

TRIBUNAL WATCH ONTARIO

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Summary of Responses to the Survey Regarding the Social Benefits Tribunal

Responses to October 6, 2021
Report dated April 11, 2022

ABOUT THIS SURVEY

Tribunal Watch Ontario is a public interest organization with a mission to monitor Ontario's adjudicative tribunal system, advocate for adjudicative independence, and promote access to justice. We monitor new adjudicative appointments to ensure that candidates are selected following a competitive process, and advocate for appointment and reappointment processes that are inclusive, transparent, merit-based, and free from political influence. We also advocate for dispute resolution processes that are fair, expert, timely and accessible.

In 2021, Tribunal Watch Ontario circulated a brief survey to users of Ontario's tribunals. In soliciting responses, Tribunal Watch wrote: "[We are] interested in your experience with Ontario's adjudicative tribunals. The following survey was designed for persons – lawyers and others – advocating on behalf of clients in disputes requiring resolution by an Ontario adjudicative tribunal during the period from April 1, 2019 to March 31, 2021. We have chosen this time period because it will allow us to compare the survey results with the data reported by the tribunal in its annual reports for the two fiscal years. The results of the survey will be made available to all interested parties."

ABOUT THE SOCIAL BENEFITS TRIBUNAL

This report is about the responses related to the Social Benefits Tribunal (SBT). It is one of 13 tribunals in the Tribunals Ontario cluster.

The SBT was established under the Ontario Works Act, 1997 (OWA), and acts as the appeal body for decisions made by municipalities and district service managers under the OWA, and by the province under the Ontario Disability Support Program (ODSP). The SBT adjudicates appeals from people who have been denied benefits under those programs. Appellants before the SBT are among the poorest and most vulnerable in Ontario. The responding party is always their local municipality or the province of Ontario. The vast majority of appeals are for denials of disability benefits under the ODSP from decisions made by the Disability Adjudication Unit (DAU) within the Ministry of Children,

Community and Social Services. The application process and the quality of decision-making by the DAU has been the subject of controversy since its inception. The SBT has historically overturned between 55%-65% of DAU disability denials that have come before it.

Low-income Ontarians rely heavily on the tribunal system to ensure that they obtain the benefits to which they are entitled under the legislation. Both OW and ODSP demand regular reporting of where recipients live, who they live with, what gifts they receive and any income they earn. Failure to comply with any of these obligations can result in loss or reduction of benefits. The SBT provides an important independent appeal process for these highly intrusive programs that regulate the daily lives of recipients.

The number of appeals has fallen from 10,529 in 2017/18 to 6,931 in the last reported fiscal year, 2020/21, with the biggest drop occurring in 2020/21. The number of appeals completed was slightly more than the number of appeals filed until 2019/20. That drop continued into 2020/21, causing a growing backlog of appeals.

Statistics from SBT Annual Reports

SBT appeals	2017/18	2018/19	2019/20	2020/21
Received	10,124	8699	10,529	6931
Completed	10,618	9048	7579	5210

In accordance with SBT performance targets, a notice of hearing is supposed to be sent to the appellant within 30 days of the date of application, and hearings are supposed to be scheduled within 180 days of the date of application. In 2016, these targets were met in 80% of the cases; by 2020/21, targets were met in only 2% of the applications filed. Frustration with these delays was voiced throughout the survey responses, with some indicating they waited up to two years for a hearing date.

The impact of the delay is twofold:

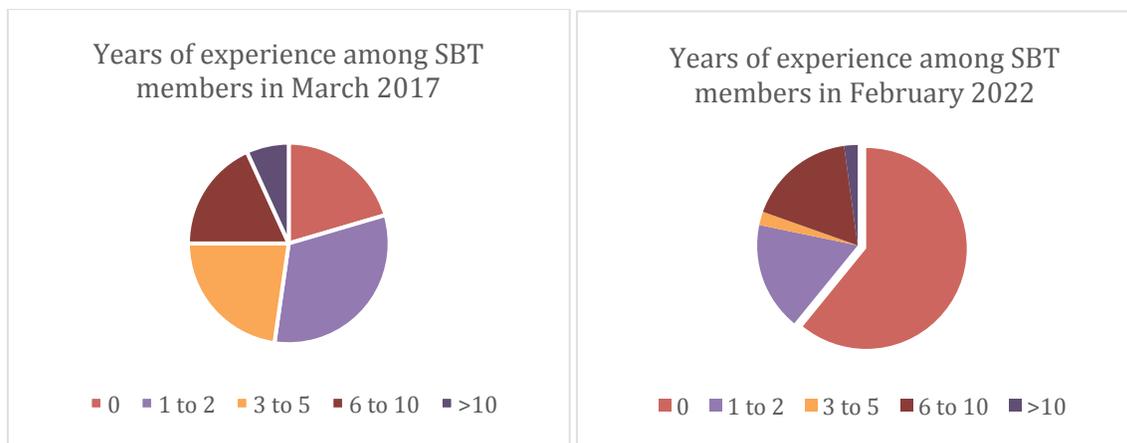
- Though benefits are retroactive if successful, appellants must survive on the much lower \$733/month available through OWA while waiting for disability appeals.
- The decision that the SBT must make is whether the appellant met the disability test at the time of the original DAU decision. Appellants are expected to testify about the impact of the disability on their lives two years earlier, putting them at a significant disadvantage.

The impact of delays is compounded by the type of hearing appellants receive when it is ultimately scheduled. The SBT, like other tribunals in the Tribunals Ontario cluster, has moved to a “digital-first” strategy, which generally means video hearings. For appellants at the SBT, this often results in a cell phone

hearing as few appellants on social assistance have computers and internet access. This means that the appellant cannot communicate privately with counsel during the hearing and cannot see the decision-maker or the opposing party. Disability hearings usually include a large volume of documentary medical evidence and rely on the testimony of the appellant.

