

ADMINISTRATIVE JUSTICE DELAYED, FAIRNESS DENIED

Investigation into whether the Ministry of the Attorney General, Tribunals Ontario and the Landlord and Tenant Board are taking adequate steps to address delays and case backlogs at the Landlord and Tenant Board

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We are:

An independent office of the Legislature that resolves and investigates public complaints about services provided by Ontario public sector bodies. These include provincial government ministries, agencies, boards, commissions, corporations and tribunals, as well as municipalities, universities, school boards, child protection services and French language services.

Land acknowledgement and commitment to reconciliation

The Ontario Ombudsman's work takes place on traditional Indigenous territories across the province we now call Ontario, and we are thankful to be able to work and live on this land. We would like to acknowledge that Toronto, where the Office of the Ontario Ombudsman is located, is the traditional territory of many nations, including the Mississaugas of the Credit, the Anishnabeg, the Chippewa, the Haudenosaunee, and the Wendat peoples, and is now home to many First Nations, Inuit and Métis peoples.

We believe it is important to offer a land acknowledgement as a way to recognize, respect and honour this territory, the treaties, the original occupants, their ancestors, and the historic connection they still have with this territory.

As part of our commitment to reconciliation, we are providing educational opportunities to help our staff learn more about our shared history and the harms that have been inflicted on Indigenous peoples. We are working to establish mutually respectful relationships with Indigenous people across the province and will continue to incorporate recommendations from the Truth and Reconciliation Commission into our work. We are grateful for the opportunity to work across Turtle Island.



Ombudsman Report

“Administrative Justice Delayed, Fairness Denied”

Investigation into whether the Ministry of the Attorney General, Tribunals Ontario and the Landlord and Tenant Board are taking adequate steps to address delays and case backlogs at the Landlord and Tenant Board

**Paul Dubé
Ombudsman of Ontario**

May 2023

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Executive Summary

- 1** The Landlord and Tenant Board is one of the busiest tribunals in Ontario’s administrative justice system, receiving some 80,000 applications a year and directly impacting the daily lives of numerous residential landlords and tenants across the province. Tribunals such as the Board were established to provide efficient and less formal dispute resolution services as an alternative to the courts. However, by the fall of 2019, the Board had spiraled into a moribund state as it grappled with an increasing backlog of applications awaiting resolution.
- 2** Confronted with a rising volume of complaints about delays in scheduling hearings and issuing orders at the Board, I commenced an investigation into whether the Board, along with the Ministry of the Attorney General, which is responsible for its administration, and Tribunals Ontario, to which the Board reports, were taking adequate steps to address delays and case backlogs.
- 3** We heard from thousands of individuals who were detrimentally affected by the prolonged delays at the Board. Some of their stories were particularly compelling, and many are featured in this report. There were tenants stuck waiting while they endured harassment, unsafe living conditions, and improper attempts to force them from their homes. And there were small landlords, including those renting out space within their own homes, who were trying to cope with tenants’ abuse, criminal conduct, and facing financial ruin and serious health harms.
- 4** Initially, officials from the Ministry, the Board and Tribunals Ontario attributed delays to the recent election and a resulting reduction in appointments of adjudicators to conduct hearings. However, even after the appointment numbers had stabilized, the Board continued to struggle as other sources of delay materialized. The arrival of the COVID-19 pandemic in March 2020 was undoubtedly a factor. By that stage, the Board already had a backlog of more than 20,000 applications. Measures introduced to address the consequences of the pandemic, including the closure of the Board’s physical offices, the move to telephone and later virtual hearings, and a moratorium on evictions, all impeded its efforts to remedy the situation.
- 5** My investigation revealed that the Board’s outdated technology also limited its ability to pivot effectively when the pandemic hit, further compounding delays. In 2021, when the Board began to transition to a new system promising greater efficiencies, it first had to contend with scores of technical glitches.

- 6 Since my investigation began, the Board has adopted a series of shifting strategies to manage its backlog of applications awaiting hearings. While there has been some slight fluctuation in the volume, the queue has not been substantially reduced, and now stands at more than 38,000 applications. Where once it took the Board a matter of days to schedule hearings, it now takes an average of seven to eight months. As of February 2023, landlord applications were generally being scheduled for hearing within six to nine months of receipt, and tenant applications could take up to two years to be scheduled.
- 7 Administrative tribunals make decisions about matters that have a serious impact on people’s lives, and the Landlord and Tenant Board is no exception, providing an extremely important service to the public. It has exclusive jurisdiction to resolve applications under the *Residential Tenancies Act, 2006*,¹ and the public is entitled to expect that it will provide services in a timely and efficient manner.
- 8 While I recognize that in recent years the Board has had to manage some challenges arising from circumstances beyond its control, my investigation identified a host of inefficiencies that have also contributed to delays. There are numerous areas where Board practices could be improved, including member recruitment and appointments, application screening, hearing scheduling and case triaging, managing adjournments, identification and processing of urgent cases, tracking of the expiration of member terms, order issuance, monitoring of outstanding orders and mediations, and identification and processing of cases requiring French language services. Accordingly, I have concluded that the conduct of the Landlord and Tenant Board, and Tribunals Ontario is unreasonable under s. 21(1)(b) of the *Ombudsman Act*.² I have also found that the Ministry of the Attorney General’s conduct relating to the appointment process for the Board is unreasonable under the *Ombudsman Act*.
- 9 In this report, I have made 61 recommendations to improve the functioning of the Landlord and Tenant Board for the benefit of the tens of thousands of Ontario residents who rely on its services. Several of my recommendations are directed at the Government of Ontario. Three focus on legislative change: One to eliminate potential reduction of adjudicative capacity connected with elections, another to provide the Board with greater authority to address delays in the issuance of orders by individual members, and one to extend the time provided to members whose terms are expiring so they can complete matters they have already heard. I have also recommended that the government support efforts towards the Board maintaining an adequate complement of adjudicators, and implementing a strategy to reduce the backlog as soon as possible.

¹ *Residential Tenancies Act, 2006*, SO 2006, c 17 [RTA].

² *Ombudsman Act*, RSO 1990, c O.6.s.

- 10 Tribunals Ontario has accepted all of my recommendations and committed to actively working to address the issues I have identified. The Ministry of the Attorney General has indicated that it takes my report and recommendations very seriously, and that work is well underway at Tribunals Ontario and the Ministry to address many of the issues identified in the report. It has agreed with all of my recommendations. Some positive steps have already been taken, including the Government of Ontario's recent announcement that it is investing \$6.5 million to appoint an additional 40 adjudicators and hire five staff to improve service and reduce the number of active applications and decision timeframes. The sooner this initiative moves forward, the sooner the Board will be in a position to improve its service levels. I am encouraged by the positive responses by Tribunals Ontario and the Ministry to my recommendations.
- 11 As the evidence we gathered in this investigation clearly demonstrates, the current state of the Board – reflected in the experience of thousands of Ontarians who came forward to us – is one where administrative justice delayed is fairness denied. The timely and efficient service to which the public is entitled from the Board has not been a reality for many years. I will closely monitor the efforts of the Board, Tribunals Ontario and the Ministry to address the issues we have uncovered.

Investigation background, scope and process

- 12 Administrative tribunals are intended to be less formal, less expensive, and able to resolve disputes more rapidly than the courts. Each tribunal addresses the needs of a specific administrative justice subject area. Tribunal members who make decisions usually have special knowledge about the topics they adjudicate.
- 13 Tribunals Ontario is a cluster of 13 adjudicative tribunals that play an important role in the administration of justice in Ontario. The province began creating tribunal clusters in 2010 to improve effectiveness and efficiency in tribunal administration. Tribunals Ontario was formed in January 2019 under the *Adjudicative Tribunals Accountability, Governance and Appointments Act, 2009*,³ through the merger of three former clusters: Social Justice Tribunals Ontario; Environmental and Land Tribunals Ontario; and Safety, Licencing Appeals and Standards Tribunals Ontario. A news release from the Ministry of the Attorney General described this as “part of the government's plan to review tribunals accountable to the Ministry of the Attorney General to ensure programs are effective, affordable and sustainable.”

³ *Adjudicative Tribunals Accountability, Governance and Appointments Act, 2009*, SO 2009, c 33, Sched. 5 [ATAGAA].

