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**ASSESSMENT REVIEW BOARD:
ORDER-IN-COUNCIL APPOINTMENT OF
HEATHER KENNY ***

Prepared for:

Standing Committee on Government Agencies

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INTRODUCTION

This document has been prepared for Members participating in the Committee's review of the Order-in-Council appointment of Heather Kenny as a part-time member of the Assessment Review Board. It describes the operations of the Board, presents information about the appointee, and identifies possible lines of questioning.

ASSESSMENT REVIEW BOARD

Enabling Statute	Responsible Ministry	
Assessment Review Board Act; Adjudicative Tribunals Accountability, Governance and Appointments Act, 2009	Ministry of the Attorney General	
Agency Type	Most Recent Annual Report	
Adjudicative Tribunal	2020-2021	
Agency Activities		
The Assessment Review Board is an independent adjudicative tribunal whose main function is to hear and determine appeals from property owners or municipalities who disagree with the accuracy of the assessment or tax classification that is established for a property.		
Board Membership		
Statutory No. of Members: As determined by the Lieutenant Governor in Council	Position	Remuneration¹
	Member (full-time)	\$110,482 annual
Term of Office: There is no limit in legislation.	Member (part-time)	\$472 per diem
	(Above rates indicate the first two years of appointment.)	
Position Requirements		
Appointments to this tribunal follow an open, competitive, and merit-based selection process. Members should have experience, knowledge or training in the subject matter and legal issues dealt with by the tribunal; an aptitude for impartial adjudication; and an aptitude for applying alternative adjudicative practices and procedures that may be set out in the tribunal's rules.		

¹ Appointees are remunerated according to [Schedule B of the Agencies and Appointments Directive](#).

Mandate and Operations

The [Assessment Review Board](#) (ARB) is one of the adjudicative tribunals grouped under [Tribunals Ontario](#), an umbrella organization comprising 14 adjudicative tribunals with a mandate to resolve and decide matters relating to safety, licensing, land, and social justice.² The ARB adjudicates applications and appeals on property assessments and classifications, and property tax matters.³

The ARB hears property assessment appeals to ensure that properties are assessed and classified in accordance with the provisions of the [Assessment Act](#).⁴ The ARB also hears appeals on property tax matters and operates under a variety of legislation including

- [Municipal Act](#);
- [City of Toronto Act](#);
- [Statutory Powers Procedure Act](#);
- [Provincial Land Tax Act](#);
- [Condominium Act](#); and
- [Education Act](#).⁵

The ARB is one of the four key institutions that make up the property assessment system in Ontario. The provincial government, through the Ministry of Finance, establishes the province's assessment and taxation laws. Municipalities are responsible for setting tax rates and collecting property taxes. The [Municipal Property Assessment Corporation](#) (MPAC) assesses and classifies all properties in Ontario. If there is a dispute between a property owner and MPAC, the property owner can file an appeal with the ARB.⁶

At the hearings, all parties present evidence and make arguments. The ARB hears these appeals and makes decisions based on the applicable law and the evidence that was filed in relation to the assigned schedule of events.⁷ ARB decisions are posted and accessible through the Canadian Legal Information Institute (CanLII) [website](#).

² Effective January 1, 2019, Tribunals Ontario was established, merging 19 adjudicative tribunals previously grouped under three independent clusters: Environment and Land Tribunals Ontario, Social Justice Tribunals Ontario and Safety, Licensing Appeals and Standards Tribunals Ontario. Tribunals Ontario, [2021/22 – 2023/24 Business Plan](#).

³ Tribunals Ontario, [2020/21 – 2022/23 Business Plan](#).

⁴ Tribunals Ontario, [Memorandum of Understanding](#).

⁵ Tribunals Ontario, [Legislation and Rules](#).

⁶ Beginning with the 2009 tax year, changes to the *Assessment Act* require owners of residential, farm and conservation lands, and managed forests to file a request for reconsideration with MPAC, and/or the Program Administrator (for farm, managed forest or conservation land), before they may file an appeal with the ARB. Tribunals Ontario, [About the ARB](#).

⁷ The schedule of events is a schedule of due dates and processes that parties must comply when working an appeal.

Structure of the Board

The executive chair of Tribunals Ontario is also the executive chair of the ARB.⁸ The Lieutenant Governor in Council may appoint an associate chair, one or more alternate executive chairs, one or more vice-chairs, and other members as considered advisable.⁹

Meetings

Pre-pandemic, hearings were held in all municipalities throughout the province. With the onset of the pandemic, the ARB switched from an in-person hearing model to a [digital-first](#) (not digital-only) approach. Alternative formats such as video, telephone, and written hearings are adopted where feasible.¹⁰

Minimal preparation time is required for the hearings.¹¹

Caseload and Performance

Figure 1 shows the ARB caseload for the past two fiscal years.

