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Democracy Watch starts legal fight with Doug Ford over appointments to tribunals

By [Morgan Sharp](#) | [News](#), [Politics](#), [Next Gen Insider](#) | July 16th 2020



An empty tribunal seen on the website of Tribunal Ontario's social justice division

The Ford government should scrap changes it made late last year to the province's tribunal appointment process, a new legal filing from Democracy Watch says, as advocates complain of delay and dysfunction.

The lawsuit from Democracy Watch filed July 8 alleges Premier Doug Ford and his attorney general, Doug Downey, broke rules ensuring the independence of the quasi-judicial bodies, which deal with everything from landlord and tenant disputes to human rights and police complaints, land use and environmental matters, and parole and youth custody review.

More than half of young people aged between 25 and 34 are renters, who are involved in hearings where they risk losing their homes in one of the biggest of those tribunals, the Landlord and Tenant Board.

Young people could also be expected to fall into rent arrears in large numbers given they were [most drastically hit](#) by job losses and reduced work hours due to the COVID-19 pandemic, which prompted Ford to order a temporary pause on eviction hearings.

Tenant rights advocates complain that board is being deliberately starved of adjudicators to justify the streamlining efforts contained in Bill 184, which went to third reading on Wednesday and will soon become law.

The bill [makes it easier](#) for a landlord to evict a tenant who misses an arrears payment without a hearing, and will be retroactive to the start of the pandemic.

Democracy Watch said the system for appointing members to Ontario's tribunals had previously involved a competitive application process controlled by the tribunals, but it is now largely controlled by cabinet.

The group said previously fixed-term appointments were being made for shorter and more uncertain time periods and that recommendations of tribunal chairs are being routinely rejected.

"This means tribunal members have little job security and are essentially serving at the pleasure of the cabinet, undermining their independence and politicizing and weakening the enforcement of many key laws across the province," the advocacy group [said in a statement](#).

The application asks the Ontario Superior Court of Justice to judge whether the appointments, which are largely done behind closed doors, run afoul of the Adjudicative Tribunals Accountability, Governance and Appointments Act of 2009 (ATAGA, or the [Tribunals Act](#)).

The Ford government stands accused of meddling with the independence of Ontario's tribunals in a legal challenge from advocacy group @DemocracyWatchr

It wants the court to cancel appointments made under the Ford government's new system on the grounds they are "illegal and unconstitutional."

A spokesperson for the attorney general said the province was served on July 14 and was reviewing the notice of application for judicial review.

"As this matter is subject to litigation, it would be inappropriate to comment further," Jenessa Crognali said in an email.

The Ford government has been slow to fill vacancies on a string of its Tribunals Ontario's 19 tribunals (five of which were recently carved off into their own cluster), which combined issue more than 130,000 quasi-judicial rulings a year. Last month it named [Sean Weir](#), a former head of top law firm Borden Ladner

Gervais and federal Conservative candidate in 2018, as executive chair for Tribunals Ontario.

The bottleneck in the hiring process has led critics with long involvement in the tribunal system to question the government's motives.

"It seems to me you can only conclude that one of the motives of the government was to make room for their own appointments," said Ron Ellis, the former chair of the Ontario's Workers' Compensation Appeals Tribunal.

He is a part of Tribunal Watch Ontario, which [warned in May](#) of a growing crisis due to the Ford government's actions.

It said those who appear before tribunals must have confidence that the adjudicator makes decisions based on the law and the evidence and free from fear of losing their job by displeasing the government.

"This becomes especially obvious for tribunals where the government is a party," the group wrote.

Shortages and cuts a 'recipe for disaster'

Tribunal Watch Ontario counted 113 members of social justice tribunals at the end of April compared to 199 in 2018, just before the election victory of Ford's Progressive Conservatives.

The Landlord and Tenant Board, one of the busiest of the tribunals with close to 80,000 decisions made a year, went from 53 members to 40, all full-time jobs lost. The Human Rights Tribunal went from 57 to 22, and the Social Benefits Tribunal from 38 to 21.

The Environmental Review Tribunal had only four members in April, the group found, with the highest-ranking member being a part-time vice-chair, compared to 12 members in March 2018.

"A shortage of adjudicators is restricting people's access to justice and a fair and timely hearing. Then on top of that, there is funding cut to those that are supporting and helping low-income folk navigating a very complex legal system," said Bahar Shadpour, a spokesperson for the Advocacy Centre for Tenants Ontario.

“It is a recipe for a disastrous way for people to access justice,” she said, noting the Ford government had [cut funding for legal aid](#) by nearly 30 per cent.

Shadpour said she expects a spike in demand for those legal services, especially related to housing, as the LTB faces an “avalanche” of eviction hearings once a pandemic-related moratorium is lifted.

The provincial ombudsman in January [launched an investigation](#) of the Landlord and Tenant Board focused on whether the government was doing enough to fix delays and backlogged cases, following a surge of complaints.

About 80 of the more than 200 complaints the ombudsman, Paul Dubé, received about the LTB in fiscal 2018-2019 were specifically about delays. He has already received more than 110 delay complaints in the first nine months of this fiscal year, including 43 in December alone.

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Editor's note: This article was updated at 1:00 p.m. Eastern on July 16, 2020 to include response from attorney general's office, note that filing seeks cancellation of appointments made under new system.