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**HUMAN RIGHTS TRIBUNAL OF ONTARIO:
ORDER-IN-COUNCIL APPOINTMENT OF
SIMON DANN***

Prepared for:

Standing Committee on
Government Agencies

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INTRODUCTION

This paper was prepared for the Members participating in the Committee's review of the Order-in-Council appointment of Simon Dann as a part-time member of the [Human Rights Tribunal of Ontario](#) (HRTO or the Tribunal), which operates as part of the Social Justice Division of Tribunals Ontario. It describes the operations of the Tribunal, presents information about the appointee, and suggests possible lines of questioning.

THE HUMAN RIGHTS TRIBUNAL OF ONTARIO

Enabling Statute	Responsible Ministry
Human Rights Code	Attorney General
Agency Type	Most Recent Annual Report
Adjudicative	2018-19 (Tribunals Ontario)
Activities of the Agency	
The Human Rights Tribunal of Ontario exercises jurisdiction under the <i>Human Rights Code</i> to resolve, through mediation or hearing, applications alleging a breach of the <i>Code</i> . The Tribunal is designated as part of the Tribunals Ontario adjudicative tribunal cluster.	
Board Membership	
Statutory No. of Members None prescribed	No. Appointed by Cabinet All
Terms of Office As specified by Cabinet	Remuneration As fixed by the Agencies and Appointments Directive—see below
Position Requirements	
Appointment to the Tribunal follows a competitive, merit-based selection process that assesses the following criteria: - experience, knowledge or training in human rights law and issues; - aptitude for impartial adjudication; and - aptitude for applying the alternative adjudicative practices and procedures that may be set out in the Tribunal's rules.¹	

Remuneration of Members

According to the information on the Public Appointments Secretariat website, appointees are remunerated in accordance with Schedule B of the Agencies and Appointments Directive. Schedule B sets out salaries for different positions, some of which increase with length of service.² Some members of the HRTO are cross-

¹ *Adjudicative Tribunals Accountability, Governance and Appointments Act*, 2009, S.O. 2009, c. 33, Schedule 5, [s. 14 \(1\)](#); *Human Rights Code*, R.S.O. 1990, c. H.19, [s. 32\(3\)](#).

² Public Appointments Secretariat, [Human Rights Tribunal of Ontario](#) (Tribunals Ontario); Treasury Board Secretariat, *Agencies and Appointments Directive*, [Schedule B](#).

appointed to other tribunals. There are currently 37 positions on the Tribunal (four of which are vacant) and their remuneration is as follows:

Table 1: Remuneration of Members

Position	Compensation	Number of Members
Executive Chairs (full-time)	\$200,780—\$224,349	2
Associate Chairs (full-time)	\$174,184—\$199,059	1
Vice Chairs (full-time)	\$136,545—\$156,077	8
Vice Chairs (part-time)	\$583 per diem	9
Members (full-time)	\$110,482—\$126,273	5
Members (part-time)	\$472 per diem	12

CURRENT OPERATIONS

The Tribunal resolves cases of discrimination and harassment under the Ontario [Human Rights Code](#) (the Code). The Code was enacted in 1962. It provides that every person has a right to freedom from discrimination on a number of grounds in relation to employment; accommodation; goods, services, and facilities; contracts; and membership in trade and vocational associations.³ Courts consider the Code quasi-constitutional in nature; it can only be overridden by express and unequivocal legislative language.⁴

Upon receipt of an application alleging a violation of the Code, the Tribunal first offers the parties an opportunity to settle issues through mediation. If the parties do not agree to mediation or mediation fails to settle their dispute, the Tribunal holds a hearing. Proceedings at the Tribunal are governed by the [HRTO Rules of Procedure and Practice Directions](#).

In January 2011, the Tribunal became part of the newly designated Social Justice Tribunals (SJTO) cluster under the [Adjudicative Tribunals Accountability, Governance and Appointments Act, 2009](#). In January 2019, SJTO was merged with two other tribunal clusters into a new organization, Tribunals Ontario. The HRTO now operates as part of the Social Justice Division, within Tribunals Ontario.⁵

³ The prohibited grounds of discrimination include race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, gender identity, gender expression, age, marital status, family status, and disability (*Human Rights Code*, ss. 1 to 6).

⁴ *Ontario (Human Rights Commission) v. Naraine*, 2001 CanLII 21234 (Ont. C.A.), at para. 47.

⁵ Tribunals Ontario, [Annual Report 2018-19](#), p. 3; [O. Reg. 126/10](#), s. 2.

Case Load

According to the most recent [Annual Report](#), in 2018-19, the Tribunal received 4,541 applications, and closed 4,460 cases.

Discrimination in employment was the most commonly alleged violation of the Code in 2018-19; it was raised in 69% of applications. Discrimination in the provision of goods, services, and facilities was the next most common allegation, raised in 26% of applications.