The digital-first policy states that an in-person hearing will only be considered if an appellant can show that it is necessary to accommodate their special needs under the Human Rights Code, or that an electronic hearing would result in “significant” prejudice. There are four urban centres where appellants may “apply” to use Tribunals Ontario computer terminals if they have no phone, computer or internet access. The Tribunal determines whether an appellant can use the government-owned terminals on a “case by case” basis. In other words, even if you live in one of the four centres and have no access to technology, you can still be turned away.

One of the key issues identified by Tribunal Watch’s first [Statement of Concern](#) in May 2020 was the failure of the current Government to re-appoint experienced adjudicators, leaving positions vacant and reducing the capacity of the tribunal to conduct hearings. Appointments have resumed but the SBT continues to feel the loss of those who were not re-appointed. The pie charts below indicate the level of experience of SBT members at two moments in time, demonstrating the loss of experience over the last five years:



SURVEY RESULTS: What’s working? What’s not working?

This survey was conducted between May and October 2021 and asked respondents to consider their interaction with a tribunal between April 1, 2019 and March 31, 2021. There were 14 responses specifically about the SBT. While this is a small number that cannot provide a robust quantitative analysis, there are some recurring comments that add valuable context to the major concerns already evident in the SBT’s Annual Report statistics. There are also some

common themes in the responses and comments that indicate significant issues that should be investigated, monitored and addressed.

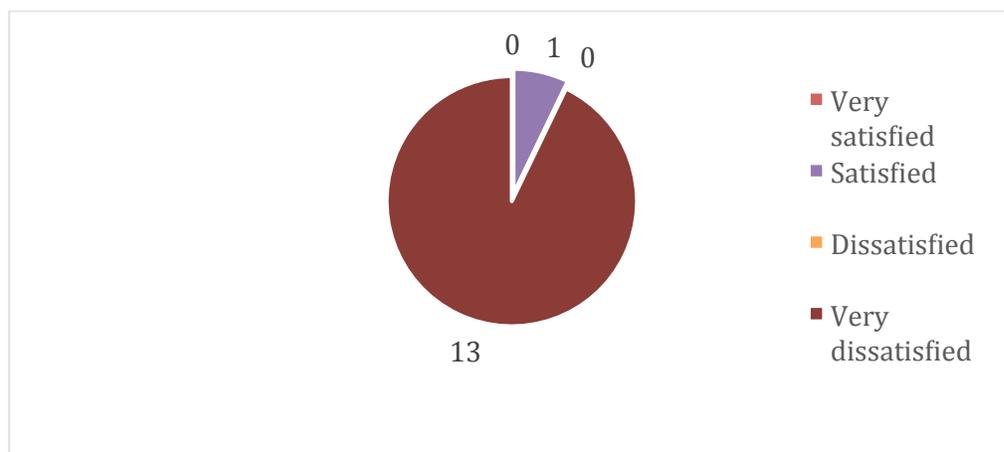
Unlike the LTB and HRTO (which work on direct-access models), the SBT hears appeals launched by individuals who disagree with first-level government decisions.

The general theme of all the responses was one of dissatisfaction in some key areas. **Most significantly, 11 of the 14 survey respondents reported that the overall experience of litigants at the tribunal, in terms of the quality, accessibility and timeliness of justice, had deteriorated over the course of the 2019/20 and 2020/21 fiscal years.** (Two survey respondents didn't answer this question; one respondent reported no change).

The responses identified the following as key concerns, in order of importance:

- The hardship caused by significant pre-hearing delays;
- The accessibility barriers raised by the shift to digital hearings, particularly for a demographic that often lacks the required technology and related skills;
- Insufficient time allocation for hearings, restricting the ability of appellants to present their full cases;
- Uneven confidence in the impartiality and skills of adjudicators and mediators;
- Inconsistency in the quality of adjudication.

QUESTION 1: During the survey period, how satisfied were you with the timeliness of the processing from initial application or response to final resolution?



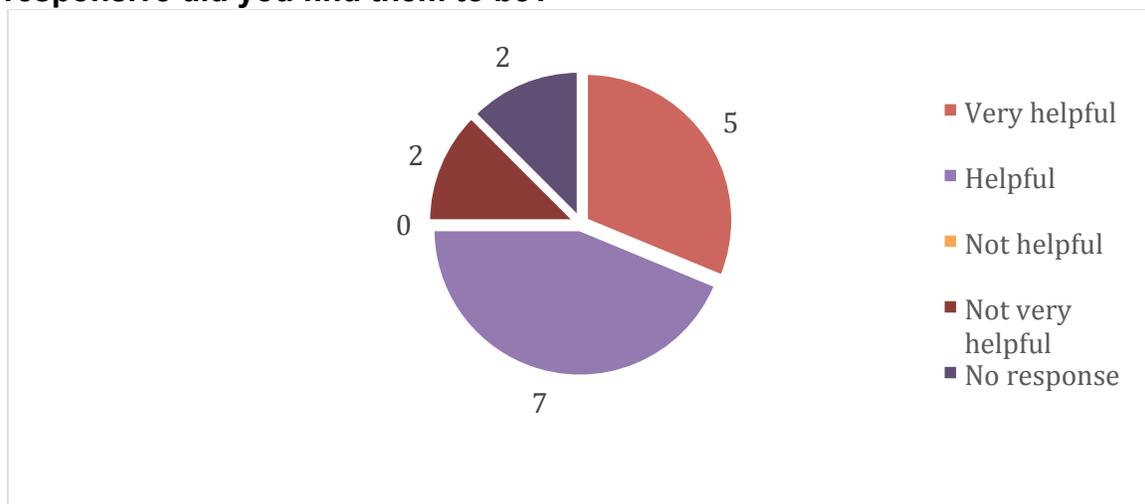
The most serious and consistent criticism focused on the timeliness of appeals. Only one person indicated satisfaction in this area, and even that survey respondent's comment was critical about the increase in delays since 2020.