- 14** Tribunals Ontario’s constituent tribunals include the Animal Care Review Board, Assessment Review Board, Child and Family Services Review Board, Custody Review Board, Fire Safety Commission, Human Rights Tribunal of Ontario, Landlord and Tenant Board, Licence Appeal Tribunal, Ontario Civilian Police Commission, Ontario Parole Board, Ontario Special Education Tribunal (English), Ontario Special Education Tribunal (French), and Social Benefits Tribunal. Each year these tribunals receive and resolve nearly 100,000 cases.
- 15** Tribunals Ontario is led by an Executive Chair, who is appointed under the *Adjudicative Tribunals Accountability, Governance and Appointments Act, 2009*.⁴ The Executive Chair reports through the Minister of the Attorney General (the Attorney General), who is ultimately accountable to the Legislature for the proper administration of Tribunals Ontario. There is a Memorandum of Understanding between the Attorney General and the Executive Chair that sets out their working relationship, expectations, and accountability and governance framework. An Executive Director supports the Executive Chair. The Executive Director is accountable to the Deputy Attorney General for the management of Tribunals Ontario’s operations. The Executive Chair, working with the Executive Director, is responsible for ensuring that Tribunals Ontario and its constituent tribunals operate in accordance with applicable government and legislative directives, agreements, and financial and administrative policies and procedures. The Government of Ontario funds Tribunals Ontario out of the Consolidated Revenue Fund, as part of its annual budget process.
- 16** Although it reports to the Attorney General for administrative purposes, Tribunals Ontario and its constituent tribunals are independent in all matters affecting their adjudication and resolution of disputes, in the assessment and management of appointees, and in their relationships, dealings and communications with tribunal users and persons affected by their services.
- 17** The Executive Chair is responsible for the administration of the 13 constituent tribunals and has all of the powers, duties and responsibilities of the chairs of those tribunals. Associate Chairs and Vice Chairs may be appointed for each tribunal. The Executive Chair may assign certain responsibilities to Associate Chairs and Vice Chairs.
- 18** The Landlord and Tenant Board is an adjudicative tribunal operating under the *Residential Tenancies Act, 2006*, which resolves disputes between tenants and landlords and matters concerning eviction in non-profit housing cooperatives. Applicants are required to pay set fees when they file their applications. The Board has exclusive jurisdiction to determine all applications under the Act.⁵ The Board is

⁴ ATAGAA, *supra* note 3, s 16(1).

⁵ RTA, *supra* note 1, s 168(2).

led by an Associate Chair, who is assisted by several Vice Chairs. Since January 2019, the Board has reported through Tribunals Ontario. Various members are appointed to the Board with the authority to issue binding decisions and orders to resolve the disputes coming before them.

- 19** My Office often receives complaints about administrative tribunals. This is understandable, given that they represent a sector of the justice system directly affecting the lives of many Ontarians. However, beginning in 2018 we noticed a significant increase in complaints about the Board, specifically about delay. In fiscal year 2018-2019, 80 of the 200 complaints we received about the Board were about delays. In the first three quarters of fiscal year 2019-2020, we received 110 complaints about delays at the Board, 43 in December 2019 alone. The complaints came from landlords and tenants, as well as other interested parties. Many cited delays in having hearings scheduled and orders issued. Some complained of significant consequences of having to wait several months or years.
- 20** Tribunals Ontario also saw a spike in complaints about Board delays, and its 2018-2019 annual report contained data showing that the Board had not consistently met its own service standards since 2017. At the time, Tribunals Ontario attributed delays primarily to a shortage of adjudicators.
- 21** In the wake of the surge in complaints, and in light of the real human impact resulting from Board delays, I determined that an investigation was warranted. On January 9, 2020, my Office notified Tribunals Ontario, the Board, and the Ministry of the Attorney General of my intent to investigate whether they were taking adequate steps to address delays and case backlogs at the Board. The investigation was assigned to our Special Ombudsman Response Team (SORT).

Scope of investigation

- 22** Our Office received submissions and complaints relating to the Board about a variety of issues other than delay. For instance, some brought forward issues regarding the accessibility of virtual hearings and the Board's new case management system. Not all the complaints we received were within our mandate, as some dealt with rent controls, housing supply, support programs for businesses and the like. In those cases, we provided as much information and assistance as possible to help people connect with appropriate agencies.

- 23** We also heard from those seeking legislative changes to the framework for resolving landlord and tenant disputes. During our investigation, amendments were made to the *Residential Tenancies Act, 2006*.⁶ The government noted that some of the changes introduced were in response to perceived issues with evictions for a landlord’s personal use and “no-fault” evictions, as well as other inefficiencies at the Board. The amendments included specific reference to the Board’s ability to resolve disputes through mediation or other dispute resolution processes and addressed financial implications of the COVID-19 pandemic on landlord-tenant relations.
- 24** Our Office addressed individual complaints through our normal resolution process and raised issues with the Board, Tribunals Ontario, and the Ministry as appropriate. However, the scope of this investigation, as reflected in this report, remained consistent with our original notices to the Board, Tribunals Ontario and the Ministry, which focused on delay.

Investigative process

- 25** This investigation required a tremendous amount of planning and preparation. Complaint volumes grew continuously while our investigation progressed. The arrival of the COVID-19 pandemic shortly after the investigation began also presented significant challenges and affected the length of time required to complete this investigation. The investigative process – particularly interviewing witnesses and obtaining documentary evidence – was hampered considerably by the state of public health, staffing levels and having to conduct much of the work virtually. Nonetheless, it was imperative that we conduct a thorough and rigorous investigation that took account of the issue of delay from a variety of perspectives.
- 26** In the weeks and months after the investigation was announced, our Office received more than 4,000 additional complaints from landlords, tenants and stakeholders, including Members of Provincial Parliament. We worked diligently to resolve these cases and factor any relevant issues into our investigation.
- 27** Our frontline complaint intake staff, known as Early Resolution Officers, worked tirelessly to resolve thousands of individual cases and obtained valuable information that informed this investigation. In addition, Special Ombudsman Response Team and Early Resolution staff engaged in many briefings and regular meetings with officials from the Board and Tribunals Ontario throughout the investigation.

⁶ Bill 184, the *Protecting Tenants and Strengthening Community Housing Act, 2020*, SO 2020, c 16, received Royal Assent on July 21, 2020. Most of the amendments introduced to the *Residential Tenancies Act, 2006* by the Bill are currently in force, while some await proclamation.

- 28** Many Ontarians shared their personal stories and concerns with us. SORT staff conducted dozens of formal interviews, including with tenants and landlords, current and former officials with the Board, Tribunals Ontario and Ministry, and two Members of Provincial Parliament. They also spoke with many other stakeholders, including tenant and landlord associations and legal clinics.
- 29** Since May 2019, our Office has been responsible for ensuring compliance with the *French Language Services Act*.⁷ We were also aware that prior to 2019, concerns had been raised with the former French Language Services Commissioner about delays at the Board regarding hearings and decisions in French. With this in mind, we also conducted interviews with French-speaking stakeholders and with former and current Board staff and members about the timeliness of its French language services. SORT worked in collaboration with our Office's French Language Services Unit on this aspect of the investigation. The French Language Services Unit also received and resolved relevant cases.
- 30** We also obtained and reviewed thousands of pages of documents during the investigation, including files from the Board, Tribunals Ontario and Ministry, as well as submissions from stakeholders and complainants.
- 31** However, we experienced considerable delays in obtaining information and documents from all three organizations due to the pandemic and resulting shutdowns and moves to remote work and virtual operations.
- 32** The Board's shift to virtual operations affected its ability to respond to our investigation in a timely fashion, as well as address its burgeoning workload. There were also changes in leadership at the Board and Tribunals Ontario, which were actively trying to roll out process improvements and implement new technologies during the course of our investigation.
- 33** Moreover, our Office was not at its full staffing complement during this investigation, which also affected timelines. Two significant expansions of the Ombudsman's mandate (in 2016 and 2019) have greatly increased caseloads, and although we have added staff and continue to do so, during the period of this investigation we lacked the human resources capacity to reach full complement and optimize our operations.
- 34** The Board, Tribunals Ontario and the Ministry of the Attorney General all co-operated fully with our investigation.

⁷ *French Language Services Act*, RSO 1990, c F.32.

