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**ONTARIO PAROLE BOARD
ORDER-IN-COUNCIL APPOINTMENT OF THEODORE NEMETZ ***

Prepared for:

Standing Committee on Government Agencies

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INTRODUCTION

This paper has been prepared for Members participating in the Committee's review of the Order-in-Council appointment of Theodore Nemetz as a part-time member of the Ontario Parole Board (OPB or Board), which is one of 14 adjudicative tribunals within Tribunals Ontario. It describes the mandate and operations of the OPB, presents information about the appointee, and identifies possible lines of questioning.

ONTARIO PAROLE BOARD

Enabling Statute	Responsible Ministry
Ministry of Correctional Services Act	Attorney General
Agency Type	Most Recent Annual Report
Adjudicative	2019-2020 (Tribunals Ontario)
Activities of the Agency	
The OPB makes decisions regarding the parole of persons serving sentences in provincial correctional facilities, as well as certain temporary absences from provincial facilities. The OPB derives its authority from Ontario's <i>Ministry of Correctional Services Act</i> and its general regulation, as well as federal corrections legislation.	
Board Membership	
Statutory No. of Members: As determined by Cabinet	Position Remuneration¹ Associate Chair: \$174,184—\$199,059 Vice-Chair (Full-Time): \$136,545—\$156,077 Vice-Chairs (Part Time): \$583 per diem Members (Full-Time): \$110,484—\$126,272 Members (Part-Time): \$472 per diem
Number Appointed by Cabinet: All	
Current Membership: Associate Chair (1) Vice Chairs (1 Full-Time, 3 Part-Time) Members (1 Full-Time (vacant), 32 Part-Time)	
Term of Office: No limit in the legislation; however, the <i>Agencies and Appointments Directive</i> generally limits the term of appointment of members to adjudicative tribunals to a maximum of ten years. ²	

¹ Treasury Board Secretariat, *Agencies and Appointments Directive*, [Schedule B: remuneration of appointees to adjudicative tribunals and regulatory agencies](#).

² Ibid., s. 3.2.2 Term of appointment – adjudicative tribunals and regulatory agencies.

Position Requirements

Members are appointed in accordance with a competitive, merit-based process that assesses a candidate's (1) experience, knowledge, or training on the subject matter and legal issues dealt with by the tribunal; (2) aptitude for impartial adjudication; and (3) aptitude for applying alternative adjudicative practices and procedures.³

OPB MANDATE AND OPERATIONS

The OPB makes decisions regarding the parole of persons serving sentences in provincial facilities (i.e., sentences of less than two years' imprisonment). It also decides applications for temporary absences from correctional institutions for periods longer than 72 hours.⁴ The Board was established under the *Ministry of Correctional Services Act*, and derives its jurisdiction over parole from the federal *Corrections and Conditional Release Act*.⁵

Parole involves the release of an offender from a correctional institution to serve the remainder of their sentence in the community under supervision and conditions. It is intended to contribute to public safety through a gradual and controlled release from custody. In most cases, persons who spend their entire sentence in custody (i.e., without parole) are released at the end of their term without supervision or conditions.⁶ The Board may only grant parole to an offender if it is satisfied that the offender will not present an undue risk to society before the expiration of the offender's sentence.⁷

Temporary absences provide an offender with an opportunity to prepare for release, and may be granted to assist with rehabilitation and reintegration into the community, or for medical or humanitarian reasons.⁸

Application and Hearing Process

Parole

Offenders are eligible for parole after serving one-third of their sentence.⁹ Those serving sentences of six months or more are automatically scheduled for a parole hearing (unless they waive this right), while those serving sentences of less than six months must apply to the Board to be considered for parole.¹⁰

³ [Adjudicative Tribunals Accountability, Governance and Appointments Act, 2009](#), S.O. 2009, c. 33, Sched. 5, s. 14(1).

⁴ Tribunals Ontario, *2019-20 Annual Report*, p. 66.

