

The Tribunal Watch Ontario Story (so far)

October 11, 2023

Voy Stelmaszynski and Brian Cook

Tribunal Watch Ontario was formed in early 2020 because of increasing alarm about the state of Ontario's adjudicative tribunal system following the election of the Ford government in 2018.

For the tribunals under the Ministry of the Attorney General, there was an apparent strategic decision to not renew adjudicators who had been appointed by the previous government and a failure to make new appointments. (Tribunals under other ministries, notably Labour and Health fared better and were mostly able to maintain their roster of experienced adjudicators.) The adjudicative tribunals under the AG are mostly under Tribunals Ontario, a cluster of 13 tribunals, the largest of which include the Landlord and Tenant Board, the Human Rights Tribunal of Ontario, the Social Benefits Tribunal, and the Automobile Accident Benefits Service.

By 2020, the process of “de-appointments”, the loss of almost all the senior tribunal leaders and the failure to make new appointments, resulted in massive backlogs, a sharp decline in the number of hearings and decisions, and administrative disarray. And that was all before the pandemic hit.

The descent into dysfunction of what had been a robust and functioning (though by no means perfect) adjudicative tribunal system prompted a group of concerned people to come together to call attention to the situation and to advocate for improvements. Thus was born Tribunal Watch Ontario.

Experts from the world of administrative law—academics, judges, senior counsel, and retired senior civil servants—were invited to form an advisory council. Others were summoned to serve on a steering committee and do the heavy lifting: to think, write, and advocate. A Mission Statement was developed:

Tribunal Watch Ontario is a non-partisan, public interest organization with a mission to monitor Ontario's adjudicative tribunal system, to advocate for adjudicative independence, and to promote access to justice.

After launching a website, tribunalwatch.ca, we began to publish statements of concern regarding the structure of several Ontario tribunals, the significant number of appointments of tribunal Chairs and adjudicators with little or no subject matter expertise or previous adjudicative experience, apprehensions about access to justice as the adjudicative regimes underwent transformation and the accumulation of backlogs.

The rapid deterioration of the system showed how fragile it really is and demonstrated the need for structural change. In addition to the task of monitoring the operation of the system, Tribunal Watch has made proposals for what those changes should be. Our seminal document, [The Adjudicative Tribunal System: Statement of Principles](#), enumerates five golden concepts upon which an administrative justice regime should be founded:

1. **Independence and Impartiality:** The adjudicator and tribunal must be, and be seen to be, independent and impartial.

2. **Accountability:** The adjudicator is accountable to the parties before them and to the tribunal. The tribunal, through the Chair, is accountable to the government for its performance and for the conduct of its adjudicators and staff.
3. **Appointments and Reappointments:** The appointment and reappointment of Tribunal Chairs and adjudicators require fair, timely and transparent processes, free of partisan or patronage influences. The terms of appointments must be fixed and based on the needs of the Tribunal.
4. **Competence and Expertise:** Adjudicators must be optimally competent and the tribunal equally competent in the exercise of its mandate. Adjudicators must have dispute resolution skills, subject matter expertise, and experience in decision writing.
5. **Accessibility, Inclusion, Diversity and Equity:** Tribunals must develop and continually review strategies to enhance accessibility, inclusion, diversity and equity in their make-up, operations and decision-making.

Other papers disseminated by Tribunal Watch have addressed crisis points as they have arisen over time: dubious appointments and reappointment practices, backlogs at key tribunals, the rise of virtual hearings, and the refusal to provide parties with the option of an in-person hearing, to name a few. We have responded to court decisions, provided commentary on reports from other entities, and raised practical suggestions to help keep administrative justice on track.

In partnership with a number of law schools in Ontario Tribunal Watch has presented webinars focusing on administrative justice. With less than a shoestring budget, we have managed to assemble an electronic mailing list, to spark sustained interest in our work among leading journalists and politicians of different stripes, and we have even found our way into footnotes in academic scholarship.

The work of Tribunal Watch is ongoing. It is a challenge that a small group of individuals who care about everyday justice has dedicated itself to. We will not let up in our efforts to improve the adjudicative tribunal world. We will continue to publish, to speak, to watch.

Interested people can join the mailing list or make a financial contribution at tribunalwatch.ca

Voy Stelmaszynski is a retired Tribunal Counsel and a member of the Tribunal Watch Ontario Steering Committee

Brian Cook is an experienced adjudicator and mediator and the Coordinator of Tribunal Watch Ontario