

Real Estate

Oversight of Ontario government appointments to tribunals has become farce | Brian Cook

By **Brian Cook**

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(October 23, 2023, 2:01 PM EDT) -- Over the course of a mandate, governments make thousands of appointments to agencies boards and tribunals. In Ontario, the Standing Committee on Government Agencies is mandated to bring some oversight to these appointments by requiring selected intended appointees to appear before the committee. This system has degenerated to the point that very few appointees appear, leaving the system of appointments to operate with virtually no oversight.

This is particularly problematic for appointments to adjudicative tribunals, which are essentially judicial bodies, dealing with legal matters that would otherwise be dealt with by the courts — human rights, landlord and tenant disputes, entitlement to social benefits or benefits after a work-related or motor vehicle accident, to name but a few.

As with the courts, public confidence in the system requires that the people appointed to adjudicative tribunals be, and be seen to be, independent and fully competent to make decisions that can have profound effects on the people appearing before them. The *Adjudicative Tribunal Accountability, Governance and Appointments Act, 2009* requires that appointments to adjudicative tribunals be merit based and that appointees have subject-matter and dispute resolution expertise. The standing committee represents the only opportunity for some transparency and accountability to the appointment process to encourage the appointment of people with the requisite expertise and to ensure that patronage is not a factor in the appointment.

In the past, prospective appointees to important tribunals were routinely called to appear before the committee. Appointees took the invitation to appear seriously and would make necessary arrangements to ensure that they were available. This approach largely ended after the Ford government was elected in 2018.

Under the rules of the legislature (which can be, and are, amended from time to time) the committee has only 30 days to deal with an intended appointment. The timetable is such that there is typically only one time slot available within the 30 days. If a person advises they are not available at that time, there are no consequences, and the appointment will go through with no oversight. Extension of the 30-day window requires unanimous consent of the committee which since 2018 has always been withheld by the government members of the committee.

The rules of the committee also provide that the committee cannot ask to call an intended appointee if the appointment is for one year or less. While there is a certain logic to this, it has been repeatedly used to appoint individuals to senior leadership positions who have clear political affiliation to the governing party and who do not appear to have the legislatively required expertise because the appointment is only for one year. At the end of the one-year term, the person is then reappointed for extended terms. The committee's mandate does not include reappointments.

It is not acceptable that the important oversight mandate of the committee can be sidestepped in these ways. Earlier this year, Tribunal Watch Ontario submitted a brief to the committee asking that its operations be changed to ensure that there is an opportunity for more meaningful review of

intended appointees by adopting the following measures:

1. If an intended appointee states they are not available to attend at the time and date scheduled for their appearance, a written explanation of their unavailability should be required, and the committee should routinely require attendance on an alternative date.
2. If any prospective appointee who is called to appear ends up not appearing, the intended appointee should be required to answer written questions from committee members before the appointment is considered by the committee for approval.
3. The committee should report the names of prospective appointees who have been called to appear before the committee but did not appear.
4. The committee should seek an amendment to the rules to ensure that all intended appointees to executive chair, chair, associate chair and vice-chair positions will be asked to appear before the committee regardless of the length of the appointment term.

There has so far been no response from the committee to these proposals.

Brian Cook is the co-ordinator of Tribunal Watch Ontario.

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