



March 27, 2019

Linda Lamoureux
Executive Chair, Tribunals Ontario
25 Grosvenor Street
Toronto ON M7A 2G6

Dear Ms. Lamoureux,

Re: Tribunals Ontario Adjudicator Appointments

First, let us take a moment to congratulate you on your recent appointment as the Executive Chair of Tribunals Ontario. As the central organization responsible for 19 tribunals that were previously organized into three clusters - the Social Justice Tribunals Ontario, the Environment and Land Tribunals Ontario and the Safety, Licensing Appeals and Standards Tribunals Ontario - this will no doubt be a challenging role, but also present opportunities to enhance the administration of justice in Ontario. We look forward to working with you to help ensure a smooth transition.

We write to you today on behalf of the Ontario Bar Association (the “**OBA**”) regarding current trends in the appointment and reappointment of adjudicators. As you may know, the OBA is Ontario’s largest legal advocacy organization, representing lawyers, judges, law professors and students from across the province, on the frontlines of our justice system and in no fewer than 40 different sectors. In addition to providing legal education for its members, the OBA assists government and other decision-makers with several legislative and policy initiatives each year - both in the interest of the profession and in the interest of the public.

This letter has been prepared with input from the OBA’s Administrative Law, Labour and Employment Law, and the Constitutional, Civil Liberties and Human Rights Law sections. Members from these sections serve as legal counsel to virtually every stakeholder in Ontario’s tribunal system, and on every tribunal in that system. Our members provide counsel to applicants, respondents, landlords, tenants, employers, unions, employees, doctors, government agencies and hospitals, just to name a few. In that manner, our members are aware of the ongoing challenges faced within Ontario’s tribunal system, from both an operational and human resources perspective. Our members recognize that the resolution of legal disputes by impartial adjudicators within a reasonable time is a necessary element of the rule of law in our system of government that may be undermined by delays in appointing adjudicators, or the failure to appoint a sufficient complement of adjudicators to a given tribunal.

Our members are keenly aware of the ongoing efforts, and challenges, in filling vacant adjudicator positions on tribunals, such as the Human Rights Tribunal of Ontario (the “**HRTO**”). With respect to the HRTO, these challenges have led to serious concerns with respect to the HRTO’s ability to deliver on its statutory mandate, as our members have received notifications of steps in certain

proceedings that must be delayed and not dealt with on a preliminary basis, and hearings that must be adjourned and re-scheduled, all based on the HRTO's lack of available resources – adjudicators in particular. While concerning for our members, these instances are most troubling for the clients for whom our members act, as parties whose entitlements and rights are determined by tribunals, like the HRTO, are negatively affected by delay. While a recent advertisement to fill the role of full-time member of the HRTO is a positive sign, it remains unclear how far this step will go in alleviating these concerns.

Our members have noted that, while there appears to be an ongoing delay in filling vacancies on certain tribunals, such as the HRTO, the delay does not appear to impact others, such as the Ontario Labour Relations Board and the Workplace Safety and Insurance Appeals Tribunal, and the cause of this distinction is not clear.

In addition, there appears to have been a change from previous practice when it comes to appointments and re-appointments for certain tribunals. For instance, our members have reported departures from the past practice, which include: government choosing not to re-appoint adjudicators despite the recommendation of the chair of the tribunal, doing so without explanation, limiting terms to one-year for first appointments, and the blanket ineligibility of candidates who have been refused an appointment, re-appointment, or extension (beyond the so-called “10-year cap”) to apply to other tribunals. The 10-year cap is itself a policy about which members of the legal community have previously expressed concern, and which we continue to review. These elements have raised concerns with respect to the tribunals' ability to recruit qualified adjudicators, and concerns about perceived independence of the adjudicators so appointed.

In raising these concerns for your consideration, we would acknowledge that only a short amount of time has passed since your appointment to lead Tribunals Ontario. Indeed, we would also acknowledge that we are aware that a review will be conducted of all tribunals, including the HRTO, to identify areas for improvement to make services more streamlined, cost-effective and efficient. With that in mind, we wish to open a dialogue with you and Tribunals Ontario, to learn more about the issues facing Tribunals Ontario, how these issues will be addressed and provide submissions from the practicing bar on any items of mutual interest.

We would welcome the opportunity to speak with you directly in the near future, and would be delighted to host a meeting with you at the OBA Conference Centre (20 Toronto Street, Toronto), at a mutually convenient time – please feel free to contact Jim Elson (jelson@oba.org, 416-869-1047 x368) who can make the necessary scheduling arrangements.

Thanks again for your attention, and we look forward to the opportunity to discuss these matters with you further in the coming days.

Yours truly,



Aaron Dantowitz, Chair
Administrative Law Section



Adrian Ishak, Chair
Labour & Employment Law
Section



Wade Poziomka, Chair
Constitutional, Civil Liberties and
Human Rights Law Section