

Doug Ford appointed unqualified party loyalists to fill key tribunal spots. Now Ontarians are paying the price as wait lists swell

Ontario's premier has shamelessly made juicy patronage appointments to the province's tribunals, Martin Regg Cohn writes.

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Wed., Dec. 14, 2022

Doug Ford first won power on a promise to clean up government and cut back wait lists.

How did justice fall off the list?

All of these years later, lineups and wait lists are longer than ever for people seeking fairness in what might be their most consequential encounters with the legal system.

Tribunals are supposed to be the one place where justice, and access to justice, is equal for all — an alternative to high-priced lawyers and endless court dates. Yet Ontario's front-line administrative tribunals have become dysfunctional on Ford's watch.

The premier long ago pledged to “stop the gravy train.” Yet in power, Ford has shamelessly larded on juicy patronage appointments, bestowed upon Progressive Conservative partisans to grease the party machine while bogging down the wheels of justice.

The PC government first gutted the system by refusing to reappoint the most experienced adjudicators, then gummed it up by leaving those jobs vacant. Belatedly, with the system in crisis, Ford's Tories packed the bench with party loyalists.

Ordinary Ontarians are paying the price for the premier's pork barrelling, with a queue exceeding 67,000 cases in key areas:

- For embattled tenants facing eviction, or exasperated landlords risking financial ruin, wait lists have more than doubled at the Landlord and Tenant Board — with applicants warned it takes at least seven months for a first hearing.
- For accident victims fighting back against insurance companies, the backlog at the Licence Appeal Tribunal is nearly four times longer.
- For disabled Ontarians trying desperately to prove they qualify for benefits (many government refusals are overturned), the wait list has increased by nearly 50 per cent at the Social Benefits Tribunal — forcing them to rely on much lower welfare payments for months on end.
- For those awaiting their day in court — or more precisely, in front of a tribunal — the days of in-person hearings are in the past. To cope with the choke points, tribunals have quietly imposed a “digital-first” policy that puts personal appearances last.

Legal clinics say they know of only a single in-person hearing at the Landlord and Tenant Board since the policy came into place. Tenants who can't connect are left flying blind at the end of a phone line, while their opponents have the benefit of watching the full proceedings on their computer screens with speedy broadband links.

But instead of speedier justice, the “digital-first” policy has become a waiting game and a war of attrition. In countless cases, people weary of the wait abandon their cases, or are no longer on the line when their case comes up — giving up much like people hang up when a call centre puts them on hold.

Except that the stakes are so much higher.

The pandemonium of the pandemic may be largely in the past, but access to justice may never fully recover. The official Tribunals Ontario website insists video hearings are needed “to protect the health and safety of all Ontarians” — long after such mandatory COVID-19 measures have been phased out across society.

“Chaos has regularly occurred during electronic (Landlord and Tenant Board) hearings, particularly as tenants participating by phone try to figure out which

voice is their landlord, who is the adjudicator,” according to a report this month by Tribunal Watch Ontario, an outside watchdog group.

It’s not just the delaying but the distancing of people in need. By imposing digital hearings under the cover of COVID-19, Tribunals Ontario “has created an onerous process” to seek in-person hearings — in sharp contrast with federal tribunals that make the process easy up front, the report concludes.

Against that backdrop of delay and disarray, the verdict is in from retired judges, former adjudicators and lawyers at Tribunal Watch: Ford’s government has systematically undermined, understaffed and politicized a pillar of the legal system.

While the law courts get most of the media attention, it is the day-to-day slogging in the trenches of the tribunals that matters more to the administration of justice, according to George Thomson, a former deputy attorney general and retired judge who works with Tribunal Watch.

Tribunals are “way more important than occasional access to the courts. This situation is damaging to the justice system as a whole,” Thomson said in an interview. “It’s hard to overstate the damage.”

When I first wrote about this issue in 2020, the Tories were in a state of denial — see no evil, hear no evil, and now, speak no comment. This week, Attorney General Doug Downey’s office declined an interview request, and his spokesperson, Andrew Kennedy, never delivered the promised answers to my questions over the course of two days.

Belatedly, the government has moved into damage-control mode, while making matters worse with unqualified patronage appointments. Downey indirectly acknowledged the backlog challenge by allocating increased funding last month.

The money won’t go far — \$1.4 million “to enhance scheduling and client experience, issue decisions and orders faster,” according to a government news release. The funding is on top of another \$1.5 million annually “to recruit more adjudicators and ... address long-standing backlog issues.”

But the backlog isn't "long-standing," it's a self-inflicted wound that predates the pandemic, according to Tribunal Watch, which has tracked the growing wait lists. It cites the government's own figures, released in the annual report from Tribunals Ontario, showing a backlog of more than 67,000 cases as of last March in the four biggest areas — landlord and tenant, human rights, auto accidents and social benefits.

The Landlord and Tenant Board is Ontario's busiest tribunal, with more than 80,000 applications a year. That number has decreased by nearly 20,000 in the latest fiscal year, yet the backlog has grown to 32,800 cases — more than double what it was before the Tories took power.

Under previous Liberal governments, "the majority of appointments were merit-based," said Alec Farquhar, who is on the Tribunal Watch steering committee. The Tories "let go most of these experienced, neutral, genuinely non-partisan adjudicators because they were seen by the Ford government as tainted by their association with the defeated Liberal government."

After leaving those positions vacant and watching the backlogs rise, the Tories realized their mistake — but then compounded it by appointing unqualified loyalists in their place.

That practice was "epitomized," Farquhar says, by the appointment of defeated federal Conservative candidate Sean Weir as executive chair of Tribunals Ontario — a patronage plum that paid him more than \$200,000 last year. As revealed in a 2020 column, Weir was quietly appointed to this pivotal, non-partisan position without any outside competition, with only a background in corporate and commercial law, and no apparent expertise in adjudicative or administrative law.

Emboldened by that partisan play, the Tories tried a replay: Sara Mintz, a former vice-president of the Ontario PC Party, is now alternate executive chair of Tribunals Ontario, after serving just over a year as associate chair of the Licence Appeal Tribunal, earning more than \$173,000 in 2021.

"Many of these senior leaders literally had no idea how to run a tribunal and knew nothing about the subject matter of the tribunal that they were leading," Farquhar said.

More recently, the government appointed defeated PC backbencher Jeremy Roberts as vice-chair of the Licence Appeal Tribunal. The Tories used their majority to run out the clock before the standing committee on government agencies could question his qualifications.

Taken together, these actions show a pattern of ignorance and incompetence toward tribunals, according to Thomson. Since taking power, the Tories have disempowered tribunals at the expense of powerless Ontarians who have nowhere else to take their fight for justice.

“This is a failure to recognize the potential damage,” he told me. “It’s hard to say why a government would allow this essential part of the justice system to become so backlogged, other than a failure to recognize its importance or an actual intent to make it less fair and effective.”

What was the government thinking? No comment, and evidently little thought.