Stories from the Queue

- 35** Many of those who complained to us about the Board described compelling circumstances. It was clear that prolonged delays in having their applications resolved were causing them and others significant hardship.
- 36** We heard from several tenants who needed repairs done or were threatened with eviction, but were left in limbo pending the Board's decisions. A community clinic contacted us about a couple whose only source of income was Ontario Disability Support Program benefits. They had approached the clinic in late 2018, concerned about the deplorable state of their rental unit. The clinic was in the process of attempting to obtain compensation from their landlord when, in April 2019, the building was shut down due to electrical safety concerns. The tenants left belongings behind that were later ruined by water damage. Their applications to the Board were filed on March 31, 2020, but they were unable to obtain an expedited hearing, and the matter was not scheduled for hearing until December 2021.
- 37** A tenant told us that she filed an application for tenant rights and maintenance in December 2020 because her landlord had been harassing her and her apartment had black mold, inadequate heat, leaks in the windows and sink, and a malfunctioning stove. She said her poor living conditions were causing her health problems, and she had been waiting more than a year for a hearing. With no solution in sight, she was forced to leave her home of eight years in May 2021. A hearing was eventually scheduled in January 2022, but it was adjourned because there were too many cases to be heard that day. It was adjourned again at a scheduled hearing in March because the presiding member was due to leave the Board and felt that another member should be assigned to hear the matter, given the volume of evidence involved. The hearing was eventually rescheduled for April 2022.
- 38** Another tenant complained about a delay in resolving her landlord's application to terminate the tenancy of another resident, who was violent. She said the resident had assaulted her on September 20, 2020, by attempting to cut her throat and drag her into his unit. The Board heard the landlord's application on an urgent basis on October 30, 2020. However, it took another two months before the order was issued. Although the woman was not a party to the application, she noted that the delay had a direct impact on her personal safety.
- 39** We also heard from a woman who complained that her landlord, his son and others were harassing her, including shutting off her heat, looking in her windows, and drilling holes in her ceiling. She said police had been contacted about the landlord's harassment several times and she had filed applications with the Board

for a rebate and tenant rights in September 2020. Her matter was not scheduled for hearing until November 2021, and then it was adjourned. Her request to have it expedited was declined and it was not scheduled again until February 2022.

- 40** Although we heard from tenants and landlords during our investigation, many of the complaints we received and stories featured in this report relate to landlords. In all, some 84% of all complaints we received about the Board were from landlords, and about 12% were from tenants (the remaining 4% were from stakeholders such as MPPs and interest groups). The numbers are unsurprising, given that most of the applications affected by the Board’s delays were filed by landlords. Some stakeholders expressed concern to us that the *Residential Tenancies Act, 2006* and delays experienced at the Board benefited the interests of landlords, particularly large corporate leasing companies, to the detriment of tenants. However, a significant percentage of the landlords who reached out to us were individuals who owned only one rental property or leased space in their homes. They described great personal and financial hardships resulting from Board delays.
- 41** For example, we were contacted about a 74-year-old landlord, a pensioner, who had applied in December 2019 to end a woman’s tenancy because of serious safety concerns. According to his representative, the tenant had assaulted the landlord – once threatening him with a knife, and on other occasions throwing stool and urine at him – and another resident. She had also intentionally flooded the rental unit with excrement and toilet water, altered the electrical panel and added an extra stove without authorization. The tenant was also allegedly operating a “grow op” and selling drugs from the unit. Despite the egregious situation, the Board did not hear the case for a full year, and the order requiring the tenant to vacate was not issued until January 2021.
- 42** A man who rented out his basement told us he applied in December 2019 to end the tenancy for personal use – so he could move his son, who is on the autism spectrum, into the unit and care for him. Scheduling of the hearing was initially delayed because the Board could not locate an interpreter for the French-speaking tenant. Then it was postponed indefinitely due to the pandemic. The tenant subsequently filed an application in May 2020. A lack of French language services contributed to the delay in scheduling, and when the applications eventually came up for hearing in November 2020, they were adjourned. The hearing finally took place in February 2021, more than two years after the landlord first applied to the Board.
- 43** Then there was the man whose tenant had made only two payments since August 2019. On December 23, 2019, he applied to terminate the tenancy for non-payment. He obtained an eviction order on February 13, 2020, but the tenant requested a review and the Board granted this request. A review hearing scheduled for May 2020 was cancelled as a result of the pandemic. When

hearings relating to evictions commenced again in August 2020, the file went missing and the matter was not scheduled for hearing until April 12, 2021. More than two years after the landlord originally filed the application, the tenant's rental arrears had surpassed \$36,000. An eviction order was finally issued in March 2022.

- 44 In September 2020, a woman told us she was concerned about her elderly parents, aged 78 and 90, who depended on income from a rental unit to pay for a personal support worker. The 78-year-old wife, who had her own significant health problems, was the primary caregiver for her 90-year-old husband. We were told their tenant was persistently behind in paying rent and was so abusive they had had to call police. The woman said an application had been filed with the Board in March 2020, but her mother was becoming depressed and suicidal as the delay in having the matter resolved dragged on for months.
- 45 One man even called us in 2022 from a homeless shelter. He had purchased a home that had a tenant in residence in 2018. The tenant had never paid him any rent. While he waited for the Board to consider his application to terminate the tenancy, he was living in a trailer without utilities and visiting shelters to get out of the cold.
- 46 In October 2022, a landlord told us that both tenants in a building he owned had stopped paying rent earlier in the year. His applications with the Board to terminate the tenancies had still not been heard. One tenant eventually moved out, but left the unit severely damaged and uninhabitable. As a result of the financial hardship the situation had caused him, the landlord was living in his car.

Issues Contributing to Delay

Evolution of delays

- 47 The cause of delays at the Board shifted during the course of our investigation. At the outset, we were told that the primary contributing factor was a dire shortage of Board members. By October 2019, there were 19,000 applications pending at the Board. By March 31, 2020, that number had risen to 22,803.
- 48 The landscape changed dramatically in March 2020 with the arrival of the COVID-19 pandemic. The global crisis worsened the already lengthy delays the Board was experiencing. On March 13, 2020, the Board suspended in-person hearings. Then on March 19, the Chief Justice of the Superior Court of Justice imposed a moratorium on residential evictions. Only evictions ordered by the court under its procedures for urgent motions were permitted. As a result, the Board announced

the suspension of all hearings and orders related to eviction proceedings, unless the matter was urgent. Historically, the majority of applications filed with the Board are landlord applications (almost 90%). Of those applications, 90% relate to evictions. Accordingly, the moratorium had a significant impact on a large volume of pending applications. This in turn led many frustrated people to complain to our Office.

- 49** In April 2020, the Board began conducting telephone hearings on some matters, while it explored other options. With the end of the eviction moratorium on July 31, 2020, the Board released more than 2,000 eviction orders that had been on hold. Its backlog of active applications by that point was 30,440, half of which were applications to evict tenants for non-payment of rent and to collect rent.
- 50** On August 1, 2020, the Board began to schedule virtual hearings. In September 2020, it announced a new “digital first” strategy. This represented a major shift away from in-person hearings, which were the standard before the pandemic. Virtual meeting technology would now be the primary method for hearing matters. As the transition to online adjudication progressed, the Board changed virtual platforms – and in March 2021, it announced the implementation of a new case management system.
- 51** As yet another pandemic wave hit, a second moratorium on evictions was imposed through provincial emergency order in April 2021. The Board wanted to avoid the accumulation of pending applications it had experienced during the first moratorium. Accordingly, throughout the second moratorium period from April 8 to June 2, 2021, it continued to hear eviction matters and issue orders for enforcement, which could be actioned once the moratorium ended.
- 52** As the Board adapted to the changing environment and adopted new methods of operation during the pandemic, we continued to receive complaints about accompanying delays. Our Office acted proactively to identify and address trends regarding delays and other issues as they arose. Special Ombudsman Response Team staff met regularly with senior leadership of the Board and Tribunals Ontario to raise concerns throughout the investigation, and these efforts assisted in prompting improvements as the investigation progressed.

Volume of applications

- 53** The Board is one of the busiest tribunals in Ontario. It received more than 82,000 applications in fiscal 2018-2019 and almost 81,000 in 2019-2020. In order to have no backlog, the Board must resolve more than 300 applications per working day. At times, the COVID-19 pandemic affected the volume of applications. For instance, in 2020-2021, the Board received just over 48,000 applications,

significantly fewer than it had received pre-pandemic. In 2021-2022, it received 61,586 applications.

- 54** According to Tribunals Ontario’s 2021-2022 annual report, about 20% of applications are withdrawn, some 11% are resolved through mediation, and 48% are dealt with by way of a hearing before a Board member. Where a hearing has been held, the matter is concluded once a member issues a written decision or order.
- 55** The Board cannot function effectively if there are not enough members available to hear applications and issue decisions and orders. Several complaints we received concerned the method for appointing members to the Board. Some individuals and groups expressed concern that political considerations might influence these appointments. Ultimately, the Executive Council (Cabinet) is engaged in decisions relating to tribunal appointments, and under the *Ombudsman Act*, our Office has no authority to review the deliberations and proceedings of the Executive Council.⁸ Accordingly, our Office does not review decisions on individual tribunal appointments, but we may consider other issues relating to the process for appointing members that do not involve the deliberations and proceedings of Cabinet.
- 56** During our investigation, we identified several factors that contribute to delay in the appointment of Board members.

