

# ADMINISTRATIVE JUSTICE DELAYED, FAIRNESS DENIED

Investigation into whether the Ministry of the Attorney General, Tribunals Ontario and the Landlord and Tenant Board are taking adequate steps to address delays and case backlogs at the Landlord and Tenant Board



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## ADMINISTRATIVE JUSTICE DELAYED, FAIRNESS DENIED

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## Office of the Ombudsman of Ontario

### We are:

An independent office of the Legislature that resolves and investigates public complaints about services provided by Ontario public sector bodies. These include provincial government ministries, agencies, boards, commissions, corporations and tribunals, as well as municipalities, universities, school boards, child protection services and French language services.

### Land acknowledgement and commitment to reconciliation

The Ontario Ombudsman's work takes place on traditional Indigenous territories across the province we now call Ontario, and we are thankful to be able to work and live on this land. We would like to acknowledge that Toronto, where the Office of the Ontario Ombudsman is located, is the traditional territory of many nations, including the Mississaugas of the Credit, the Anishnabeg, the Chippewa, the Haudenosaunee, and the Wendat peoples, and is now home to many First Nations, Inuit and Métis peoples.

We believe it is important to offer a land acknowledgement as a way to recognize, respect and honour this territory, the treaties, the original occupants, their ancestors, and the historic connection they still have with this territory.

As part of our commitment to reconciliation, we are providing educational opportunities to help our staff learn more about our shared history and the harms that have been inflicted on Indigenous peoples. We are working to establish mutually respectful relationships with Indigenous people across the province and will continue to incorporate recommendations from the Truth and Reconciliation Commission into our work. We are grateful for the opportunity to work across Turtle Island.

*Ce rapport est aussi disponible en français.*



## **Ombudsman Report**

### **“Administrative Justice Delayed, Fairness Denied”**

**Investigation into whether the Ministry of the Attorney  
General, Tribunals Ontario and the Landlord and Tenant  
Board are taking adequate steps to address delays  
and case backlogs at the Landlord and Tenant Board**

**Paul Dubé  
Ombudsman of Ontario**

**May 2023**

#### **Recommendation 60**

**Tribunals Ontario should report back to my Office in six months' time on its progress in implementing my recommendations, and at six-month intervals thereafter until such time as I am satisfied that adequate steps have been taken to address them.**

#### **Recommendation 61**

**The Ministry of the Attorney General should report back to my Office in six months' time on its progress in implementing my recommendations, and at six-month intervals thereafter until such time as I am satisfied that adequate steps have been taken to address them.**

## **Recommendations**

- 1. The Attorney General, Ministry of the Attorney General, Tribunals Ontario, and the Landlord and Tenant Board should enter a memorandum of agreement setting out a fixed complement of members for the Board and a method for revising the complement in response to changing circumstances.**
- 2. The Attorney General, Ministry of the Attorney General, Tribunals Ontario, and the Landlord and Tenant Board should include in the memorandum of agreement referred to in Recommendation 1, provision for additional operational resources to support any increased member complement.**
- 3. The Government of Ontario should take steps to ensure that the Landlord and Tenant Board's member and staff complement, as established in accordance with Recommendations 1 and 2, is maintained.**
- 4. The Ministry of the Attorney General, Tribunals Ontario, and the Landlord and Tenant Board should agree on a definition of part-time and cross-appointed work to ensure that there is a common understanding of the minimum time such appointees should be expected to dedicate to matters before the Board.**
- 5. Tribunals Ontario and the Landlord and Tenant Board should develop a policy relating to recruitment of members to enhance operational stability and better ensure that the Landlord and Tenant Board maintains adequate adjudicative capacity.**

