

**Legislative
Assembly
of Ontario**



**Assemblée
législative
de l'Ontario**

Legislative Research
Information and Technology Services Division
Room 2520, Whitney Block
Queen's Park
Toronto, Ontario M7A 1A9
Telephone: (416) 325-3675
Facsimile: (416) 325-3696

Recherche législative
Division des services de l'information et de la technologie
Bureau 2520, Edifice Whitney
Queen's Park
Toronto (Ontario) M7A 1A9
Téléphone: (416) 325-3675
Télécopieur: (416) 325-3696

200239

**THE SOCIAL BENEFITS TRIBUNAL:
ORDER-IN-COUNCIL APPOINTMENT OF
DENISE DIETRICH ***

Prepared for:

Standing Committee on
Government Agencies

Prepared by:

Andrew McNaught
Research Officer
Legislative Research

October 1, 2020

- * Projects prepared by Legislative Research are designed in accordance with the requirements and instructions of the Committee making the request. The views expressed should not be regarded as those of Legislative Research or of the individual preparing the project.

CONTENTS

INTRODUCTION	1
SOCIAL BENEFITS TRIBUNAL	1
Role of the Tribunal	2
Recent Activities	2
The Auditor General's <i>2019 Annual Report</i>	4
THE WITNESS	5
Possible Questions	6

INTRODUCTION

This document was prepared to assist Members participating in the Committee's review of the Order-in-Council appointment of Denise Dietrich to the Social Benefits Tribunal. It describes the role and operations of the Tribunal, presents information about the appointee, and suggests possible lines of questioning.

SOCIAL BENEFITS TRIBUNAL

Enabling Statute		Responsible Ministry
<i>Ontario Works Act, 1997</i>		Attorney General
Agency Type		Most Recent Annual Report
Adjudicative		2019-2020
Activities of the Agency		
The Tribunal has jurisdiction to hear appeals regarding the refusal to grant a benefit, the suspension or cancellation of a benefit, the reduction of a benefit, or the amount of a benefit as set out in the <i>Ontario Works Act, 1997</i> and the <i>Ontario Disability Support Plan Act, 1997</i> . The Tribunal is designated as part of an adjudicative tribunal cluster known as Tribunals Ontario.		
Board Membership		
Statutory Number of Members	No limit	Position Remuneration¹ Members Full-Time \$110,484 to \$126,272 Part-time \$472 per diem
Number Appointed by Cabinet	All	
Current Membership	Associate Chair (1)	
	Vice Chair (7)	
	Members	
	Full-Time (8)	
	Part-Time (8)	
Term of Office	No limit	
Position Requirements		
Appointees need experience, knowledge or training in the subject matter dealt with by the tribunal, and on adjudicative practices and are appointed in accordance with a competitive merit-based process		

¹ Public Appointments Secretariat, [Schedule B: remuneration of appointees to adjudicative tribunals and regulatory agencies](#).

Role of the Tribunal

Since 1998 Ontario's main social assistance programs have been Ontario Works (OW) and the Ontario Disability Support Program (ODSP). The programs are established under the *Ontario Works Act, 1997* and the *Ontario Disability Support Plan Act, 1997*.

OW helps people who are in temporary financial need; the ODSP helps people with disabilities. Administered by the Ministry of Children, Community and Social Services, both programs offer financial and employment assistance.

Within this social assistance regime, the role of the Social Benefits Tribunal is to hear appeals from Ministry decisions regarding entitlement to OW and ODSP benefits. Specifically, the Tribunal hears appeals pertaining to

- the refusal or cutting off of assistance;
- the amount of assistance;
- reductions in assistance to recover over-payments;
- special diet assistance;
- employment and training start-up assistance;
- medically necessary transportation costs and certain health supplies; and
- the appointment of a trustee to receive a benefit payment for applicants 18 and older.²

Recent Activities³

In 2019-2020 the Tribunal received over 10,500 applications, an increase of more than 1,800 from the previous fiscal year; however, it completed almost 1,500 fewer appeals than in 2018-2019 (and more than 5,000 fewer than in 2016-2017).

As compared with 2018-2019, the Tribunal had almost 3,000 more active cases at the end of 2019-2020, had held more than 1,000 fewer hearings, and had rendered almost 1,000 fewer decisions.

² CLEO (Community Legal Education Assistance), [Appealing a decision about social assistance](#), March 2016, pp. 10-11.

³ See [Tribunals Ontario 2019-20 Annual Report](#), pp. 69-72.

Social Benefits Tribunal: Caseload Overview

Caseload	2019-2020	2018-2019	2017-2018	2016-2017
Appeals received	10,520	8,699	10,124	10,403
Appeals closed	7,579	9,048	10,618	12,831
Active appeals at fiscal year end	9,267	6,326	6,675	7,169
Hearings held	6,694	7,795	7,891	10,307
Decisions rendered	4,499	5,478	5,969	7,636

Source: *Tribunals Ontario: 2019-20 Annual Report*.

As in previous years, the Tribunal reported that the vast majority of appeals—93%—concerned ODSP decisions, with 85% to 90% of these pertaining to the specific issue of whether an individual meets the definition of a person with a disability under the ODSP Act.

In 2019-2020 the Tribunal granted 58% of ODSP appeals, and just over 30% of OW appeals.