Tribunal appointments

- 57** Under the *Adjudicative Tribunals Accountability, Governance and Appointments Act, 2009*, appointments to tribunals, such as the Board, are made through a process that is competitive and merit-based.⁹ The authority to appoint members rests with the Lieutenant Governor in Council (essentially Cabinet, with the formal approval of the Lieutenant Governor) under the *Residential Tenancies Act, 2006*.¹⁰ Members may be full-time or part-time and some are designated as Vice Chairs, who may be assigned a range of duties in addition to adjudicative responsibilities. All members of the Board are appointed by way of orders in council. Some are cross-appointed to other tribunals. Unless a member is reappointed before the end of their term, they can only continue to serve for four weeks after their term expires, and only to provide decisions on hearings they have already participated in.¹¹

⁸ *Ombudsman Act*, *supra* note 2, s 13(1)(b).

⁹ *ATAGAA*, *supra* note 3, s 14.

¹⁰ *RTA*, *supra* note 1, s 169(1).

¹¹ *Ibid*, s 173.

- 58** The Executive Chair of Tribunals Ontario is responsible for making recommendations to the Ministry about appointments to the Board. When Tribunals Ontario was created, there was a “cap” of 155 full-time adjudicators for Tribunals Ontario, which represented the full-time member complement inherited from the former clusters. In April 2022, the cap was increased to 158. Tribunals Ontario determines how many members from within its general complement should be allocated to each constituent tribunal. Tribunals Ontario told us that increases to its total complement number would require submission of a business case to the Ministry for allocation of additional adjudicative resources, and if the Ministry was not in a position to assist, a case would have to be made to Treasury Board/Management Board of Cabinet.
- 59** Part-time appointments are not considered to come within the cap on Tribunals Ontario appointments. Like other tribunals, the Board relies on part-time members to help with its caseload. The Associate Chair of the Board and Tribunals Ontario’s Executive Chair confer on how many recommendations should be made for part-time members. Tribunals Ontario officials told us that historically, the Board’s dedicated complement consisted of 40 full-time and 10 part-time members.
- 60** Typically, the Executive Chair suggests a term length when recommending an appointment or reappointment. However, it is within Cabinet’s discretion to accept or reject recommendations for candidates as well as the length of appointments.
- 61** In accordance with the Treasury Board Secretariat’s Agencies and Appointments Directive, the maximum total term that an appointee to an adjudicative tribunal can serve is normally 10 years in any given position. Typically, an initial appointment is for up to two years. There is potential for re-appointment to a second term of up to three years, and after completion of terms totalling five years, potential reappointment for a term of up to five years.¹²
- 62** The number of adjudicators available to the Board at any given time directly affects its ability to process applications. At the outset of the investigation, the Board and Tribunals Ontario acknowledged that the Board was experiencing significant delays and that the resulting backlog of applications was increasing. They attributed the cause of the delays to a “critical” shortage of members and said they had tried to address the situation through recruitment and appointment of new members. However, they noted there were delays in the appointment process. The situation was reaching the point where the Board’s functioning would be drastically compromised. Many appointments were due to expire, and unless more were made by the end of January 2020, five of the Board’s eight regional offices would

¹² Ontario, Treasury Board Secretariat, *Agencies and Appointments Directive* (updated 13 December 2022), s 3.2.2, online: <<https://www.ontario.ca/page/agencies-and-appointments-directive>>.

be without any members. Fortunately, this situation was ultimately avoided as appointments and reappointments eventually increased.

Appointments by the numbers

- 63** In November 2019, the Board had 33 full-time and seven part-time members available to adjudicate applications. This was not only considerably less than its dedicated complement of 40 full-time and 10 part-time members, but many members' terms were due to expire. In March 2022, that number had increased to 41 full-time and 37 part-time members. Tribunals Ontario explained that its roster could be supplemented with additional part-time adjudicators. Some part-time and full-time members are cross-appointed to several tribunals. Members who are cross-appointed are assigned a "home tribunal." They work from their home tribunal unless that tribunal agrees to lend them out to work somewhere else.
- 64** In April 2022, the provincial budget earmarked \$19.2 million for investment over three years to increase capacity at the Board and the Ontario Land Tribunal "to resolve cases faster, address the significant backlog, support more efficient dispute resolution, and increase housing supply and opportunity." A sum of \$4.5 million was allocated to the Board, which increased its staffing and added three members to its complement of full-time adjudicators that same month.
- 65** By summer 2022, the Board had an authorized complement of 44 full-time members and 37 positions had been filled. There were also 50 part-time members. As of January 2023, that number had declined. There were 35 full-time members and 43 part-time members. Of this total, two full-time and nine part-time members were cross-appointed to other tribunals. Six of the 11 cross-appointed members were assigned to the Board as their "home" tribunal. The remaining five were attached to another tribunal, which determines how much time they can spend working for the Board.
- 66** The availability of adjudicators is no longer the significant contributing cause of delay it once was. However, the initial member shortage triggered the accumulation of a large backlog of cases, which for varying reasons has continued to this day. To avoid such a situation recurring in the future, and to continue to tackle the backlog, the Attorney General, Ministry, Tribunals Ontario and the Board should enter a memorandum of agreement establishing a fixed complement of members for the Board and a method for revising the complement in response to changing circumstances. Tribunals Ontario officials pointed out that the volume of members could be increased to assist with exigent situations, but additional staff would be required to support adjudicators. Accordingly, the memorandum of agreement should also account for operational resource needs corresponding to any increase in members.

Recommendation 1

The Attorney General, Ministry of the Attorney General, Tribunals Ontario, and the Landlord and Tenant Board should enter a memorandum of agreement setting out a fixed complement of members for the Board and a method for revising the complement in response to changing circumstances.

Recommendation 2

The Attorney General, Ministry of the Attorney General, Tribunals Ontario, and the Landlord and Tenant Board should include in the memorandum of agreement referred to in Recommendation 1, provision for additional operational resources to support any increased member complement.

Recommendation 3

The Government of Ontario should take steps to ensure that the Landlord and Tenant Board's member and staff complement, as established in accordance with Recommendations 1 and 2, is maintained.

- 67** The degree to which part-time members are available to conduct hearings varies, as many hold other positions or are otherwise engaged in full-time employment. Cross-appointed members typically spend most of their time adjudicating matters for their home tribunals. Accordingly, as of January 2023, five of the cross-appointed members who are counted as part of the Board's total complement would likely spend limited time adjudicating matters for the Board. While on paper the Board may appear at times to have adequate adjudicative resources, the schedules of part-time and cross-appointed members may reflect a different reality. Tribunals Ontario told us that part-time candidates are asked if they are prepared to work three to four days a week; however, they might not adhere to this standard once in the position. The Ministry explained that Tribunals Ontario and the Board are responsible for work assignment and that it has no role in this process.
- 68** Tribunals Ontario, the Ministry and the Board should agree on a definition of part-time and cross-appointed work to ensure that there is a common understanding of the minimum time such appointees should be expected to dedicate to matters before the Board. Appointments to the Board should not just be part of a numbers game, they should add to the Board's actual ability to combat delay and address its unprecedented backlog of cases.

Recommendation 4

The Ministry of the Attorney General, Tribunals Ontario, and the Landlord and Tenant Board should agree on a definition of part-time and cross-appointed work to ensure that there is a common understanding of the minimum time such appointees should be expected to dedicate to matters before the Board.

Multi-step appointment process

69 Delay is endemic to the process for appointing members to the Board. Appointments are made through a relatively lengthy, multi-stage process involving various bodies, including the Board, Tribunals Ontario, the Ministry of the Attorney General, the Attorney General, and the provincial Cabinet. The 11 high level stages in the process are:

- Tribunals Ontario’s Executive Chair and the Associate Chair of the Board consult on recruitment needs.
- Tribunals Ontario and the Ministry of the Attorney General post job advertisements, receive applications and Tribunals Ontario provides the Board’s Associate Chair with a scoring package.
- The Board’s Associate Chair reviews applications, shortlists candidates, conducts interviews and makes appointment recommendations to Tribunals Ontario’s Executive Chair.
- Tribunals Ontario’s administrative and Legal staff complete administrative background work (e.g. conflict of interest reviews, reference checks).
- Tribunals Ontario submits recommendation letters to the Attorney General, with a copy to the Ministry of the Attorney General, and provides accompanying candidate documents (e.g., Canadian Police Information Centre check) to the Attorney General.
- The Ministry of the Attorney General prepares an approvals package for the Attorney General and their staff for review and signoff.
- Treasury Board Secretariat’s Public Appointments Unit reviews the approvals package and schedules Cabinet review.
- Cabinet approves/rejects the appointment recommendations, and sends recommendations to the Legislative Standing Committee on Government Agencies for review generally for appointments of more than a year.
- The Ministry of the Attorney General provides a signed order in council and the Attorney General’s letter relating to the appointment to Tribunals Ontario.