Two survey respondents comment on the harm to appellants caused by the delays.

Sample Responses to Question 1

- *The timelines started to become unsatisfactory in about December 2019. Appeals filed before then were generally heard within a reasonable period of time, although there were often postponements because members were not available throughout late 2019 into early 2020.*
- *In 2019 it took 6-8 months to get to a hearing once an appeal was filed. In 2021 it is taking 18-22 months.*
- *The Tribunal is supposed to schedule hearings within 60 days of an appellant filing their appeal. I have clients who filed appeals in March/April 2020 who still do not have a date scheduled for their hearing. When I began working for the legal clinic, clients had hearing dates usually within 7-8 months of appealing. Now they are waiting 18-24 months for their hearing and they have to subsist on Ontario Works until a decision is made about their ODSP appeal. It is grossly unfair to make people wait years for their hearing, all while trying to subsist on \$733/month on OW.*
- *Prior to March 2020, there were delays but files were being processed and hearings were being assigned. After March 2020, more than 100 files with my office are pending hearing dates. Prior to March 2020, most hearings were in-person. The location was quite far for both the representative and the appellant but the hearing format was appreciated. Since COVID, whatever hearings have happened have been primarily via telephone with a bit of video hearings. A format that is not in-person does not offer the same benefits and experience as in-person, especially for the appellant.*

QUESTION 2: In your dealings with the Tribunal staff how helpful and responsive did you find them to be?

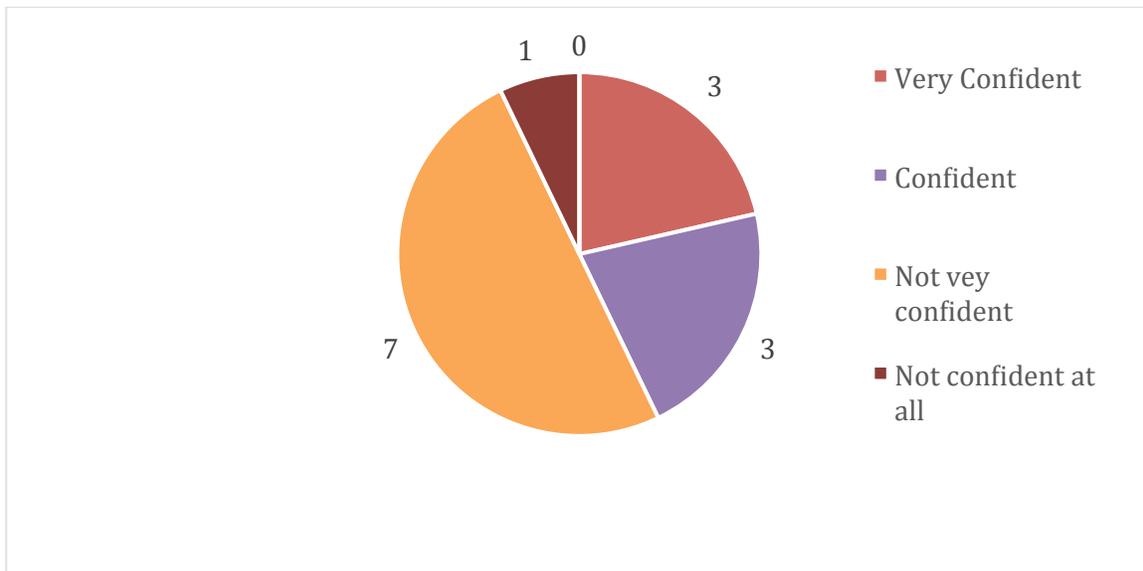


This question received the largest number of positive responses. Survey respondents appear to be satisfied with the work of tribunal staff, with 12 out of 14 expressing satisfaction. Comments indicate that staff respond to their inquiries quickly and are generally helpful. But comments also indicate that it is beyond their power to assist with their main concerns – the scheduling of a timely hearing date.

Sample Responses to Question 2

- *The Appeals Resolutions officers are doing their best within the scheduling timeframes listed above for hearings.*
- *At an individual level, staff are helpful. On a systemic level, there is nothing they can do about the shortage of adjudicators and the abundance of cancelled hearing weeks.*
- *Very helpful. The Appeals Resolution Officers for Toronto at SBT have been wonderful. They have been very helpful, particularly during COVID. They provide quick responses and pleasant to interact with.*

QUESTION 3: Given your experience with the Tribunal’s dispute resolution processes during the survey period, be they mediations or hearings of whatever nature, how confident were you in the impartiality of the mediators or adjudicators?