⁵ [Corrections and Conditional Release Act](#), S.C. 1992, c. 20, s. 112; *Ministry of Correctional Services Act*, R.S.O. 1990, c. M. 22, s. 34.1. While the federal government has jurisdiction over substantive criminal law and procedure, it has delegated parole decisions regarding inmates serving sentences in provincial facilities to provincial parole boards (where such boards exist).

⁶ Government of Canada, "[What is parole?](#)"

⁷ *Corrections and Conditional Release Act*, s. 102.

⁸ Tribunals Ontario, "[About the OPB](#)."

⁹ [R.R.O. 1990, Reg. 778 \(General\)](#), s. 41(1). Parole may be granted earlier in exceptional circumstances.

¹⁰ Tribunals Ontario, "[OPB: Application & Hearing Process](#)," R.R.O. 1990, Reg. 778 (General), ss. 41(1) and 43.

The primary role of the Board is to determine whether an applicant can safely be released and, if so, under what conditions. In considering an applicant's suitability for parole, the Board may consider any information it considers useful and relevant regarding the character, abilities, and prospects of the applicant, including the applicant's criminal record, information from the correctional facility, and reports about the applicant's physical and mental health.¹¹ Board members review all available information about the applicant prior to the hearing.¹²

During the hearing, parole applicants and their assistants (such as lawyers) may make submissions. Victims of the parole applicant are also entitled to participate.¹³ Indigenous applicants may request a circle hearing, which is an alternative hearing method that is led and facilitated by Indigenous Elders.¹⁴ Prior to the COVID-19 pandemic, parole hearings were held in person at correctional institutions, although they can now be held in writing and by electronic means.¹⁵

If the Board grants parole, it is required to impose certain conditions (e.g., reporting to a parole officer) unless it determines they are not appropriate. The Board may also impose special conditions tailored to the applicant (e.g., abstaining from alcohol or drugs).¹⁶

The Ministry of the Solicitor General, not the OPB, is responsible for supervising those released from provincial facilities on parole. In Ontario, parolees are supervised by both a probation officer and a parole officer.¹⁷ If a parolee breaches their parole conditions, they may be re-committed to custody by the OPB and their parole may be revoked following a hearing before the OPB.¹⁸

Temporary Absences

The Superintendent of a correctional institution, as well as certain officials within the Ministry of the Solicitor General, may grant an application for a temporary absence from an institution. Alternatively, they may refer it to the Board for review where the request is for an absence of more than 72 hours.¹⁹ If the matter is referred to the Board, the applicant is entitled to make submissions, and the Board may decide to hold a hearing (though it does not have to do so).²⁰

OPB Caseload and Statistics

In 2019-20, the OPB rendered 4,200 decisions, an increase from the 3,828 decisions rendered in the previous year.²¹ Of those hearings, 1,756 were held in person, 2,387 were held in writing, and 77 were held electronically (i.e., by video or teleconference).

¹¹ R.R.O. 1990, Reg. 778 (General), ss. 44(1) and (2).

¹² Public Appointments Secretariat, "[Ontario Parole Board \(Tribunals Ontario\)](#)."

¹³ R.R.O. 1990, Reg. 778 (General), ss. 44(1) and 44.1.

¹⁴ Ontario Parole Board, "[Circle Hearings](#)."

¹⁵ Tribunals Ontario, "[COVID-19](#)."

¹⁶ R.R.O. 1990, Reg. 778 (General), s. 48; *Ministry of Correctional Services Act*, s. 35.

¹⁷ Ministry of the Solicitor General, "[Correctional Services – Community Corrections – Parole](#)."

¹⁸ *Ministry of Correctional Services Act*, s. 39.

¹⁹ R.R.O. 1990, Reg. 778 (General), ss. 35, 37, and 38.

²⁰ *Ibid.*, s. 38(2), (3), and (3.1).

²¹ Tribunals Ontario, *2019-20 Annual Report*, p. 67.