- Tribunals Ontario distributes the signed order in council along with the Attorney General and Executive Chair congratulatory letters.
- 70** Each stage involves additional processes. As the Executive Chair of Tribunals Ontario recently observed in a public presentation,¹³ recruitment and appointment of members involves some 122 distinct steps.
- 71** Staff at Tribunals Ontario told us it can take anywhere from four weeks to nine months to receive approval of recommendations, with most receiving approval within three to five months. The timing of appointments is subject to Cabinet’s scheduling priorities.
- 72** In the fall of 2019, Tribunals Ontario and the Ministry began to look for incremental efficiencies to speed up the appointments process. For instance, they were able to eliminate one to two weeks by reducing the timeframe for forwarding an “approval template.” In March 2020, Tribunals Ontario began sending its recommendations relating to appointments to the Ministry on a “conditional” basis. This new practice allowed the Ministry to start its review while Tribunals Ontario finalized its assessment of candidates. Tribunals Ontario has recently made other changes to streamline the process, including increasing staffing on their appointments team, standardizing reporting, and accelerating the process for interviewing candidates.
- 73** A senior Board official told us that at one point, one-year terms were requested to allow for more flexibility. This practice gave the Board an opportunity to determine whether the appointment was a good fit, and to expedite appointments, as shorter appointments are not subject to Standing Committee review. However, we heard from several witnesses that such brief terms resulted in uncertainty and morale issues amongst members. Eight members left the Board prior to the expiry of their appointments in 2020, and 10 in 2021 – although this was not necessarily related to the length of their terms. More recently, we were told that the strategy of requesting one-year appointments has been abandoned and recommendations are typically made for an initial term of two years.
- 74** The process for reappointing members to the Board follows a similar but abbreviated process to initial appointments. Members proposed for reappointment receive related forms to fill out, including for conflicts of interest. Before recommending a reappointment, the Board will conduct a performance review. During our investigation, Tribunals Ontario and the Board introduced reviews at

¹³ Discussion with Sean Weir chaired by Jeff Andrew and Mina Karabit, "What's New at Tribunals Ontario: A Fireside Chat with Executive Director Sean Weir" (Ontario Bar Association Administrative Law Program delivered via webcast, 27 October 2022) ["Discussion with Sean Weir"], online: <https://www.cbapd.org/details_en.aspx?id=ON_ON22ADM05V>.

three and six months, in addition to annual performance reviews for new members. One of the goals of this change was to provide early notice of the need to recruit replacement members.

- 75 There is no set timeframe for reappointment recommendations to be submitted to the Ministry. However, the Public Appointments Secretariat’s policy provides that reappointments cannot proceed more than six months in advance of the appointee’s term expiration. The expectation is that a reappointment recommendation will be forwarded between four and six months prior to the expiry of the appointment. We were told that in practice, the average is closer to three to four months. However, in August 2022, the Board advised us that it now conducts performance reviews seven months prior to the expiry of members’ terms. This new step enables the Board and Tribunals Ontario to make recommendations to the Ministry about term extensions well in advance.
- 76 Former and current Board members told us that delays in the reappointment process can cause significant stress for members – one said it was “almost cruel.” A former senior Board official said: “Approvals received close to the deadline create fear and uncertainty for members, leading to retention issues amongst members seeking more predictable and stable appointments.” It was also noted that “it’s a huge loss to the Board, especially during difficult times, to lose experienced, capable, high-performing members, and there is also the loss of investment and training.”
- 77 We were told that there has been some discussion of adopting a four-to-six-month cycle for recruitment once Tribunals Ontario is at full complement. Injecting more predictability into member recruitment might well prevent situations in which a decline in available members compromises the Board’s ability to process applications efficiently. Tribunals Ontario told us that since 2020 it has continued to aggressively recruit for the Board with very few gaps between postings. Tribunals Ontario and the Board should formalize its recruitment strategy for the Board. They may wish to consider various options, including scheduling recruitment at set intervals, adjusting recruitment efforts based on factors such as the roster of members dropping below a certain level, or adopting a practice of continual recruitment.

Recommendation 5
Tribunals Ontario and the Landlord and Tenant Board should develop a policy relating to recruitment of members to enhance operational stability and better ensure that the Landlord and Tenant Board maintains adequate adjudicative capacity.

- 78 Given the uncertainty associated with reappointments at the Board, it would be beneficial if Tribunals Ontario and the Board developed a clear and consistent policy for member reappointments, including, where possible, anticipated timeframes for various steps in the process. If members have a clear and consistent expectation about the reappointment process, it might help prevent premature departures and the associated loss of skilled adjudicative resources.

Recommendation 6

Tribunals Ontario and the Landlord and Tenant Board should develop a policy and procedure for the timely reappointment of members to ensure that the Board’s adjudicative services are not interrupted by a shortage of members.

- 79 Once Tribunals Ontario makes an appointment or reappointment recommendation to the Ministry, the Ministry provides only periodic updates. A former Associate Chair of the Landlord and Tenant Board told us: “It would be amazing if Tribunals Ontario and [the Ministry] shared a system or document that allowed both agencies to track the status and outcome of a recommendation.” Another Tribunals Ontario official agreed, saying direct access would be a “huge time saver.” The Ministry uses the Ontario Public Service appointment management system for tracking candidates for and documentation relating to appointments. Tribunals Ontario’s request to access this system was denied. Ministry officials explained to us that the Ontario-wide system is highly confidential, it includes Cabinet and Standing Committee information, and access to it is accordingly restricted. The Ministry told us it has taken steps to improve information sharing, including instituting weekly meetings with Tribunals Ontario to discuss appointments. Tribunals Ontario confirmed that these meetings have been ongoing since November 2021.
- 80 Ministry officials told us that one feature of the Ontario Public Service appointments management system that would be particularly helpful for Tribunals Ontario is the ability to identify whether candidates hold additional appointments to other external provincial tribunals. Such candidates might have to resign before accepting a new appointment, so this would be useful for Tribunals Ontario to monitor.
- 81 Tribunals Ontario has had to develop a workaround for monitoring the status of recommendations relating to appointments, using a “master tracker.” It also maintains a separate tracker of all candidates for adjudicative appointments, and identifies whether they were recommended and appointed. In addition, Tribunals Ontario has a forecast tracker that shows vacancy counts for the Board and other tribunals, their historical member counts, and pending recommendations.

- 82 Certain documents involved in vetting candidates and reappointments – such as conflict-of-interest and member reappointment forms – are generated by the provincial system. Because Tribunals Ontario does not have access to the system, it must ask the Ministry to send the forms to candidates, and then forward them to Tribunals Ontario once they are returned. The appointment management system also houses all of the documentation connected with an application. The Ministry must download the relevant records and forward them all to Tribunals Ontario when the application process is complete.
- 83 The absence of an integrated system adds steps and time to the overall process for appointing members to the Board and other tribunals. The Ministry should improve the appointment process to eliminate inefficiencies and save time. As the Ministry does not control the Ontario-wide system for tracking tribunal appointments, it should implement an alternative method to ensure better co-ordination and timelier tribunal appointments.

Recommendation 7

The Ministry of the Attorney General should develop a more efficient mechanism for providing Tribunals Ontario with the necessary information and documentation regarding candidates to execute timelier appointments to tribunals, including the Landlord and Tenant Board.

- 84 Tribunals Ontario told us there should be a review of the entire appointment process to avoid duplication and to ensure maximum efficiency. For instance, there is considerable duplication in the vetting process. Tribunals Ontario gathers information and assesses candidates before making recommendations. However, it does not share its research with the Ministry, which then engages in its own independent evaluation. Further research may also be conducted when the recommendation reaches the offices of the Attorney General or the Premier. Some time might be saved if Tribunals Ontario disclosed relevant information about prospective appointees obtained during the vetting process to the Ministry. Under the circumstances, they should reach an arrangement allowing for disclosure of the results of Tribunals Ontario's research with the Ministry. For instance, pertinent information could be included with the recommendations package Tribunals Ontario submits to the Ministry.

Recommendation 8

Tribunals Ontario and the Ministry of the Attorney General should minimize duplication in the candidate vetting process and enter into

an agreement for the sharing of relevant information about appointments that Tribunals Ontario has obtained through its vetting process.