More than half of survey respondents indicated some degree of lack of confidence in the impartiality of “mediators” and adjudicators. In the SBT context, mediation is in the form of an early resolution process conducted by SBT staff, not adjudicators. The responses speak to both. Some comments refer

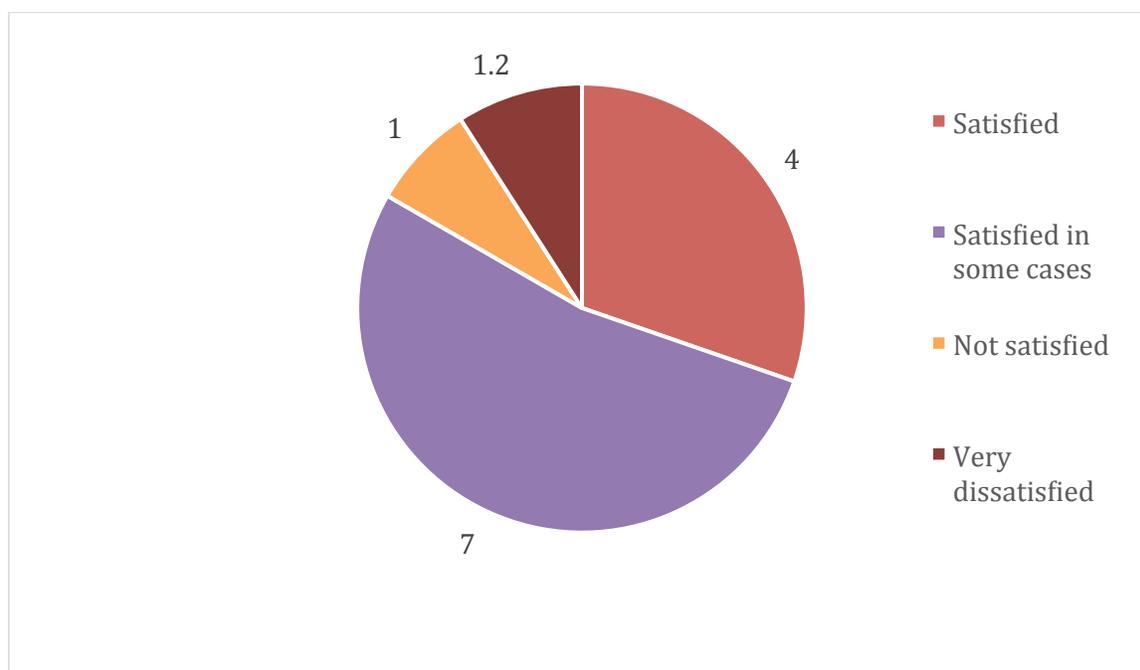
to the impartiality, or lack of it, in specific adjudicators. Others speak to systemic issues that create bias towards their clients, notably shortened hearing times that often do not allow an appellant to present their case fully.

Samples Responses to Question 3

- The current government did not renew the appointments of many experienced and knowledgeable members and have replaced them with members who appear at this early stage to be predisposed to denying applications for social assistance and who are not knowledgeable about how to properly apply the tests they quote in their decisions. At least one new member consistently misstates and couches the evidence in the decisions to support a predisposition in decision making.*

QUESTION 4: Given your experience with the Tribunal’s dispute resolution processes during the survey period, be they mediations or hearings of whatever nature, how confident were you in the subject matter expertise of the tribunal’s mediators or adjudicators?

Half the survey respondents expressed satisfaction in some cases and not in others, indicating the unevenness in the quality of adjudication. Within this category, the dissatisfaction was expressed strongly in comments

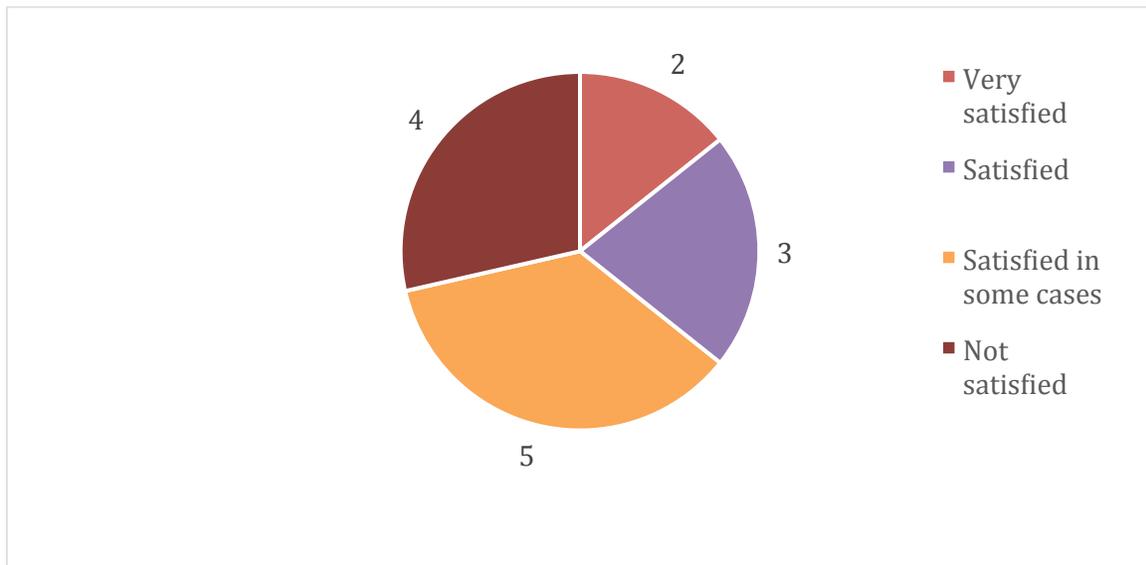


Sample Responses to Question 4

- *Most members are good, a few are so bad they should not be doing hearings at all.*
- *The adjudicators appear to have knowledge about the basic law that applies, but not about access issues which require accommodation by the Tribunal. The Tribunal made an order making it peremptory on his legal representative to ensure the appellant has a telephone with sufficient minutes for the next hearing before granting an adjournment because the client did not have sufficient minutes to participate in his appeal.*

QUESTION 5: Given your experience with the Tribunal's dispute resolution processes during the survey period, be they mediations or hearings of whatever nature, how confident were you in the skills of the Tribunal's mediators or adjudicators to administer the process?