According to Tribunals Ontario, the OPB aims to convene a hearing and issue a decision to applicants by their parole eligibility date 80% of the time. In 2019-20, the Board met this target 88% of the time.²²

FINANCIAL INFORMATION

Tribunals Ontario does not provide specific financial data for the OPB. In 2019-20, expenditures for Tribunals Ontario as a whole totalled about \$86.5 million.²³ Approximately \$25 million was allocated to remuneration for full-time and part-time tribunal members.²⁴

RECENT DEVELOPMENTS

Changes at the Board

In 2019, new [practice guidelines](#) for the OPB were posted to its website. According to Tribunals Ontario, the new guidelines are intended to clarify how and when applicants, victims, and others can interact with the OPB, and to bring greater consistency and transparency to service delivery.²⁵

In 2019, the OPB also updated its scheduling practices by increasing the number of hearings held per day at each institution. According to Tribunals Ontario, this change allowed the OPB to optimize its resources, and resulted in improved efficiency and increased value for money.²⁶

In March 2020, in response to the COVID-19 pandemic, regulatory changes were made to allow the OPB to hold parole hearings in writing and electronically. Victims, their support persons, and assistants to the applicants (such as lawyers) may also participate in these alternative format hearings. Circle hearings can be facilitated via teleconference.²⁷

Parole Trends, Corrections Reform, and the OPB

A 2017 report from the Independent Review of Ontario Corrections, [Corrections in Ontario: Directions for Reform](#), notes that parole rates, as well as the use of temporary absences, have declined over the past few decades in Ontario. Throughout the 1980s and early 1990s, the average number of people on parole each month was between 1,200 and 1,800. In 2018-19, this number stood at 399.²⁸ Although parole rates have declined, research shows that conditional

²² Ibid.

²³ Ibid., p. 74.

²⁴ Ibid., p. 76.

²⁵ Ibid., p. 66.

²⁶ Ibid.

²⁷ Tribunals Ontario, "[COVID-19 Updates on Tribunals Ontario Operations](#)," updated March 10, 2021; Tribunals Ontario, [Ontario Parole Board Updates](#), April 27, 2020.

²⁸ Independent Review of Ontario Corrections, [Corrections in Ontario: Directions for Reform](#) (September 2017), pp. 145, 149-151; Justice David P. Cole, [Final Report of the Independent Review on the Ontario Ministry of the Solicitor General's Compliance with the 2013 "Jahn Settlement Agreement"](#) (Ministry of the Solicitor General, 2020), table 2. (2018-19 parole numbers).

release from incarceration is more effective in promoting successful reintegration than sudden freedom at the expiry of a sentence, without any assistance or supervision.²⁹

Directions for Reform notes that declining parole rates can be partially attributed to risk aversion in the criminal justice system, which can be seen in OPB outcomes. At the time of the report, only about one in 100 parole applications were granted by the OPB. A 2015 mandate review of the OPB found that risk aversion undermined the Board's ability to come to well-reasoned parole decisions and, ultimately, effectively deliver on its mandate.³⁰

Directions for Reform also cited concerns about the quality, timeliness, and completeness of information placed before the OPB for its decision-making, and concerns about the independence of the Board. In particular, the report notes that some Ministry policies appear to fetter the discretion given to Board members by law.³¹

The report did, however, recognize the OPB's efforts to address challenges particular to Indigenous inmates, including expanding training on "culturally appropriate review and decision making for Indigenous inmates."³² In its *2018-19 Annual Report*, Tribunals Ontario indicated it had made improvements to how circle hearings are conducted by the OPB.³³

THE WITNESS

According to the Office of the Premier, the Witness, of Toronto, is a self-employed lawyer, a former Vice-Chair for the Workplace Safety and Insurance Appeal Tribunal, and a former Adjudicator for the Indian Residential Schools Project and the Parole Board of Canada.

POSSIBLE QUESTIONS

What has motivated the witness to seek this appointment?

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

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

What challenges, if any, does the witness anticipate the Board will continue to face in its operations during the COVID-19 pandemic?

²⁹ Ibid., p. 133.

³⁰ Ibid., pp. 150-151.

³¹ Ibid., pp. 154, and 156-157.

³² Ibid., p. 159.

³³ Tribunals Ontario, *Annual Report 2018-19*, p. 7.