- 6. Tribunals Ontario and the Landlord and Tenant Board should develop a policy and procedure for the timely reappointment of members to ensure that the Board's adjudicative services are not interrupted by a shortage of members.**
- 7. The Ministry of the Attorney General should develop a more efficient mechanism for providing Tribunals Ontario with the necessary information and documentation regarding candidates to execute timelier appointments to tribunals, including the Landlord and Tenant Board.**
- 8. Tribunals Ontario and the Ministry of the Attorney General should minimize duplication in the candidate vetting process and enter into an agreement for the sharing of relevant information about appointments that Tribunals Ontario has obtained through its vetting process.**
- 9. The Government of Ontario should consider amending the *Residential Tenancies Act, 2006* to provide for extension of member terms for a period of time before and after a provincial election to ensure that the Landlord and Tenant Board retains sufficient members to effectively carry out functions under the Act.**
- 10. Tribunals Ontario and the Landlord and Tenant Board should develop a formal strategy relating to recommendations for appointments, including term lengths, prior to election years.**
- 11. The Ministry of the Attorney General, Tribunals Ontario and the Landlord and Tenant Board should work together to ensure that staggered appointment terms are proposed to ensure consistent adjudicative coverage for the Landlord and Tenant Board.**
- 12. Tribunals Ontario and the Landlord and Tenant Board should ensure that the level of training required by the training passport is maintained and that training opportunities are not limited in future.**
- 13. The Landlord and Tenant Board should establish a consistent and thorough screening process for early identification of errors to ensure applicants have an opportunity to remedy them prior to scheduling a hearing.**
- 14. The Landlord and Tenant Board should include guidance with all notice forms for termination of a tenancy identifying what information must be included and cautioning that failure to include this information may result in the application being dismissed.**
- 15. The Landlord and Tenant Board should immediately triage outstanding tenant applications, and identify and schedule matters that are significantly aged.**

- 16. The Landlord and Tenant Board should schedule tenant applications more frequently and set more realistic time frames for hearings of these matters.**
- 17. The Landlord and Tenant Board should revise its operational procedures concerning requests for expedited hearings to include reference to the standardized response to be used by staff in replying to individuals who have not used the Request to Extend or Shorten Time form.**
- 18. The Landlord and Tenant Board should develop a separate form for requests to shorten the time before hearings take place.**
- 19. The Landlord and Tenant Board should, if it reinstitutes its practice of expediting applications to end a tenancy for illegal acts and causing serious problems in a rental unit or residential complex, indicate on the applications and any corresponding instructions that they are considered urgent and submission of a Request to Extend or Shorten Time form is unnecessary.**
- 20. The Landlord and Tenant Board should, if it reinstitutes its practice of expediting applications to end a tenancy for illegal acts and causing serious problems in a rental unit or residential complex, revise the Request to Extend or Shorten Time Instruction Guide to clarify that an application to end a tenancy because of illegal acts or for causing serious problems in a rental unit or residential complex is considered urgent and does not require submission of the form.**
- 21. The Landlord and Tenant Board should revise its form for requesting an expedited hearing to ensure that there is adequate room for requestors to include multiple application numbers.**
- 22. The Landlord and Tenant Board should train members on adjudicating requests for expedited hearings including using case examples.**
- 23. The Landlord and Tenant Board should regularly audit decisions regarding expedited hearing requests to identify concerns, further training needs, and areas requiring process improvement.**
- 24. The Landlord and Tenant Board should implement a process for triaging urgent cases for scheduling.**

**25. To assist with prioritizing applications for hearing, the Landlord and Tenant Board should configure its new case management system to produce reports showing the length of time urgent matters have been outstanding, or alternatively develop another method for producing such reports.**

**26. The Landlord and Tenant Board should establish a set notice period between issuance of a hearing notice and the date of hearing, subject to defined exceptions where a shorter notice period would be permitted.**

**27. Tribunals Ontario and the Landlord and Tenant Board should provide dedicated real-time technical assistance to its members and hearing participants to improve the accessibility and timeliness of its hearing processes.**

**28. The Landlord and Tenant Board should review and revise its hearing processes to ensure that technical glitches and the order in which moderators admit participants into hearing rooms do not negatively impact the adjudication of their matters.**

**29. The Landlord and Tenant Board should implement a process to expeditiously address problems that arise at hearings due to technical glitches and the timing of moderated admission into hearing rooms.**

**30. The Landlord and Tenant Board should ensure that in future it does not consider members that have been assigned cases for hearing seized of any matters that they have adjourned without hearing.**

**31. The Landlord and Tenant Board should configure its new case management system to track adjournments, reasons for adjournment, and member instructions relating to adjournments in order to identify cases for priority scheduling and increase scheduling efficiency or alternatively, the Board should develop another effective means for tracking this information.**

**32. The Landlord and Tenant Board should designate a staff person to update the case management system after hearings and ensure adjourned cases are assigned for rescheduling and appropriately identified for priority scheduling.**

**33. The Landlord and Tenant Board should designate a staff person to record in its case management system the members assigned to cases and responsible for issuing orders following hearings.**