The question resulted in a mix of responses, though even one of the two who expressed that they were very satisfied included a highly critical comment. Dissatisfaction includes procedures around adjournments, and how technical difficulties in electronic hearings were addressed.



Sample Responses for Question 5

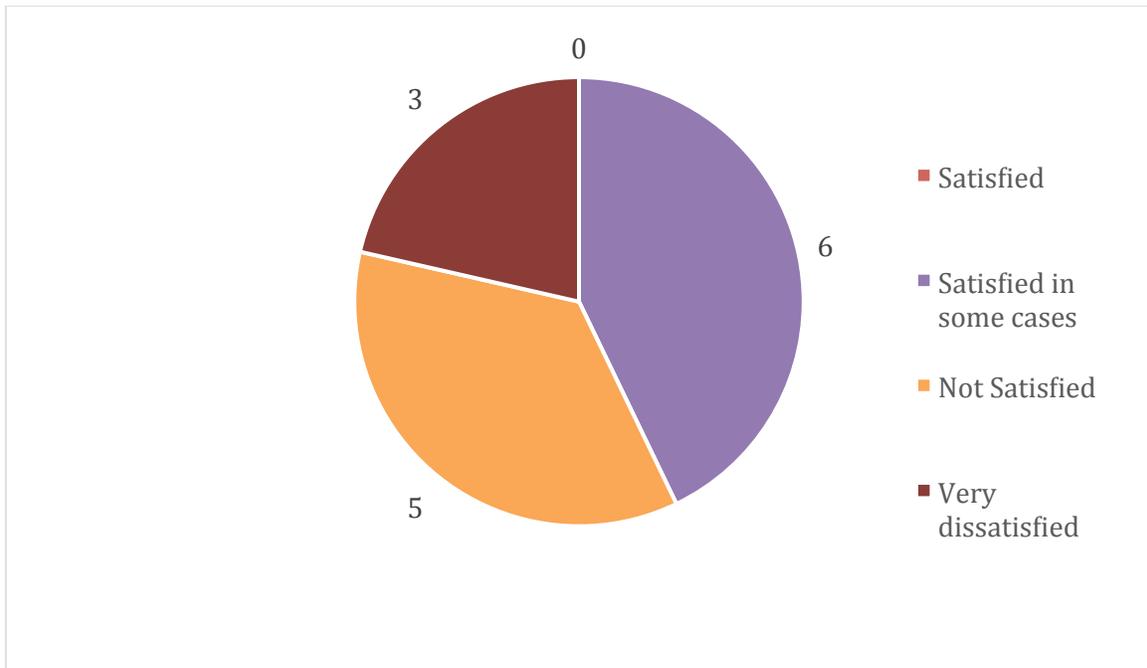
- *Clients have no supports from the Tribunal with technical problems they experience. The additional time some clients need to get the technology working cuts into their hearing time. Many clients are forced to call in using their cell phones so they cannot see the adjudicator and the adjudicator*

cannot see them. Body language and non-verbal communication is therefore lost in most appeals.

- *There were administrative steps missed at some hearings, like swearing in.*

QUESTION 6: Given your experience with the tribunal’s hearing processes during the survey period, be they in-person, by video, or telephone or in writing only (or any combination of these), how satisfied were you generally with the fairness of the process?

The majority of survey respondents indicated they were not satisfied or very dissatisfied with the fairness of the process, while another 40% were satisfied in some cases and not others. No one indicated satisfaction. The primary complaint appears to be the impact of the Digital First policy on the appellant community. Survey respondents noted the lack of technology to participate effectively in hearings. The digital proceedings policy in the SBT context does not mean video hearings but cell phone hearings. One survey respondent noted that unrepresented appellants are given telephone hearings unless they request a video hearing.



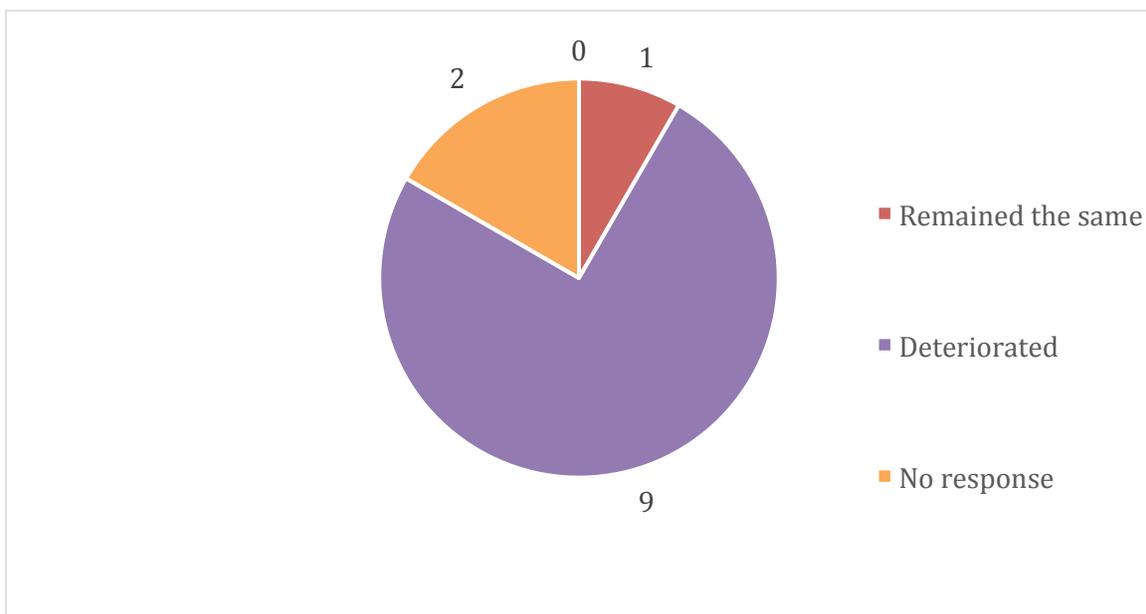
Sample Responses to Question 6

- *With timelines so stretched, vulnerable appellants often give up / abandon their goals. Further, telephone hearings were entirely unfair for any decision involving credibility (which is almost all ODSP Disability decisions). Video hearings, and to a lesser extent telephone hearings, are not accessible to people living in poverty.*