Figure 1: ARB Caseload

<u>Caseload</u>	<u>2020-2021</u>	<u>2019-2020</u>
Appeals received	22,311	29,561
Appeals closed	37,840	37,305
Active appeals at fiscal year end	40,170	55,699
Hearings held	734	932
Decisions rendered	36,880	37,711
Number of in-person hearings held	0	85
Number of electronic hearings held (i.e., video conference and teleconference)	661	472
Number of written hearing events	73	135
Total number of hearing days	220	241
Number of appeals dismissed	1050	1,447
Number of appeals with revised values	16,865	15,681

Source: Tribunals Ontario, *Annual Reports* [2019-2020](#) and [2020-2021](#).

⁸ Public Appointments Secretariat, [Assessment Review Board \(Tribunals Ontario\)](#).

⁹ Section 3 of the *Assessment Review Board Act*.

¹⁰ Tribunals Ontario, *Annual Report 2020-2021*, pp. 6 and 14.

¹¹ Public Appointments Secretariat, [Assessment Review Board \(Tribunals Ontario\)](#).

Figure 2 summarizes the ARB's performance targets and actuals in the past four fiscal years.

Figure 2: ARB Performance Results

Performance Measures	Target	2020-2021 Actual	2019-2020 Actual	2018-2019 Actual	2017-2018 Actual
Cases in which the ARB issued a decision within 60 days of the hearing	85%	99%	99%	98%	97%
Summary appeals resolved within 40 weeks of commencement date	85%	90%	82%	92%	99%
General appeals resolved within 135 weeks of commencement date	85%	97%	100%	100%	N/A

Source: Tribunals Ontario, *Annual Report 2020-2021*, p. 29.

RECENT DEVELOPMENTS

The ARB's assessment cycle was extended as per the provincial government's budget announcement in 2020 and again in 2021; the general assessment for the taxation years 2021 and 2022 was postponed.¹²

In 2020, the ARB consulted with stakeholders on proposed changes to its [Rules of Practice and Procedure](#). Changes to the rules took effect on April 1, 2021, and included, among others, the reduction of the schedule of events timelines from 66-104 weeks to 40 weeks. These changes are expected to shorten timelines in the resolution of appeals and result in a reduced number of appeals being carried over into the next cycle.¹³

The ARB implemented a new Electronic Document Format and Filing Requirements Guideline. The purpose of the guideline is to provide directions for the orderly formatting and filing of electronic documents to be relied on at both a settlement conference and a hearing.¹⁴

In March 2021, the provincial government announced a new investment of \$28.5 million—as part of its [Justice Accelerated Strategy](#)—for a digital case management system to help reduce delays and backlogs at Ontario's tribunals.¹⁵ This new system is expected to form the backbone of Tribunals Ontario's digital strategy.¹⁶

THE WITNESS

The witness, Heather Kenny, is seeking appointment as a part-time member.

¹² Tribunals Ontario, *Annual Report 2020-2021*, p. 28.

¹³ Ibid.

¹⁴ Ibid.

¹⁵ Ontario, "[Ontario Unveils Plans to Accelerate Access to the Justice System](#)," news release, March 11, 2021.

¹⁶ Tribunals Ontario, *Annual Report 2020-2021*, p. 16.

According to the Office of the Premier, the witness, of Bowmanville, serves as a member (part-time) for the Criminal Injuries Compensation Board, a Registered Acupuncturist and Owner of Vitality Acupuncture, and a Registered Acupuncturist for Shining Waters Chiropractic Clinic. Her community involvement includes serving as President of Traditional Chinese Medicine Ontario.

POSSIBLE QUESTIONS

1. *What has motivated the witness to seek this appointment?*
2. *What particular contribution does the witness hope to make to the Board?*
3. *How does the witness feel that her professional, volunteer, or other experience will enhance the performance of her duties in this role?*
4. *Does the witness have any experience, knowledge, or training in the subject matter and legal issues dealt with by the Board?*
5. *Does the witness have any experience, knowledge, or training in adjudication?*
6. *The COVID-19 pandemic has dramatically changed the way Ontario's tribunals operate. In witness's opinion, what should the Board's digital strategy prioritize to improve service for the people of Ontario?*