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**SOCIAL BENEFITS TRIBUNAL
ORDER-IN-COUNCIL APPOINTMENT OF
PETER BISHOP***

Prepared for:

Standing Committee on
Government Agencies

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INTRODUCTION

This document was prepared to assist Members participating in the Committee's review of the Order-in-Council appointment of Peter Bishop as a part-time member of 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 (SBT)

Enabling Statute		Responsible Ministry
Ontario Works Act, 1997		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 Remuneration ¹ 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

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.³

Recent Activities⁴

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

⁴ 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 *2019-20 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 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").⁵

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).

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.⁶

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.⁷

⁵ Auditor General, *2019 Annual Report*, Chapter 3, [Section 3.09](#), p. 542.

⁶ Ibid. (Recommendation 8).

⁷ 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)

RECENT DEVELOPMENTS

Due to the COVID-19 outbreak, the Social Benefits Tribunal is holding all hearings by phone or in writing until further notice. The Tribunal is prioritizing interim assistance matters (e.g., basic financial assistance or income support, drug and dental benefits, among other items).

In his 2019-20 *Annual Report*, the Ontario Ombudsman noted that delays at the Social Benefits Tribunal were a common topic of complaint to his office in the past year.⁸ Some commentators note that high numbers of current vacancies on Ontario's administrative tribunals, including the Social Benefits Tribunal, are responsible for the increased delays.⁹

Additional concerns have been raised that 2019 changes to the appointments and reappointment process for tribunals in Ontario have led to appointments which are short and inconsistent, and concerns over too much government control over appointments.¹⁰

THE WITNESS

The witness, of Red Lake, is seeking appointment as a part-time member.

According to information provided by the Office of the Premier, Mr. Bishop is a retired judge of the Ontario Court of Justice. His community involvement includes serving on the Board of Governors for Confederation College (2014-15 to 2018-19).

Possible Questions

1) How would the witness's previous experience as a provincial judge assist him in performing his duties as a member of the Tribunal?

2) 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 he comment?

3) 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?

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).

⁸ Office of the Ombudsman of Ontario, [2019-2020 Annual Report](#), p. 37.

⁹ Anita Balakrishnan, "[Tribunal system 'in crisis,' group says](#)," *Law Times*, May 20, 2020

¹⁰ Bernise Carolino, "[Democracy Watch asks Superior Court to cancel new tribunal appointment system](#)," *Law Times*, July 20, 2020.

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