- *Not satisfied as the waiting period are too long and appellants are expected to recall how they were feeling 2 years ago... we have files from Fall 2019 that are being scheduled for hearings in Fall or 2021.*
- *Many of my clients are ESL or do not speak English. Telephone hearings are very challenging and inefficient. In-person hearings are much better. Additionally, some adjudicators are more aware of access to justice issues in their application of the rules of procedure.*
- *Since COVID, everything is moved to telephone or video. Self-represented clients are only offered telephone option (though apparently they can request video option but this is not widely shared by the Tribunal).*
- *Telephone hearings do not provide the same benefits as an in-person hearing. They may be more convenient as there is no travel required and a fixed time is assigned. However, it is difficult for clients to participate, especially when there is also an interpreter. Many clients have found it overwhelming or that it was confusing.*

QUESTION 7: Thinking of the span of the survey period, would you say that the overall experience of litigants at the tribunal, in terms of the quality, accessibility and timeliness of justice, has improved, deteriorated or remained the same?

The vast majority of survey respondents replied that the quality, accessibility and timeliness of justice have deteriorated during the span of the survey period. The issues raised in the comments continue to be about delays to hearing, and the nature of the hearings themselves, describing the barriers created by electronic hearings for low-income people, citing once again that most participate by cell phone.



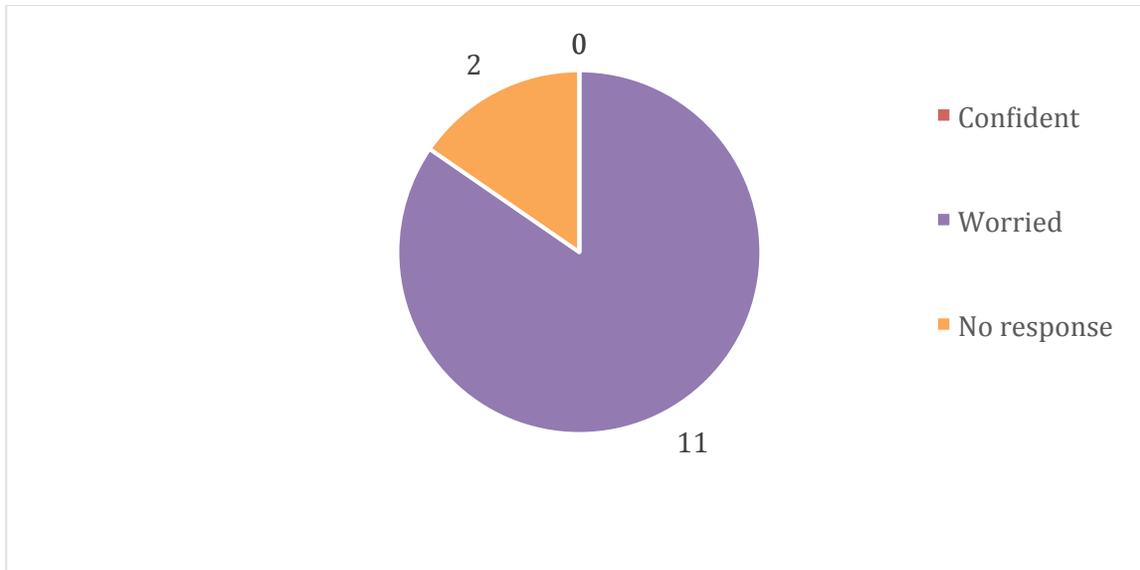
Sample Responses to Question 7

- *There is now a 2 year delay from time of filing appeal to hearing date. Previously the delay was 6-10 months, which is still long but was not nearly as bad.*
- *Going from in person to telephone has been horrible for my clients. Additionally, the delays have grown significantly during this time.*
- *My clients are waiting too long for hearings. The SBT has been terrible over the past two years and now newly appointed adjudicators are resigning before they even start!*
- *In terms of timeliness, it has been bad for many years. Regarding accessibility many of our clients do not have data plans, use pay as you go telephones and often have to borrow equipment to participate. Many planned videoconference hearings have turned into telephone hearings due to technical issues. The convenience heavily favours tribunals and government offices where costs are born [sic] by taxpayers and IT departments exist. The quality has diminished because of greater difficulties regarding expression over electronic media versus in person communication.*

QUESTION 8: If you responded “deteriorated” in the previous question, which of the following reflects your assessment of the prospects for improvement in the post-pandemic period?

- **I am confident that the quality of justice at the Tribunal will improve once pandemic challenges are over.**
- **I am worried that the Tribunal will maintain changes made during the pandemic with a continuing negative impact on the experience of litigants.**

All who responded to this question were worried that changes made during the pandemic will remain. The almost unanimous concern was the permanent elimination of in-person hearings and the negative impact this will have on their clients who do not have access to this technology. Some concern was also voiced about downloading responsibility for access to technology to community legal clinics.



