

**Legislative
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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

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

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**ONTARIO PAROLE BOARD:
ORDER-IN-COUNCIL APPOINTMENT OF
MARK BRICKELL ***

Prepared for:

Standing Committee on Government Agencies

Prepared by:

Lauren Warner
Research Officer
Legislative Research

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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 Mark Brickell as a part-time Member to the Ontario Parole Board (OPB or Board). The Board is one of 14 tribunals within Tribunals Ontario. This paper 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	2020-21 (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—\$126,273 Members (Part-Time): \$472 per diem
Number Appointed by Cabinet: All	
Current Membership: Associate Chair (1) Vice-Chairs (1 Full-Time, 4 Part-Time) Members (2 Full-Time, 35 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	
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	

¹ Management Board of Cabinet, *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.

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

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

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,

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.

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; however, in 2020-21, all hearings were held in writing or electronically (i.e., by phone or video-conference).¹⁵

If the Board grants parole, it may impose certain conditions, such as the requirement to report to a parole officer.¹⁶ The Ministry of the Solicitor General, not the OPB, is responsible for supervising those released from provincial facilities on parole.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 the matter 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

CASELOAD AND PERFORMANCE MEASURES

In 2020-21, the OPB received 3,012 applications and rendered 3,012 decisions (a decrease from 4,220 applications and decisions the previous year).²¹ Of those applications, 1,744 hearings were held in writing, and 1,268 were held electronically (i.e., by video or teleconference). No hearings were held in person in 2020-21 due to the impacts of the COVID-19 pandemic.

With respect to performance measures, the OPB aims to convene a hearing and issue a decision to applicants by their parole eligibility date 80% of the time. In 2020-21, the Board did so 81% of the time (versus 88% of the time in 2019-2020, and 100% of the time in 2018-19).²²

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, *Annual Report 2020-21*, p. 56.

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](#)."

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, *2020-21 Annual Report*, pp. 55-56.

²² *Ibid.*, p. 55.

FINANCIAL INFORMATION

Tribunals Ontario does not provide specific financial data for the OPB. In 2020-21, expenditures for Tribunals Ontario as a whole totalled about \$82.7 million (down from \$86.4 million in 2019-20).²³ Approximately \$24 million was allocated to remuneration for full-time and part-time tribunal members.²⁴

Tribunals Ontario receives revenue in the form of application filing fees for certain tribunals, which is transferred to the Province's Consolidated Revenue Fund. In 2020-21, this revenue totalled about \$11.5 million.²⁵

RECENT DEVELOPMENTS

Changes at the Board

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) are permitted to participate in these alternative format hearings.²⁶

Circle hearings (led by Indigenous Elders) can be facilitated via teleconference. The OPB has stated that the pandemic has challenged its work with Indigenous communities, as "the limitations of teleconferences lessened the positive impact of culturally sensitive hearings." However, the Board continues to seek solutions to support videoconference services for circle hearings.²⁷

Over the past year, the OPB has brought in 11 new part-time adjudicators. They participated in modified in-class training and new training modules involving peer mentorship, hearing observation, and decision-writing.²⁸ The Board has also created a comprehensive guide for new OPB adjudicators on conducting teleconference hearings.²⁹

Parole Trends, Corrections Reform, and the Board

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.³⁰ However, research shows that conditional release from incarceration is more

²³ Ibid., p. 63.

²⁴ Ibid., p. 65.

²⁵ Ibid., p. 64.

²⁶ Tribunals Ontario, "[COVID-19 Updates on Tribunals Ontario Operations](#)," updated March 10, 2021; Tribunals Ontario, [Ontario Parole Board Updates](#), April 27, 2020.

²⁷ Tribunals Ontario, *2020-21 Annual Report*, p. 54.

²⁸ Ibid.

²⁹ Tribunals Ontario, *2020-21 Annual Report*, p. 54.

³⁰ 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 Reviewer 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).

effective in promoting successful reintegration than sudden freedom at the expiry of a sentence, without any assistance or supervision.³¹

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 robust and well-reasoned parole decisions and, ultimately, effectively deliver on its mandate.³²

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.³³

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."³⁴ In its *2018-19 Annual Report*, Tribunals Ontario indicated it had made improvements to how circle hearings are conducted by the OPB.³⁵

THE WITNESS

According to the Office of the Premier, the Witness, of St Catharines, is Principal and Chief Executive Officer for Brickell Consulting Group. The Witness is the former Chief Administrative Officer and Secretary Treasurer for the Niagara Peninsula Conservation Authority, and a former School Trustee and City Councillor, St. Catharines, and Regional Councillor.

POSSIBLE QUESTIONS

What has motivated the witness to seek this appointment?

How will the witness' 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 as a result of the COVID-19 pandemic?

³¹ Independent Review of Ontario Corrections, *Corrections in Ontario: Directions for Reform*, p. 133.

³² *Ibid.*, pp. 150-151.

³³ *Ibid.*, pp. 154, and 156-157.

³⁴ *Ibid.*, p. 159.

³⁵ Tribunals Ontario, *Annual Report 2018-19*, p. 7.