



PUBLIC REQUEST TO THE ONTARIO AUDITOR GENERAL

May 30, 2023

INTRODUCTION

Tribunal Watch Ontario is a non-partisan, public interest organization, dedicated to promoting an independent and accessible adjudicative tribunal system in Ontario. Tribunal Watch Ontario advocates for accessible, efficient, timely and fair dispute resolution processes at Ontario tribunals.

Tribunal Watch Ontario is filing this Public Request with the Office of the Auditor General of Ontario because of our deep concern about the continuing failure of Tribunals Ontario, and in particular, the Landlord and Tenant Board (LTB), to deliver timely access to case resolution. We have reviewed with alarm the recently-released report of the Ontario Ombudsman on delays at the LTB, entitled “*Administrative Justice Delayed, Fairness Denied*”. Although the Report sets out many areas in which Tribunals Ontario and the LTB are failing to provide the quality of service previously provided to Ontarians, in this Public Request, we are focusing on a specific issue identified by the Ombudsman that raises value-for-money concerns.

BACKGROUND

The Report of the Ombudsman identifies in detail many deficiencies in the operation of a new Case Management System (CMS) purchased by the Ministry of the Attorney General (MAG) for Tribunals Ontario, and particularly for the LTB, in March 2021. The Ombudsman’s Report examines the impact of those deficiencies in worsening delays for the tens of thousands of landlords and tenants in the still-growing queue for a hearing at the LTB: see paragraphs 115-121 and examples throughout the case studies in the Report.

The new system purchased by MAG is based on a technology solution used by tribunals in British Columbia, and includes a public-facing navigation tool, as well as case management and online dispute resolution features. However, right at the outset, the Ombudsman’s Report raises questions about whether the new system – referred to hereafter for ease of reference as the BC CMS - was in fact needed at the time of purchase.

Between 2016 and 2020, MAG and the LTB dedicated significant funds and considerable staff resources to develop another new CMS, specifically for the LTB, and designed to meet the particular needs of its case resolution process, including many important features that are reported by the Ombudsman to be missing from the system purchased in 2021. This earlier LTB-specific CMS was, according to the Ombudsman, still being fine-tuned when his investigation started, but was ready to become operational early in 2019: see paragraphs 103 to 115.

Documents show that by February 2019, the new system under development by the Ministry was almost ready for implementation. However, the newly constituted Tribunals Ontario was concerned that given the backlog in applications the Board had to address, there would be insufficient staff available to operationalize the new system. Tribunals Ontario was also interested in adopting a system that could apply across all of its constituent tribunals. The Ministry continued to promote the system under development, anticipating implementation in the fall of 2020, but by spring 2020, the situation had shifted. The Ministry retained a consultant to assess the feasibility of a new case management system that would allow for integrated scheduling across Tribunals Ontario. Funding for this system model received approval in January 2021. Given the Board's critical need, an initial target was set for it to implement the system as a pilot project by the spring of 2021. (para. 108)

THE ISSUES

It is ironic that, in 2019, Tribunals Ontario was relying on backlog concerns and staff shortages to make the case for another new CMS. As of March 31, 2019, its Annual Report documents a backlog at the LTB of 14,726 applications. As of May 4, 2023, the Ombudsman reported a backlog of 38,000 applications, a backlog that has grown despite increased funding for an expanded staff and adjudicator complement.

In response to media inquiries following the release of the highly critical Ombudsman's Report, a spokesperson for the Attorney-General defended MAG's oversight and support of the LTB and Tribunals Ontario by noting, among other things, the Government's purchase of the BC CMS at a cost of \$28.5 million in March 2021. Given the many failures of the BC CMS since implementation in 2021, as enumerated by the Ombudsman, there are reasonable questions as to whether the purchase was merited, whether the system itself was appropriate for the task intended, and whether implementation was flawed.

At the time of the purchase, it was announced that the system would be used by multiple tribunals within Tribunals Ontario. Tribunal Watch Ontario has questions about whether other tribunals within Tribunals Ontario are today using the BC CMS and if so, to what extent and how successfully.

What is clear is that the LTB has not yet been able to adapt the purchased product to meet the full needs of its case resolution process. For example, the Ombudsman noted that, during his investigation, the BC CMS was unable to perform adequately, or at all, some of the most basic functions, such as: scheduling hearings (para.118); identifying the age of urgent matters waiting for hearing (para. 188); keeping track of applications

adjourned due to over-scheduling and files requiring priority scheduling due to multiple adjournments (paras. 225, 226, 227, 228); identifying which cases were in mediation, the assigned dispute resolution officer and the status of the mediation (para.281); identifying which adjudicators were assigned to which cases (para. 248); producing a comprehensive report on outstanding orders, the assigned adjudicator and the length of the delay (para. 249); identifying cases requiring French language services; allowing reports on the comparative scheduling data for English versus French language applications (para. 293); and producing French language orders (para. 295).

