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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

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**THE SOCIAL BENEFITS TRIBUNAL
ORDER-IN-COUNCIL APPOINTMENT OF
STEPHANIE ZWICKER SLAVENS***

Prepared for:

Standing Committee on
Government Agencies

Prepared by:

Andrew McNaught
Research Officer
Legislative Research

March 24, 2021

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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 Stephanie Zwicker Slavens as a full-time Vice-Chair 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.

THE 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 Vice-Chair (Full-Time) \$136,545 to \$156,077 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 (5)	
	Members	
	Full-Time (13)	
	Part-Time (12)	
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 enabling legislation for these programs is 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.

The role of the Social Benefits Tribunal is to hear appeals from the Ministry employees who make decisions regarding entitlement to OW and ODSP benefits.

In particular, 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 Activities

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).³

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 [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 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.

The Tribunal's most recent annual report (2019-2020) notes the following operational highlights:

- 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 March 2021 Tribunals Ontario posted the following update on 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

In addition, the Social Benefits Tribunal announced that it would be accepting

- appeals outside of the 30-day legislative requirement;
- additional documents for hearings outside of the regular timelines; and
- requests to reconsider Tribunal decisions outside the 30-day legislative requirement.⁶

RECENT DEVELOPMENTS

The Auditor General's 2019 Annual Report

The Auditor General conducted two value-for-money audits of the ODSP in the space of 10 years (2009 and 2019). In 2019 the Auditor found that, as in 2009, the Tribunal continues to overturn almost 60% of Ministry decisions that deny eligibility for ODSP benefits ("non-disabled decisions").⁷

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%

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](#), March 10, 2021.

⁶ Ibid. Tribunals Ontario's update also notes that the emergency order issued in March 2020, suspending limitation periods and procedural time periods pertaining to tribunal proceedings, was lifted on September 14, 2020.

⁷ Auditor General, *2019 Annual Report*, Chapter 3, [Section 3.09](#), p. 542.

of Ministry decisions that a person was not disabled; 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, so as 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.⁸

In response to the Auditor’s report, the Tribunal said 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 had 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.⁹

Delays at the Tribunal

Groups such as Tribunal Watch Ontario and Defend Disability, as well as legal clinics that work with OW and ODSP claimants, say that delays at the Social Benefits Tribunal are no longer the exception—they have become the norm.¹⁰

In some parts of the province, delays are said to range from 18 months to two years. One legal clinic in Thunder Bay reports that none of the ODSP appeals it filed in 2020 has been scheduled for a hearing in 2021. Other clinics say their clients will have to wait until 2022 to get a hearing.

As some observers have pointed out, this means that people with disabilities who are currently “subsisting” on OW benefits at \$730 per month are being forced to

⁸ Ibid. (Recommendation 8).

⁹ Ibid.

¹⁰ Brendan Kennedy, “Delays at the Social Benefits Tribunal have tripled, leaving ODSP claimants in extended limbo,” *Toronto Star*, February 16, 2021; “Concerns Mount Among Ontarians Living with Disabilities About Erosion of Social Benefits Tribunal Defend Disability,” *Canada NewsWire*, January 27, 2021; Amira Elghawaby, “Has the Ford government cancelled 2021 for Ontario’s most vulnerable?,” *Toronto Star*, December 29, 2020; “Busy 2020 for Sudbury legal clinic as Landlord Tenant Board clears hearing backlog,” *CBC News*, December 29, 2020.

wait many months to see if they qualify for ODSP benefits, which pay \$1,169 per month.

Critics attribute these delays to a high vacancy rate at the Tribunal. They note, for example, that whereas the Tribunal had 38 full- and part-time adjudicators in 2018, it had only 26 in February 2021. Moreover, the more senior and experienced members of the Tribunal are reportedly not being reappointed to further terms.

Some allege that this understaffing is a deliberate attempt to reduce the cost of social assistance, in part, by restricting the right of appeal and therefore the number of people eligible for support.

Stakeholders are also concerned that understaffing may be the first step toward dismantling the Tribunal. In their view, the government has been too quick to embrace the Auditor General's 2019 report, which they say unfairly blamed Tribunal members for inefficiencies, rather than the Ministry's bureaucrats.¹¹

THE WITNESS

The witness, of Toronto, is seeking appointment as Vice-Chair (full-time).

According to information provided by the Office of the Premier, Ms. Zwicker Slavens is a lawyer and partner for Diamond and Diamond Lawyers LLP, and a former lawyer for Flaherty Dow Elliott and McCarthy. Her community involvement includes serving as a volunteer for JNF (Jewish National Fund) Toronto.

Possible Questions

What has attracted the witness to apply for this position?

How would the witness's experience as a lawyer 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?

Anti-poverty groups and legal clinics report significant delays at the Tribunal. Is the witness aware of this issue? 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

¹¹ Martin Regg Cohn, "Doug Ford and Bonnie Lysyk team up to go after some of Ontario's most vulnerable," *Toronto Star*, December 9, 2020.

remotely. In the witness's view, how (if at all) have these measures affected the appeals process?

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