Government transition

- 85** When we first spoke with the Ministry in the fall of 2019 about the rapidly dwindling number of members available to conduct adjudications at the Board, a senior official noted that it was, to some degree, the result of the transition to a new government after the 2018 provincial election. He observed that as that election approached, the then government was reluctant to appoint members to the Board. The Treasury Board Secretariat issued a memo at the time dictating that the term length for all new appointments and reappointments within a particular period had to end on December 31, 2018. Then, as the new government came in, it needed to familiarize itself with the appointment process and become comfortable with appointments. Any appointments or reappointments under the new government were initially set for terms ending in December 2019. In some cases, this resulted in six-month appointments.
- 86** Prior to an election, it is common for provincial governments to limit activities such as tribunal appointments. This practice reflects the constitutional principle known as the “caretaker convention.” The convention provides that governments should exercise restraint during an election period. However, some jurisdictions provide for more flexibility. For instance, in Saskatchewan, there are no rules that restrict Cabinet appointments of tribunal members during elections.
- 87** In Ontario, Board members may continue to complete decisions or issue orders for four weeks after their terms expire. However, this extension of authority was of limited assistance in the period surrounding the 2018 election. In some jurisdictions, legislative schemes provide greater flexibility. For instance, in Nova Scotia, Manitoba and New Brunswick, some tribunals and board members may remain in their positions until they are either reappointed or replaced.
- 88** Not every provincial election ushers in a new government with the potential to impact the timing and number of appointments to adjudicative tribunals; prior to 2018, there had not been a change of government for 15 years. In the case of the Board, the 2018 transition between governments contributed to a significant reduction in the members available to adjudicate applications, resulting in considerable delays. Those delays negatively affected the lives of tenants and landlords in the province in a variety of ways. To prevent a situation in which an election, combined with a transition to a new government, compounds delays in appointments to the Board, the province should consider amending the *Residential*

Tenancies Act, 2006 to include a provision ensuring adequate adjudicative coverage for a reasonable period buffering a provincial election.

Recommendation 9

The Government of Ontario should consider amending the *Residential Tenancies Act, 2006* to provide for extension of member terms for a period of time before and after a provincial election to ensure that the Landlord and Tenant Board retains sufficient members to effectively carry out functions under the Act.

- 89 A provincial election was also held in 2022, but it did not result in a change of government, and the Board did not experience the severe reduction in members it had in 2018-2019. Leading up to the election, the Board and Tribunals Ontario also took preventative measures. They started to plan a year before the election, identified members whose terms were due to expire, and forwarded recommendations for appointments and term extensions well before the caretaker period. Tribunals Ontario also requested two-year terms for several members in 2021, in an attempt to limit the number of members who would come up for reappointment in 2022. To assist in ensuring that the Board maintains adequate adjudicative resources in future election years, Tribunals Ontario and the Board should develop a formal strategy relating to appointments during such periods.

Recommendation 10

Tribunals Ontario and the Landlord and Tenant Board should develop a formal strategy relating to recommendations for appointments, including term lengths, prior to election years.

Concurrent term lengths

- 90 While some appointments to the Board in the lead-up to the 2022 election were staggered to avoid the terms of multiple members expiring concurrently, this is not a general practice. Our review of appointments to the Board shows that it is typical for several members' terms to expire at the same time. For example, a review of the members assigned to the Board as of March 4, 2021, revealed that the terms of 26 of the 76 (mostly part-time) members were set to expire in July or August 2021. As of August 2022, there were nine members with terms due to expire between December 2022 and January 2023, ten whose appointments were to end in June 2023, and 16 in July 2023.

- 91 Having multiple members on the same term schedule might be administratively convenient, but staggering the length and expiry date of terms could help the Board maintain a sufficient roster of members to process applications efficiently. In Nova Scotia, staggering the terms of provincial tribunal appointees is a recommended practice. I recognize that multiple parties are involved in the appointments process, and it is ultimately up to the Cabinet to establish term lengths. However, the Ministry, Tribunals Ontario and the Board should work together to ensure that staggered appointment terms are proposed to ensure consistent adjudicative coverage for the Board.

Recommendation 11
The Ministry of the Attorney General, Tribunals Ontario and the Landlord and Tenant Board should work together to ensure that staggered appointment terms are proposed to ensure consistent adjudicative coverage for the Landlord and Tenant Board.

Member training

- 92 In addition to a lack of adequate adjudicative resources, our investigation has revealed that other factors have also contributed to chronic backlogs at the Board.
- 93 To process applications as effectively and efficiently as possible, the Board needs sufficient adjudicators. However, those members must also be adequately trained to handle the various applications and issues that they are faced with. A former Associate Chair of the Board acknowledged to us that ensuring members are fully trained helps get the work done faster.
- 94 The move to virtual work in March 2020 significantly impacted the Board's ability to conduct training. One member who arrived in December 2019 described the virtual training as "excruciatingly difficult." They explained that they had never even observed a hearing, leaving them unprepared when they had to conduct one.
- 95 In the fall of 2020, the Board established "drop-in" sessions so members could discuss cases and issues with experienced Vice Chairs. In late 2020, it introduced specific positions responsible for member development. There is now a Vice Chair dedicated to ongoing member training and another full-time and part-time Vice Chair responsible for "onboarding" new members.

- 96** In January 2021, the Board surveyed its members on the training they had received, and identified training gaps. It subsequently made some adjustments to its training program and practices. That month, Friday training sessions also became a regular occurrence to help members with difficult issues, and in April 2021, the Board established “drop in” sessions so that members could consult with legal staff on various matters. Tribunals Ontario also has several lawyers dedicated to the Board who are available to respond to members’ questions and provide legal opinions as required. The legal team also reviews members’ decisions and provides feedback and coaching on the application of the law and overall quality of decisions.
- 97** The Board provides new members with “in-class” and “self-study” instruction on a variety of areas, including legislation, Board processes, writing reasons, and preparing for hearings. They are also trained on each type of application the Board hears, and later observe cases and participate as co-chairs before conducting hearings on their own. Even then, an experienced adjudicator may “shadow” their hearings at the outset. New members are also assigned to a lawyer at Tribunals Ontario who will review their decisions for six months or more if necessary. They can also participate in “informal mentoring” by more experienced Board members.
- 98** The expectation is that new members spend a minimum of four days over two weeks observing hearings, and then co-chair several hearings before conducting them solo. However, we learned that these expectations are not always met. We heard from one member that they went straight from observing three hearing blocks (multiple hearings held on one day) to conducting hearing blocks on their own. They suggested they would have benefitted from more time observing other members, particularly regarding issuing orders, and how to use the case management system.
- 99** The Board acknowledged that during the pandemic, it twice limited the opportunities for new members to observe and participate as co-chairs in hearings as part of their training. During these periods, new members received in-class training on all types of applications. However, they only observed or participated in hearings on applications that the Board had prioritized for scheduling. In the fall of 2020, priority was given to landlord applications to evict tenants for non-payment of rent and to collect rent. In the winter and spring of 2021, the priority shifted to tenant applications and landlord applications to evict tenants for reasons other than non-payment of rent.
- 100** The result of the Board’s changing practices was that members had varying levels of familiarity with different types of applications. In August 2021, there were 72 members, many part-time, who were theoretically available to adjudicate applications. However, only 32 members were trained to conduct hearings on any applications. Nine could hear most but not all cases, nine could address landlord

applications for eviction for non-payment of rent and collection of rent, two could only address applications for eviction for non-payment of rent – and 20 were still in training and not conducting any hearings.

- 101** The Board updated its member resource guide in 2021 and began development of a “Landlord and Tenant Board training passport,” setting out all steps required for members to be ready to hear each type of application. The passport was finalized in 2022. Tribunals Ontario also entered into an agreement with the Society of Ontario Adjudicators and Regulators (SOAR) to provide adjudication training to its members. Tribunals Ontario began sending 75 members to the SOAR and Osgoode Professional Development training in fiscal 2021-2022. Twenty-seven of these individuals were members of the Board. Tribunals Ontario anticipates that beginning April 1, 2023, another 11 Board members will attend the training.
- 102** Although Tribunals Ontario and the Board have recently taken steps to improve the level and consistency of adjudicator training, they should ensure that the scope of training required by the “passport” is maintained, and that training opportunities are not limited in future as they were for significant periods earlier in the pandemic.

Recommendation 12

Tribunals Ontario and the Landlord and Tenant Board should ensure that the level of training required by the training passport is maintained and that training opportunities are not limited in future.

Outdated technology

- 103** The Board and the Ministry of the Attorney General have been aware for a considerable time that the Board’s case management system – introduced in 2008 when the Board was an agency of another ministry – was costly, outdated, and inefficient. In fact, development of a Board-specific system through the Ministry of the Attorney General began in late 2016, and was still ongoing when our investigation began.
- 104** Our investigation revealed that the Board’s antiquated system has added to delays and the accumulation of backlogs. Between July and August 2019, a technical issue with the calendar function limited the Board’s ability to process applications. Senior Board staff expressed escalating concerns, noting that applicants were complaining and the problem was causing significant delays. Some applications were waiting for more than 30 days and more than 1,500 applications were in the queue for processing. On August 14, 2019, Tribunals Ontario’s then Executive Director observed in an email to the Ministry that “the operational impact is rapidly

becoming catastrophic [...] and presents a huge reputational risk.” The Ministry concurred that the sooner they moved away from the legacy system, “the better,” as they would continue to encounter new issues.