Operational highlights from the Tribunal's 2019-2020 annual report include the following:

- In October 2019 the Tribunal began holding its Toronto hearings at the new Tribunals Ontario Mediation and Hearing Centre on Grosvenor Street. The centre is equipped for teleconference and video conference hearings.
- The Tribunal continues to develop its process for accepting electronic submissions from legal clinics and respondent offices.
- The Tribunal continues to work on its case management system to streamline daily operations and improve service delivery.
- The Tribunal continues to expand its Early Resolution Opportunity program (ERO), which helps to resolve appeals without a hearing. Of the 2,250 ERO sessions held in 2019-2020, 38% resulted in a settlement.

The Social Benefits Tribunal is designated as one of 14 adjudicative tribunals that together form Tribunals Ontario, an office within the Ministry of the Attorney General.⁴ In September 2020 Tribunals Ontario posted the following update on tribunal activities during the COVID-19 pandemic:

Tribunals Ontario continues to provide services to the public while keeping Ontarians safe. To comply with physical-distancing direction from public health authorities, most staff and adjudicators are working remotely.

Tribunals Ontario is postponing and rescheduling all in-person hearings, and where possible, is moving forward with alternative options such as written and telephone hearings.

In response to COVID-19, all in-person service counters are closed until further notice. Where possible, please use email to contact Tribunals Ontario's boards and tribunals.⁵

The Auditor General's 2019 Annual Report

Ontario's Auditor General conducted two value-for-money audits of the ODSP in the space of 10 years (2009 and 2019). The 2019 audit found that, as in 2009, the Tribunal continues to overturn almost 60% of Ministry decisions that deny eligibility for ODSP benefits (described in the audit as "non-disabled decisions").⁶

Other findings relating to the Tribunal's role in the ODSP system included the following:

- A review of decisions rendered in 2018-2019 found a "high variation" in Tribunal member decisions. For example, one member overturned 28% of Ministry decisions that a person was not disabled, while another member overturned 93% of Ministry decisions.
- Tribunal members are not required to have a medical background.
- The Ministry does not review Tribunal decisions for quality or consistency (the rationale being the need to preserve independent decision-making).

⁴ The Tribunal is designated under the *Adjudicative Tribunals Accountability, Governance and Appointments Act, 2009* (Ontario Regulation 126/10).

⁵ Tribunals Ontario, [COVID-19 Updates on Tribunals Ontario Operations](#), September 14, 2020.

⁶ Auditor General, *2019 Annual Report*, Chapter 3, [Section 3.09](#), p. 542.

To ensure that only eligible individuals receive ODSP income support, the Auditor recommended that the Tribunal, “while respecting Tribunal member independence,”

- review the rates at which Ministry decisions are overturned “for reasonableness between Tribunal members,” and determine whether changes in training or other tools are needed to foster greater quality; and
- make improvements where needed.⁷

In response, the Tribunal emphasized that it “is committed to ensuring members receive the professional development and supports they require to make fair and just decisions,” and that it currently has a number of internal processes that “support this objective.” Nonetheless, the Tribunal committed to

actively look for opportunities to foster and improve the quality, reasonable consistency, and coherence of Tribunal decisions, and will take steps to identify and put in place additional processes if determined needed, provided that they respect judicial independence as well as the appearance of that propriety.⁸

THE WITNESS

The witness, of Waterloo, is seeking appointment as a full-time member.

According to information provided by the Office of the Premier, Ms. Dietrich is a former member of the Veterans Review and Appeal Board, and a former Vocational and Medical Disability Management Case Manager for Liberty Mutual Insurance. Her community involvement includes serving as a member of the Exam Development Committee for the College of Nurses of Ontario.

⁷ Ibid. (Recommendation 8).

⁸ Ibid. Two reports offer explanations for the high over-turn rate at the Tribunal. A 2010 Law Commission review of the eligibility criteria for disability support programs noted that the Ministry was less likely to look at the cumulative effects of certain disabilities, such as mental illness, than was the Tribunal. Given that persons with mental health conditions made up at least half of the ODSP caseload, the implication was that these definitional differences may have been contributing to the high success rate of ODSP appeals (see Lora Patton, Brendon Pooran and Rita Samson, [A Principled Approach: Considering Eligibility Criteria for Disability-Related Support Programs through a Rights-Outcome Lens](#), Law Commission of Ontario, August 9, 2010, pp. 40-41). Also in 2010, the Commission for the Review of Social Assistance in Ontario (CRSAO) found that there were more than 800 rules determining a client’s eligibility. The Commission concluded that this complexity was causing confusion, inconsistency, excessive administration, and a lack of transparency (see CRSAO, [Discussion Paper: Issues and Ideas](#), June 2011, p. 28; and [Brighter Prospects: Transforming Social Assistance in Ontario](#), 2012).

Possible Questions

What has attracted the witness to apply for this position?

What skills does the witness bring to the position?

How would the witness's previous experience as a member of a federal administrative tribunal and as a case manager for an insurance company assist her in performing her duties as a member of the Tribunal?

Ontario's Auditor General has twice reported that Ministry decisions regarding eligibility for ODSP benefits are frequently overturned at the Tribunal. Is the witness aware of the Auditor's findings? Can she comment?

In response to the current pandemic, the Tribunal is postponing and rescheduling all in-person hearings, and is moving forward with alternative options such as written and telephone hearings; in addition, adjudicators are now working remotely. In the witness's view, how (if at all) will these measures affect the way in which members of the Tribunal perform their duties?

In the witness's view, what are the greatest challenges facing the Tribunal in the immediate future?