Service Standards

According to the Tribunal's website, "service excellence is a priority for the Human Rights Tribunal of Ontario. Our service standards keep us focused on providing fair, effective, and timely dispute resolution." To this end the Tribunal has published four service standards, which it expects to meet 80% of the time.⁶

The Tribunal's most recent *Annual Report* states that compliance with the service standards was as follows in 2018-19:

Table 2: Service Standards in 2018-19

Service Standard	Actual Compliance Rate in 2018-19	Expected Compliance Rate
The first mediation date offered to parties will take place within 150 calendar days from the date the parties agree to mediation.	62% (the average number of days was 156)	80%
The first hearing date will be offered to parties within 180 calendar days from the date the application is ready to proceed to hearing.	35% (the average number of days was 172)	
Decisions for hearings which take 3 days or less will be issued within 90 calendar days.	76% (the average number of days was 70)	
Decisions for hearings which take longer than 3 days will be issued within 180 calendar days.	29% (the average number of days was 275)	

The actual compliance rate decreased for each of the four service standards from the previous year (2017-18). According to media reports, a shortage of adjudicators and an increased case load was affecting the Tribunal's ability to meet its service standards.⁷

⁶ HRTO, "[Service Standards](#)."

⁷ Paola Loriggio, "[Ontario human rights tribunal short of adjudicators causing widespread delay of cases](#)," *Global News*, January 11, 2019. See also HRTO, "[Practice Direction on New Case Processing System and Case Management Conference Calls](#)," news release, October 3, 2018.

FINANCIAL INFORMATION

In 2016-17, the total operating budget for SJTO was \$50.8 million, with \$33.7 million going to salaries and wages, and \$4.0 million to benefits.⁸ It was projected that in fiscal years 2017-18 to 2019-20, just over \$50 million would be allocated to SJTO.⁹ According to the most recent Annual Report, the total expenditures for the Social Justice Division of the newly created Tribunals Ontario, of which the HRTO is a part, was \$50.6 million in 2018-19.¹⁰

RECENT DEVELOPMENTS

In 2008 major changes to the Code took effect.¹¹ The revised Code required the new system to be reviewed in three years. Andrew Pinto was appointed to conduct the review and he issued a report in 2012 (known as the “Pinto Report”).¹² The Pinto Report found that the Tribunal had made improvements in effectively and efficiently moving applications through the system. However, concerns remained about the complexity and inaccessibility of the Tribunal’s application forms and rules.¹³ The Pinto Report made 16 recommendations with respect to the Tribunal, among them that the forms and processes be streamlined and simplified.¹⁴

In response to the Pinto Report, the Tribunal changed processes, modified forms, and committed to introducing new practice directions for interpreting Tribunal rules.¹⁵ The Tribunal also made changes to its electronic forms so that they could be submitted directly through the Internet, without an email account.¹⁶

In 2017-18, the Tribunal received 4,425 applications, representing a 23% increase from 2016-17. The Tribunal received a similar volume of applications in 2018-19 (4,541 applications). In August 2017, the HRTO launched a temporary triage project to address the increased number of applications. Following the triage project, the HRTO adopted a [new case processing model](#).¹⁷ Under the new system, a vice-chair is assigned to each application to manage all adjudicative matters from the time the application is received until the file is closed. The goal of the new system is to improve the efficiency of case processing and issuing of decisions.¹⁸

⁸ Social Justice Tribunals Ontario, [2017/18-2019/20 Business Plan](#).

⁹ Ibid.

¹⁰ Tribunals Ontario, [Annual Report 2018-19](#), p. 62.

¹¹ The most significant change was that applications are now filed directly with the Tribunal, rather than with the Human Rights Commission. Previously, the Commission processed, mediated, and investigated alleged violations of the Code. Where the Commission felt it appropriate, the Commission forwarded complaints to the Tribunal for adjudication.

¹² Andrew Pinto, [Report of the Ontario Human Rights Review 2012](#), November 2012.

¹³ Ibid., p. 27.

¹⁴ Ibid., p. 198.

¹⁵ Social Justice Tribunals Ontario, [2013-2014 Annual Report](#).

¹⁶ Ibid.

¹⁷ Social Justice Tribunals Ontario, [2017-2018 Annual Report](#); Tribunals Ontario, [Annual Report 2018-19](#), p. 46.

¹⁸ Tribunals Ontario, [Annual Report 2018-19](#).

COVID-19 Related Changes

Currently, the Tribunal is not holding in person hearings due to the COVID-19 pandemic. However, it continues to hear applications by telephone, video-conference, or in writing, and has issued a [*Practice Direction on Hearing Formats During the COVID-19 Pandemic*](#). According to media reports, delays are currently an issue at the Tribunal; it was reported to have been slow to move to alternative hearing formats early on in the pandemic, which compounded existing delays due to staffing shortages.¹⁹

THE WITNESS

The witness, of Toronto, is seeking appointment as a part-time Member of the Tribunal.

According to the Office of the Premier, the witness is a self-employed regulatory and compliance consultant and strategy advisor. He is a former arbitrator for Tarion Builder Arbitration Forum, and a former Director of Government & Corporate Relations for Luxell Technologies Inc.

POSSIBLE QUESTIONS

What has motivated the witness to seek this appointment?

Based on the witness's knowledge of recent developments at the Tribunal, what challenges does the witness anticipate facing during his appointment?

How will the witness's previous experience be of assistance to the Tribunal?

What contributions does the witness hope to make to the Tribunal?

¹⁹ Paola Loriggio, "[Staffing shortage compounds COVID-19 delays at human rights tribunal: experts](#)," *National Post*, August 27, 2020.