

TRIBUNAL WATCH ONTARIO

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SUBMISSION TO STANDING COMMITTEE ON THE LEGISLATIVE ASSEMBLY

BILL 245, ACCELERATING ACCESS TO JUSTICE ACT, 2021 SCHEDULE 6 – ONTARIO LAND TRIBUNAL ACT, 2021

(submitted March 9, 2021, by Ron Ellis on behalf of the Steering Committee of Tribunal Watch Ontario – info@tribunalwatch.ca)

TRIBUNAL WATCH ONTARIO

Tribunal Watch Ontario is a public interest organization with a mission to monitor Ontario's judicial tribunal system, advocate for adjudicative independence, and promote access to justice. We will monitor new appointments to ensure that candidates are selected following a competitive process. We will advocate for appointment and reappointment processes that are inclusive, transparent, merit-based, and free from political influence. We will advocate for dispute resolution processes that are fair, expert, timely and accessible.

<https://tribunalwatch.ca/about/>

Tribunal Watch Ontario is a group of people with a deep concern for the integrity of Ontario's system of tribunal justice. Many of us have current or recent experience as members, vice-chairs, associate chairs or chairs of Ontario adjudicative tribunals or as advocates appearing before these tribunals.

Tribunal Watch Ontario

Statement of concern about the proposed amalgamation of five adjudicative tribunals into a new Ontario Land Tribunal

March 8, 2021

1. Introduction and background

Tribunal Watch Ontario is a public interest, non-partisan organization advocating for the excellence, independence and adequate resourcing of Ontario's adjudicative tribunals.

Tribunal Watch has significant concerns about the proposed amalgamation of five provincial tribunals into a new "Ontario Land Tribunal" ("OLT"). The proposal is contained in Schedule 6 to Bill 245, an omnibus bill which was introduced into the Ontario Legislature on February 16, 2021. The affected tribunals include the Board of Negotiation, the Conservation Review Board, the Mining and Lands Tribunal, the Environmental Review Tribunal, and the Local Planning Appeal Tribunal (LPAT, formerly the Ontario Municipal Board).

Tribunal Watch has significant questions about the Bill, the lack of process before it was introduced, and how the changes will be implemented. We note that organizations that appear before the current tribunals have expressed important concerns and questions about the proposals (see in particular, the Statement from the Canadian Environmental Law Association). These questions and concerns need to be addressed before any changes are implemented.

2. Key areas of concern

a) Why has there been no public consultation?

It appears that these major changes have been developed without adequate consultation, except perhaps with the development industry. Adjudicative tribunals handle important issues that affect the lives of many people and communities. The Government must carefully consider any significant changes to the tribunal justice system, which includes clustering or amalgamation of tribunals. Public consultation involves a range of interests and ideas to ensure that changes are fully considered, including alternative approaches and the identification of unintended consequences.

Decisions on tribunal re-structuring or merger should transparently apply criteria that are focused on access to justice and tribunal excellence. There must also be an assessment of the suitability of combining different tribunals or subject areas, since some case types may be more incompatible to be dealt with by the same organization. Even if the Bill is passed without adequate consultation, it is essential that there be a commitment to full and meaningful consultation about how the changes will be implemented.

b) What will be done to ensure expertise and competence?

A key reason for creating adjudicative tribunals is to ensure that the affected parties have access to adjudicators who are expert in the subject matter of the tribunal.

The Environmental Review Tribunal (ERT) currently has one full-time and four part-time adjudicators. The appointment of the one full-time adjudicator is due to expire in May 2021. In 2018, it had six full-time and six part-time members. The ability of the ERT to

hear and decide environmental cases is already significantly reduced by the loss of adjudicative resources, and this must be dealt with immediately. It is not a solution to abolish this specialized tribunal and then use or appoint adjudicators with land use planning expertise to deal with environmental cases, which deal with environmental law, and technical and scientific evidence.

In contrast, the Local Planning Appeal Tribunal (LPAT), currently has 26 full-time and 5 part-time adjudicators, not including the Executive Chair and Associate Chair. Despite its large size, the LPAT may be the only adjudicative tribunal that has a complement that meets or exceeds the numbers before the last election. It is also noteworthy that over half of the existing 31 adjudicators were appointed since the election, with a corresponding loss of the most experienced adjudicators.

c) Why is the ability to participate in the adjudication of planning and environmental cases being reduced or changed?

The Bill proposes significant changes to the way hearings will be conducted, allows for more cases to be dismissed without a hearing, and reduces the ability of people who have an interest in a case but who are not parties to participate. How these measures will be implemented will be left largely to the discretion of the tribunal to decide. These are important policy issues that can impact on access to justice and deserve careful consideration with full public consultation. This is particularly true since the Bill also reduces the ability of the court to ensure that cases have been fairly decided on judicial review and eliminates existing avenues of appeal.

The Government has already abolished the Local Planning Appeal Support Centre (LPASC) which provided services and resources to citizens who would like to participate in land use planning cases. This decision should be reviewed because it directly affects the ability of affected parties to participate effectively at the tribunal. A new Centre should be developed to provide information and resources for those affected by the planning and environmental decision-making processes.

3. Conclusion

The proposed changes will significantly change the adjudication and resolution of land use planning and environmental issues in Ontario. There is no clear urgency to any of the proposed changes. A meaningful consultation process will increase the prospect that changes will increase and not decrease access to the decision-making process for those who are affected by land use and environmental issues. Merit-based appointment and reappointment of adjudicators following a competitive recruitment process will ensure expertise and competence. A full complement of adjudicators with expertise in environmental law will ensure that environmental concerns are not over-shadowed by land use planning priorities.