34. The Landlord and Tenant Board and Tribunals Ontario should implement a case management system modification that allows for comprehensive monitoring of outstanding orders, including capacity to track the length of time orders are outstanding and the specific members responsible for them.
35. The Landlord and Tenant Board should revise its Outstanding Order Reports: Process and Protocol to reflect its current expectations and practices.
36. The Landlord and Tenant Board should ensure that the Outstanding Order Reports: Process and Protocol includes clear information about how members can request assistance when they fall behind in order production.
37. The Landlord and Tenant Board should ensure that members, who fall behind in the preparation of orders, are provided with assistance expeditiously when they reach out for help.
38. The Government of Ontario should consider amending the *Residential Tenancies Act, 2006* to provide the Associate Chair of the Landlord and Tenant Board with the authority to address serious delay in issuing orders through re-assigning applications to another member for re-hearing.
39. Tribunals Ontario and the Landlord and Tenant Board should develop a rigorous process for tracking members whose terms are about to expire, which takes into consideration the number and age of outstanding orders associated with such members.
40. Tribunals Ontario and the Landlord and Tenant Board in developing the process referred to in Recommendation 39, should consider historical information about de novo hearings and select a reasonable time period for detailed examination of outstanding orders associated with members whose terms are due to expire.
41. The Landlord and Tenant Board should avoid assigning applications for hearing to members whose terms are due to expire, and who have a significant inventory of pending orders.
42. The Landlord and Tenant Board should avoid assigning applications in which there have already been significant delays to members whose terms are due to expire.
43. The Government of Ontario, the Ministry of the Attorney General, Tribunals Ontario and the Landlord and Tenant Board should develop an expedited process for short-term reappointments of members to allow them to complete outstanding orders.
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44. The Government of Ontario should consider amending the *Residential Tenancies Act, 2006* to extend the time that member terms are deemed to continue for the purpose of completing outstanding orders.
45. The Landlord and Tenant Board should configure its case management system in order to track mediation assignments to dispute resolution officers, and the status of mediations.
46. The Landlord and Tenant Board should establish a process to address cases where mediation is unsuccessful and where parties indicate a mediated settlement has been breached.
47. The Landlord and Tenant Board should amend its notices of hearing to clearly outline the steps parties can take to make requests for bilingual hearings.
48. The Landlord and Tenant Board should implement a simplified online process for respondents to identify their French language service needs.
49. The Landlord and Tenant Board should amend its application forms to enable applicants to identify potential French language service needs of the respondent.
50. The Landlord and Tenant Board should follow up directly with any respondents that applicants have identified as potentially requiring French language services in order to confirm whether a bilingual adjudicator should be scheduled to hear the matter or take other measures such as automatically scheduling a bilingual member to hear the matter in such circumstances.
51. Tribunals Ontario and the Landlord Tenant Board should ensure that the case management system has the capacity to collect information about all cases in which French language services are requested and provided and identify the length of time taken at each stage to process such files.
52. The Landlord and Tenant Board should conduct statistical analysis comparing the length of time taken to process files in which French language services are provided to the length of time taken to process files only in English.
53. The Landlord and Tenant Board should take steps to remedy any problem areas in the timeliness of service identified through the analysis referred to in Recommendation 52.
54. The Landlord and Tenant Board should take steps to ensure that hearings adjourned because of last-minute requests for French language service are prioritized for rescheduling.
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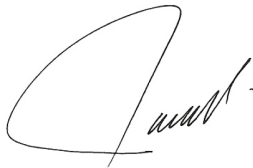
- 55. Tribunals Ontario should ensure that its case management system has full bilingual functionality for issuing orders.**
- 56. The Landlord Tenant Board should analyze information relating to the number of cases in which French language services are provided to identify the number of bilingual members required for equivalent French language services without delay across the province.**
- 57. Tribunals Ontario and the Landlord and Tenant Board should develop a formal recruitment and retention strategy for recruiting and retaining bilingual members.**
- 58. The Government of Ontario, the Ministry of the Attorney General, Tribunals Ontario and the Landlord and Tenant Board should work together to develop and implement a strategy for reducing the backlog at the Board as soon as possible.**
- 59. The Landlord and Tenant Board should report back to my Office in six months' time on its progress in implementing my recommendations, and at six-month intervals thereafter until such time as I am satisfied that adequate steps have been taken to address them.**
- 60. Tribunals Ontario should report back to my Office in six months' time on its progress in implementing my recommendations, and at six-month intervals thereafter until such time as I am satisfied that adequate steps have been taken to address them.**
- 61. The Ministry of the Attorney General should report back to my Office in six months' time on its progress in implementing my recommendations, and at six-month intervals thereafter until such time as I am satisfied that adequate steps have been taken to address them.**