These deficiencies, several of which remain outstanding, raise serious value-for-money questions with respect to the \$28.5 million expenditure. At least eight recommendations in the Ombudsman's Report deal with the BC CMS and the Report documents many other attempted or successful fixes to the system that were instigated on the recommendation of the Ombudsman throughout the almost 3.5 years of its investigation. See recommendations 25, 31, 32, 33, 34, 45, 51, and 55.

We understand that Tribunals Ontario and MAG retained Price Waterhouse Cooper (PWC) at some point in the assessment or rollout of the BC CMS, to determine its suitability or to assist in eliminating the "bugs" that were resulting in lost files and delayed applications. We do not know if the fee paid to PWC was in addition to the initial \$28.5 million purchase price.

QUESTIONS FOR INVESTIGATION

Considering the above, we are asking the Office of the Auditor General to consider conducting a value-for-money audit of the process surrounding the purchase and implementation of the BC CMS, including:

1. Whether the purchase request by Tribunals Ontario was appropriate in light of its existing brand-new LTB-specific CMS that was ready to go operational;
2. Whether the request merited approval by MAG;
3. Whether the implementation at the LTB by Tribunals Ontario, presumably with technical support from MAG, has been handled competently so as to make good use of the funds expended;
4. The extent, cost and effectiveness of the work performed by PWC to support the assessment and/or rollout of the BC CMS; and
5. Whether the BC CMS is being used by other tribunals within Tribunals Ontario, and with what success.

CONCLUSION

In closing, Tribunal Watch Ontario also raises the issue of a possible relationship between steadily deteriorating public service at the LTB after it was moved from the Social Justice Tribunals Ontario (SJTO) into Tribunals Ontario in January 2019, and the

misplaced effort and energy that Tribunals Ontario and the LTB then put into acquiring and badly implementing the BC CMS. It is also not hard to imagine that staff morale at the LTB would have suffered when years of developing a LTB-specific CMS were wasted in favour of a new system that has failed to perform as promised.

As the Ombudsman explains, the new leadership at Tribunals Ontario was not interested in moving forward with the just-completed new LTB-specific CMS, and continued to use its legacy system as it lobbied MAG to fund a purchase of the BC CMS. Although there were multiple inadequacies with the legacy system, as the Ombudsman explains, the fact remains that the LTB at the SJTO, using the old system, was able to maintain a relatively reasonable backlog that averaged just under 13,000 at the end of each fiscal year as reported in the last SJTO Annual Report (released in June 2018). If we turn to the most recent Tribunals Ontario Annual Report, we can see that the backlog then grew to an average of over 30,000 applications by April 1, 2022. As of May 2023, as reported by the Ombudsman, the backlog stood at 38,000.

Moreover, it bears noting that during the most recent reported years, as the backlog grew, the number of new applications fell dramatically, from a previous average of over 80,000 a year, to 48,422 in 2020/21 and 61,586 in 2021/22. In 2020/21, the drop was attributable to the pandemic; in 2021/22, the drop may reflect a loss of public confidence in the ability of the LTB to deliver justice in the face of the publicly-reported delays.

As well, over the past two years, the Government has announced on more than one occasion, millions in new funding for the LTB, including for increased staff and a larger panel of adjudicators. As the backlog grew to 38,000 this year, the LTB has enjoyed the largest budget, the largest panel of adjudicators, and the largest staff complement in its history, and is in year three of implementation of the BC CMS. The BC CMS appears to have drained staff and financial resources at Tribunals Ontario and the LTB, while requiring detailed review and recommendations from the Office of the Ombudsman, and perhaps also from Price Waterhouse Cooper.

As the Ombudsman makes clear, the LTB is not currently providing any reasonable level of accessible justice to the landlords and tenants trying to use its case resolution services:

Since my investigation began, the Board has adopted a series of shifting strategies to manage its backlog of applications awaiting hearings. While there has been some slight fluctuation in the volume, the queue has not been substantially reduced, and now stands at more than 38,000 applications. Where once it took the Board a matter of days to schedule hearings, it now takes an average of seven to eight months. As of February 2023, landlord applications were generally being scheduled for hearing within six to nine months of receipt, and tenant applications could take up to two years to be scheduled.

Administrative tribunals make decisions about matters that have a serious impact on people's lives, and the Landlord and Tenant Board is no exception, providing an extremely important service to the public. It has exclusive jurisdiction to resolve applications under the Residential Tenancies Act, 2006, and the public is entitled to expect that it will provide services in a timely and efficient manner.

Thank you for your attention to these important issues.

TRIBUNAL WATCH ONTARIO