Sample Responses to Question 8

- *I am worried that the Tribunal will maintain changes made during the pandemic with a continuing negative impact on the experience of litigants. The tribunal should go back to in-person hearings. If they do not I fear for the appellants. Often people applying for ODSP do not have means to guarantee access to justice and often do not have stable places to live. It is often not on the appellants mind to update SBT on their change of address/change of circumstances, especially with such a delay in the time of filing to an actual hearing.*
- *Digital First - it is simply not practicable for low income Ontarians to have access to a computer with Microsoft Teams software, a webcam, a microphone and internet access.*
- *Digital hearings instead of in person hearing will become the norm, where before we only did in person hearings. We will continue to be rushed for time and clients with complex and multiple health conditions will not be able to fully present their cases.*

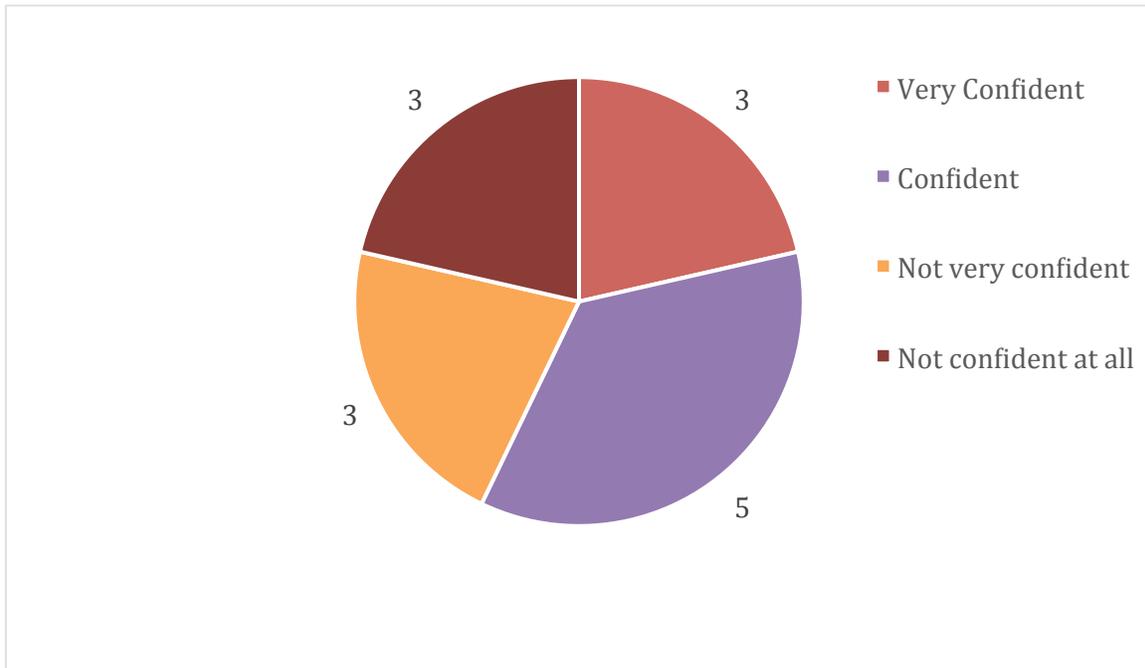
Questions 9, 10 and 11

The next three questions asked for an assessment of the person's most recent experience before the Board, in terms of three factors: impartiality, subject-matter expertise and hearing/mediation skills. Given the extensive delays reported by the survey respondents, it is not clear if this last experience occurred in the last two years or in the pre-pandemic period.

As with the earlier questions (3, 4 and 5) that asked about impartiality, subject-matter expertise and hearing/mediation skills during the survey period, the answers to questions 9, 10, and 11, were mixed.

QUESTION 9: In your most recent matter before the Board, how confident were you in the impartiality of the mediators or adjudicators?

A majority of survey respondents were confident or very confident about the impartiality of adjudicators. A significant minority were not. One commented about insufficient time for the hearing, while most referred back to comments made earlier in the survey.

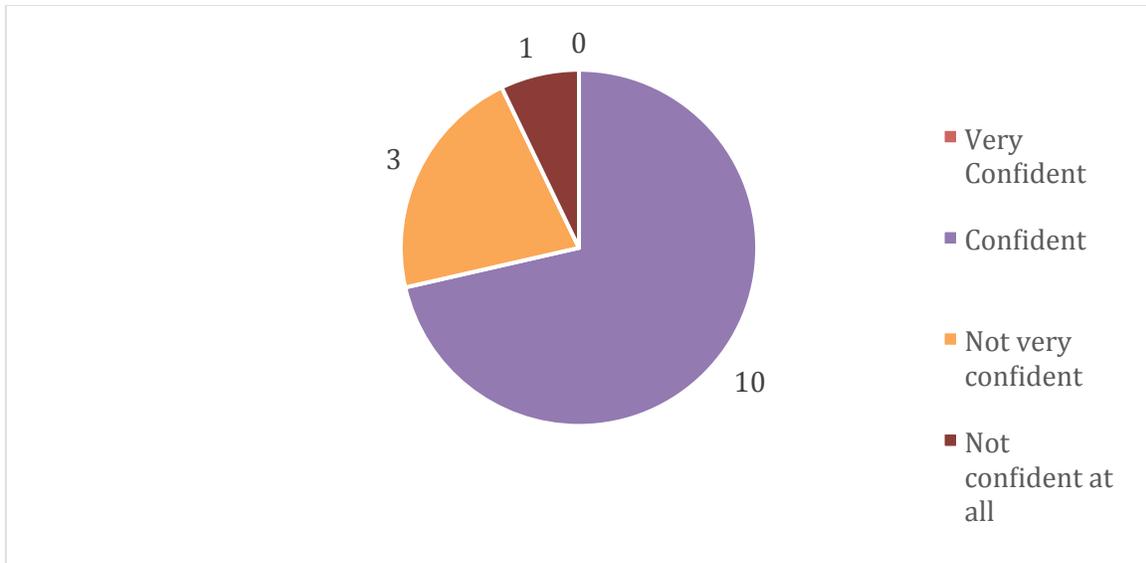


Sample Responses to Question 9

- *Not very confident; Felt the client was rushed in her testimony. Not enough time for the hearing including preliminary issues.*

QUESTION 10: In your most recent matter before the Board, how confident were you in the subject matter expertise of the Tribunal’s mediators or adjudicators?