- 105** In November and December 2020, another system difficulty prevented the Board from attaching or generating documents such as notices of hearing. The Board had to produce documents manually, which reduced its capacity to schedule new hearings. To compensate, it modified its scheduling strategy by temporarily focusing on categories of applications that required fewer notices to be issued. It was able to schedule some hearings, but at a much slower pace. Board officials told us this glitch alone resulted in 30,000 documents not being updated in the system, a setback that the Board was still addressing as late as April 2021.
- 106** Another feature of the system that exacerbated delays is its inability to track matters that have been identified as requiring an expedited hearing. For instance, when an expedited hearing is adjourned, there is no way to flag it for rescheduling on an urgent basis.
- 107** Most of the members we spoke to also criticized the slow multi-step process required to issue an order using the outmoded system. One commented: “Ironically [...] the old fashioned way of hand-writing is faster than the data entry method.” Some members simply bypassed the system, choosing to write their own orders. One observed that it takes longer to use the system, and mistakes “are rampant,” describing the order issuance mailbox as a “big black cyber-hole.” Another member mentioned that the software does calculations automatically for the members, but it has to be manually “tricked” to do certain computations. For example, if a tenancy ends in the middle of the month, the system will not accurately calculate the rent. He noted that an inexperienced adjudicator could potentially spend hours trying to figure out how to get the right number for an order, and said the system for generating orders contains “unnecessary procedural steps that impact the ability to chip away at the delay.”
- 108** Documents show that by February 2019, the new system under development by the Ministry was almost ready for implementation. However, the newly constituted Tribunals Ontario was concerned that given the backlog in applications the Board had to address, there would be insufficient staff available to operationalize the new system. Tribunals Ontario was also interested in adopting a system that could apply across all of its constituent tribunals. The Ministry continued to promote the system under development, anticipating implementation in the fall of 2020, but by spring 2020, the situation had shifted. The Ministry retained a consultant to assess the feasibility of a new case management system that would allow for integrated scheduling across Tribunals Ontario. Funding for this system model received approval in January 2021. Given the Board’s critical need, an initial target was set for it to implement the system as a pilot project by the spring of 2021.

- 109** The new system was to be based on the technology solution used by tribunals in British Columbia, which includes a public-facing navigation tool, as well as case management and online dispute resolution features. The public would use some functions of the system, while others would only be accessible to staff.
- 110** The Ministry, Tribunals Ontario, and the Board envisioned that the new system would enable staff to search the entire system, track the status of cases, assign and escalate tasks, and manage documents. It would also be able to send notifications to staff that a case required review, automatically generate key documents, send communications to parties, and perform advanced reporting and analytics. The Board expected that the new system would eventually result in reduced filing errors, fewer applications requiring manual processing, and greater efficiencies internally.
- 111** In January 2021, the Board acknowledged to our Office that because of its shift to virtual hearings, the use of its old technology had slowed down the processing of applications. It anticipated that the new system would allow it to function more efficiently. The Board and Tribunals Ontario also told us a significant amount of time and resources were being invested in assisting with the development of the new system.
- 112** On March 11, 2021, both the Ministry and Tribunals Ontario announced that a new case management system would be implemented.
- 113** On July 2, 2021, the first part of the Board’s new system was launched publicly as “Navigate Tribunals Ontario.” It provides members of the public with an online tool to help them understand Board processes and rules, as well as their rights and responsibilities under the *Residential Tenancies Act, 2006*.
- 114** Another part of the new system is the Tribunals Ontario Portal. It has two components: The Board’s case management system and a portal that parties to proceedings can use to file applications, upload documents, view case information and work on resolving disputes with other parties with or without a mediator. Certain functionalities within the portal came online in December 2021. These included the ability for parties to file some applications, including those involving eviction for non-payment of rent, tenant rights and maintenance.
- 115** The implementation of the new system was not without its problems. As of March 4, 2022, there was a list of more than 200 bugs in the system, which the Board was gradually addressing. Our Office received 64 complaints about issues users experienced with the new system. For instance, the new “portal” contains a “Help” feature, allowing users to send a query through to a “digital delivery team.” The team addresses technical issues and forwards any process questions to the Board

to answer. After the portal launched, complainants told us that they either waited for long periods for a response after using the Help feature or didn't hear back at all. The Board acknowledged that there was a backlog in email queries generated by the Help feature. It explained that due to numerous technical issues, it did not have the capacity to respond to the volume of queries. As of April 19, 2022, there were 985 queries awaiting processing, the oldest dating back to March 31, 2022. By July 28, 2022, the situation had improved somewhat – however, there were still some 335 queries awaiting a response, with the oldest dated July 17, 2022.

- 116** We also received complaints about the “Save” function in the portal. A technical issue resulted in some completed applications not being saved. The Board confirmed that approximately 700 applications uploaded via the portal were blank. The Board had to contact all of the applicants and ask them to resubmit their matters. This issue was specific to certain applications to end a tenancy or collect money. The problem was resolved in early February 2022. Similarly, some portal users were unable to attach documents to their digital application files or ended up uploading multiple copies after receiving error messages. This issue was also resolved in February 2022.
- 117** Another frustrating issue people raised with us was a malfunction with the payment feature, which failed to record some payments that parties made when filing applications online. In April 2022, the Board acknowledged that it had 198 applications in the system showing “no payment.” There were other situations where applicants found themselves stuck on the payment screen. The Board explained that the web page would “time out” and the “Submit” button would no longer function. There were 511 applications affected by this. The Board told us it reached out to applicants to facilitate payment where necessary, and it had resolved the issue.
- 118** Technical issues also affected the ability of Board staff to process applications in a timely manner. Of particular concern, the system’s scheduling feature was not functioning as intended. Pending the new system becoming fully operational, the Board continued to rely on its previous system to process applications. While a significant backlog remained in the old system, a new backlog of applications began accumulating in the portal awaiting scheduling for hearings. The Board anticipated that the new system would be working properly by May 2022.
- 119** The Board told us more of its staff had access to the scheduling feature as of March 30, 2022. However, by then the Board’s focus was on processing tenant applications from the old system, urgent matters, and previously adjourned cases. By April 27, 2022, the Board was scheduling urgent as well as non-urgent applications uploaded in the portal. Given the limits of the older system, the Board could not confirm how many urgent matters in that system remained outstanding. It noted that some applications filed before December 14, 2021 had become urgent

over time. Fortunately, in the new portal, urgent cases can be identified as they are filed and prioritized for scheduling – something beyond the capacity of the older system. As of May 2022, there were approximately 25,000 applications awaiting scheduling within the legacy and new systems. As of January 2023, that number had grown to more than 38,000.

- 120** In the summer of 2022, the Board was still in the process of manually uploading some types of applications into its legacy system as it trained staff on how to upload applications into the new system. Staff were also manually transferring data from the old to the new system.
- 121** The Board has continued to roll out features in its new system. All applications can now be entered into the portal by staff. A self-scheduling feature was introduced in December 2022. Other enhancements were planned to allow the Board to migrate attachments from its old system to the portal and enable parties to upload additional forms directly into the portal.

The Board Process from Applications to Orders

- 122** There are multiple stages involved in processing applications at the Board, from receipt of applications to issuance of orders. My investigation identified several areas where the Board could improve the efficiency of its administration.

Receipt and screening of applications

- 123** Applications to the Board can generally be filed by e-mail, mail, in person at a ServiceOntario centre, and via the Board’s new portal. More than half of all applications are now filed electronically. The Board’s website states that applications are processed according to the date they are received.
- 124** During the pandemic, the Board struggled to process applications by mail and fax. By May 2020, Tribunals Ontario had centralized the processing. However, the limited staff and single fax machine designated for this purpose could not handle the volume of applications. In November 2020, the Board created five regional mail hubs across Ontario.
- 125** The Board’s service standards note that applications should be entered into its case management system within three business days of being received. We were advised by one former customer service officer that prior to 2018, it could take weeks for an application received by mail or fax to be entered into the Board’s case management system. Another officer told us that in 2018 they were expected

to process 15 applications a day. An internal report from November 2021 indicated that the average time for an application to be entered was 5.8 days, with about 25% taking two weeks. As of December 2022, applications received by e-mail, mail, or in person were being entered into the Board's system within about three months. In contrast, applications e-filed through the new portal are immediately uploaded into the system. As of February 7, 2023, more than 700 new applications submitted via email, mail or in-person were waiting to be uploaded into the new portal.

- 126** The Board's website notes that staff check application forms and supporting documents including to assess whether they are filed on time, then enter them into the case management system. The job description for its customer service officers notes that they follow a checklist to ensure applications do not contain "fatal errors" and if they do, they contact clients to correct them. However, Board officials told us that in practice, there is no detailed screening of applications and customer service officers do not normally check them for errors.
- 127** When an application is filed through the portal, the system screens the application to ensure the required fields are completed and the required notices and documents are attached.