## **Response**

- 313** Tribunals Ontario and the Ministry of the Attorney General were given an opportunity to review and respond to my preliminary findings, opinion, and recommendations. Their comments have been incorporated, as warranted, into this final report.
- 314** Tribunals Ontario, which responded on behalf of the Board, acknowledged “the significance and value” of my report and observed that it was “thorough” and “fair.” It accepted all of my recommendations and told me that it is actively working to implement them as a “top priority.”

- 315** In addition, Tribunals Ontario provided comments related to specific recommendations. For instance, I have made several recommendations to address the existing limit on the ability of Board members to complete decision-making after their appointments expire (**Recommendations 9, 43, 44**). Tribunals Ontario commented that **Recommendation 43** – which calls for short-term extensions of members’ terms would lead to increased workload and delays. As an alternative, it noted the simplest way to address the issue would be to eliminate the limitation in the *Residential Tenancies Act, 2006*.
- 316** **Recommendation 13** addresses situations where cases collapse after many months because of fatal technical flaws in applications and calls for the Board to implement a process for early identification of errors. Tribunals Ontario indicated that it agreed with screening applications filed by individuals and small-scale landlords. But it commented that this would be labour-intensive and resources should not be expended on screening applications from professional representatives and large corporations. It said the cost of screening applications should be analyzed “compared to the cost of sending them to hearing where they may be ultimately dismissed.”
- 317** Tribunals Ontario also indicated that it could look at improving its forms (**Recommendation 14**) and that dedicated real-time technical assistance for hearing participants was launched on April 19, 2023 (addressing **Recommendation 27**, in part).
- 318** As for my recommendation that it and the Board develop a formal recruitment and retention strategy for recruiting and retaining bilingual members (**Recommendation 57**), Tribunals Ontario said it has implemented an outreach strategy in partnership with French-speaking associations to target French-speaking candidates. It has also communicated with the Ministry regarding potential additional partners to expand its outreach efforts.
- 319** Finally, Tribunals Ontario undertook to provide me with further details of its plans to address my recommendations and updates on its progress.
- 320** The Ministry of the Attorney General observed that my report was “comprehensive and thoughtful” and that it took my report and recommendations “very seriously.” It also noted that work is well underway at Tribunals Ontario and the Ministry “to address many of the issues identified in the report.” The Ministry agreed with my recommendations and to provide me with further details of its plans to address them, as well as updates on its progress.

- 321** In early April 2023, during the time the Ministry, Board and Tribunals Ontario were given to review my preliminary findings and prepare their responses, the Government of Ontario announced that it was “taking steps to support renters and rental housing providers by increasing the number of adjudicators and staff at the Landlord and Tenant Board to speed up decision timeframes, as well as strengthening a broad range of tenant protections.” It stated that it is investing \$6.5 million to appoint an additional 40 adjudicators, effectively doubling the number of full-time adjudicators, and to hire five staff at the Board. It said these changes are directed at improving service standards and reducing the number of active applications and decision timeframes.
- 322** I am cautiously optimistic that the planned infusion of adjudicative resources will help the Board provide more timely and efficient services to the public. However, I urge the Government of Ontario to act quickly to increase the Board’s adjudicative capacity and fund the additional staff required to support the new members. Otherwise, given the timelines involved in recruitment and training, the positive impacts of this initiative could be significantly delayed. In addition, as my investigation has revealed, there are numerous problems with the Board’s administrative functioning, some of which will require legislative changes to fix.
- 323** I am pleased with the commitments by Tribunals Ontario and the Ministry of the Attorney General to implement my recommendations and to work towards ensuring that the Board provides the level of service the public of Ontario deserves. I will closely follow the progress of Tribunals Ontario and the Ministry in tackling the Board’s chronic delays.



Paul Dubé  
Ombudsman of Ontario



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### **Our Values:**

Fair treatment

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Independence, impartiality

Results: Achieving real change

### **Our Mission:**

We strive to be an agent of positive change by promoting fairness, accountability and transparency in the public sector and promoting respect for French language service rights as well as the rights of children and youth.

### **Our Vision:**

A public sector that serves citizens in a way that is fair, accountable, transparent and respectful of their rights.

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