While the majority expressed confidence in the subject matter expertise, one of the positive comments also contained a negative comment about the ability of the adjudicator to understand the context of the appellant’s circumstances.

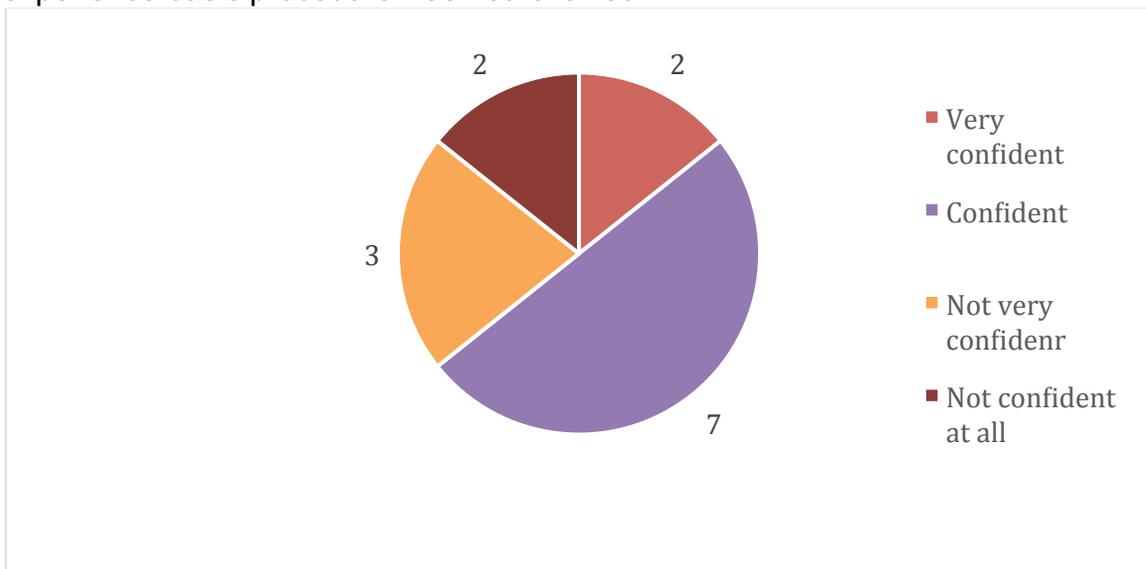


Sample Responses to Question 10

- *Worried that some adjudicators do not know about the particular challenges faced by people living in poverty (e.g., access to treatment options, etc).*
- *Adjudicator seemed competent on the applicable Act but not on procedural fairness issues.*

QUESTION 11: In your most recent matter before the Board, how confident were you in the skills of the tribunal’s mediators or adjudicators to administer the process?

The majority expressed confidence in the skills of the adjudicators. Once again, one survey respondent who expressed confidence reported a negative experience basic procedure was not followed.



Sample Responses to Question 11

- *The Adjudicator permitted the opposing legal representative a lot of time, when my client and myself were rushed to present evidence and arguments.*
- *Confident; though this was the session where the member did not swear in the applicant.*

Additional Comments

Survey respondents' final comments were consistent with the themes raised in earlier responses, including the challenges posed by remote hearings, insufficient time allocated for hearings, the impact of extended delays on already-vulnerable appellants, and concerns about bias and stigma.

- *I work in a community legal clinic. Our clients are on social assistance and the working poor. They do not have access to the technology digital hearings require. Some of my clients cannot afford minutes of cell phone time sufficient for a hearing. During COVID, many clients, who are homeless have no access to a place where they can have a telephone hearing (I have 1 client living in a tent and a few living in shelters).*
- *Clients wait a long time for their hearings. These hearings are regarding disability benefits while are a form of social assistance. Fairness requires the clients be given the time they need to testify and present their evidence. There is an appearance of bias if the appellant is being pressured about time.*
- *I believe that electronic hearings are appropriate for many preliminary matters but the ultimate evidentiary hearing that can result in the deprivation of or provision or maintenance of the means of personal freedom, security, food and shelter must be for the benefit first and foremost of the party who stands to be most affected and it is they who should have a right to choose the form of the hearing. I also feel that there should be an impartial mechanism for the selection of Tribunal members.*

CONCLUSION

The survey results paint a grim picture for low-income Ontarians who have acquired a disability within the last three years and need income support. The delays in getting a hearing are unconscionable, particularly when historically more than half those appellants were successful in proving their eligibility. There are thousands of people trying to survive on \$733/month for up to 18 months longer than they would have in the past. Many of them are ill with treatable conditions that will likely be worsened by their living conditions while they wait. And when they finally do get to their hearing, the consequences of the Digital-First policy often create barriers to justice that block their access to critical benefits.

For more information and documents about the Social Benefits Tribunal in the Tribunal Watch Ontario website, please see: <https://tribunalwatch.ca/sbt/>.