Fatal errors

- 128** We received many complaints from individuals, who, after months and sometimes years of waiting, were told by a member at a hearing that their applications had "fatal errors," forcing them to start the process over again. In one particularly compelling case, a woman who lived in her basement and leased the upper half of her home contacted us while she was dying of stage 4 lung cancer. She had filed an application in December 2021 to end the tenancy of the unit for personal use – so she could pass away in a peaceful environment. Her request for an expedited hearing was approved, and the matter was scheduled for hearing on February 24, 2022. However, it was adjourned to March 9 because there were too many cases to be heard that day. On March 9, the woman waited for her virtual hearing to start, only to learn that it had not been properly scheduled. When the matter was finally heard on March 18, the application was dismissed because she had failed to include the unit number on her application. By then, the tenants had not paid rent for several months and were tormenting her during her final days – shooting video of visitors to the home, releasing their dogs to harass nurses and medical suppliers, blasting music all day, and shouting obscenities. Police were also called to the home repeatedly to address death threats against the woman and sexual harassment of her daughter. The woman was forced to start the application process all over again. She passed away May 1, 2022, with the matter still before the Board and unresolved.

- 129** There are some situations in which errors in applications can be amended. Under the *Residential Tenancies Act, 2006*, applicants may amend applications in accordance with the Board’s rules.¹⁴ The Board may also amend an application on its own motion and on notice to the parties, where it considers it appropriate and it would not be unfair to any party.¹⁵ The Board’s Rules of Procedure explicitly authorize it to amend applications in order to provide “the most expeditious and fair determination of the questions arising in any proceeding.”¹⁶ The rules also provide Board members with discretion to grant a request for an amendment at a hearing “if satisfied the amendment is appropriate, would not prejudice any party and is consistent with a fair and expeditious proceeding.”¹⁷ This discretion has been used in the past to correct clerical errors such as minor spelling errors. However, more substantive errors may be considered “fatal,” resulting in applications being dismissed. For instance, if a tenant makes an application outside the one-year limit set by the Act, it would be fatal to the application.¹⁸
- 130** While the Board may amend some applications, those based on flawed notices of termination will normally not be subject to amendment. Tenancies can only be terminated in accordance with the Act.¹⁹ For instance, the Act expressly provides that a notice of termination must be in a form approved by the Board. It must identify the rental unit, the date the tenancy is to terminate, and be signed by the person giving the notice or their agent.²⁰ Failure to comply with these requirements will typically be fatal to any application to terminate a tenancy.
- 131** The Board’s website provides general instructions for landlords on its various termination notice forms. The “How to Complete this Notice” section for each form explains what information must be included and notes that applications may be dismissed if the forms are not completed properly. For notices of termination for non-payment of rent, the Board has also attached a checklist that can be detached when the notice is served on the tenant. In the checklist, the Board cautions landlords on the importance of properly filling out the notice and warns that failure to do so may result in the application’s dismissal. Below is an example of the general warning and the requirement to include the complete address of the rental unit on the notice:

¹⁴ *RTA*, *supra* note 1, s 200.

¹⁵ *Ibid*, s 201(1)(f).

¹⁶ Landlord and Tenant Board, *Rule 1 - General Rules*, r 1.6.

¹⁷ Landlord and Tenant Board, *Rule 15 - Amending Applications*, r 15.4.

¹⁸ *RTA*, *supra* note 1 s 29(2).

¹⁹ *Ibid*, s 37.

²⁰ *Ibid*, s 43(1).

Before you serve the attached notice to your tenant(s), make sure you can answer **YES** to each of the following questions. If not, your notice may be invalid. If you file an application to the Landlord and Tenant Board based on an invalid notice, your application may be dismissed and you will have to start over.

Did you fill in the complete address of the rental unit?

Be sure that you have provided the full address - be sure to also identify the correct rental unit (for example Unit 202 or Basement) and provide the postal code.

- 132** However, there are many other reasons that a landlord may wish to terminate a tenancy as evidenced by the case of the woman attempting to obtain her rental unit for her own use during her terminal illness. The Board has not included guidance for completing other notices of termination directly on its forms.
- 133** Screening applications when they are received to identify obvious errors would potentially help the Board and its participants avoid wasting time and resources addressing deficient applications at the hearing stage. It would be helpful if the Board had a more rigorous and consistent screening process for all applications, regardless of how they are received. If errors are caught early and applicants are provided an opportunity to remedy them, it could reduce the likelihood of cases collapsing many months later, after hearings have been scheduled.

Recommendation 13

The Landlord and Tenant Board should establish a consistent and thorough screening process for early identification of errors to ensure applicants have an opportunity to remedy them prior to scheduling a hearing.

- 134** In addition, the Board should provide guidance at the beginning of all of its forms for notice of termination, setting out the mandatory information that must be included and cautioning landlords that failure to comply may be fatal to their applications. This practice would be particularly helpful for small, self-represented landlords who may have difficulty navigating the Board's website and might find it easier to review the instructions at the front of the relevant form.

Recommendation 14

The Landlord and Tenant Board should include guidance with all notice forms for termination of a tenancy identifying what information must be included and cautioning that failure to include this information may result in the application being dismissed.

Scheduling hearings

- 135** Prior to our investigation, the Board had set a standard that it would schedule applications to evict tenants and collect rent owing within 25 business days of receipt. In fiscal 2020-2021, not a single application was heard within the time set by the Board's standards. The average time from receipt of application to hearing was 72.7 days. The situation had improved somewhat by November 2021, when the average time was 66.5 days – but this was still more than double the standard.
- 136** Other types of applications were generally expected to be heard within 30 business days.²¹ In fiscal 2020-2021, only 7% of these cases met the Board's standard. The average time from receipt of application to hearing was 74.2 days. By November 2021, it was 56.2 days – again, substantially beyond the standard the Board had set for itself.
- 137** While the sheer volume of backlogged applications at the Board undoubtedly resulted in scheduling delays, administrative inefficiencies also contributed to the problem. For instance, a former Associate Chair of the Board advised us that in early 2021, she noticed that the number of hearings scheduled had not increased to reflect the fact that the number of available adjudicators had doubled. To address the situation, she directed that adjudicators be scheduled to capacity.
- 138** Despite the Board's efforts, the scheduling situation has not improved over time. As of March 2023, landlord applications were generally being scheduled for hearing within six to nine months of receipt, while it was taking up to two years for a tenant application to be scheduled. Tribunals Ontario told us it intends to update its service standards at the end of April 2023 to indicate that some applications will be scheduled within 50 to 55 calendar days. Even once a hearing is held, there is no guarantee that the matter will then be resolved expeditiously. Additional delays are often incurred at the order issuance stage (discussed later in this report).

Scheduling backlog management

- 139** The Board has periodically changed its scheduling strategy to address the chronic backlog of applications. By March 31, 2020, the Board had 22,803 active files. That number rose with the first moratorium on evictions. When the moratorium ended on July 31, 2020, the Board focused on scheduling landlord applications for eviction for non-payment of rent and to collect rent. Until November 2020, no other applications were scheduled for hearing.

²¹ This expectation did not apply to applications for above guideline rent increases and to vary a rent reduction, which were often heard outside of this timeline.

- 140** In December 2020, the Board began to direct its attention to tenant and adjourned matters, although it continued to schedule other types of hearings. As of February 2021, it resumed hearing all types of applications, prioritizing the oldest application types, which were generally landlord applications to evict tenants for reasons other than non-payment of rent, adjourned and tenant applications. By March of that year, its inventory of active files had increased to 34,731.
- 141** On May 31, 2021, the Board implemented a “summer scheduling strategy,” including a six-week period in August when the Board focused on tenant and adjourned matters. Notwithstanding these efforts, by September 2021 the backlog was approximately 31,000 files.
- 142** As delays at the Board continued to accumulate, our Office received mounting complaints about scheduling delays well beyond the Board’s standards. We regularly communicated with the Board about the situation. In June 2022, the Board told us it had 27,000 applications waiting to be scheduled for hearings and acknowledged that the average time from receipt of application to hearing was seven to eight months. On July 25, 2022, it announced average scheduling time publicly.
- 143** In the fall of 2022, the Board was still trying to catch up with the backlog. Some pre-pandemic applications had still not been scheduled for hearing, such as the Above Guideline Increase applications. By October 2022, the Board had an inventory of approximately 1,800 of these applications in its legacy system, several dating back to 2018. Beginning in November 2022, it began to schedule and prioritize the clearing of these applications, aiming to clear up all the remaining applications in its legacy case management system by the end of the year. However, scheduling of other cases was placed on hold, leading to additional backlogs of unprocessed matters.
- 144** In October 2022, the Board told us it would hear only Above Guideline Increase applications, urgent matters, motions, and adjourned matters from November 14, 2022 to the end of the year. It would also focus on processing the backlog of requests for expedited hearings.
- 145** The Board continues to seek solutions to its burgeoning scheduling backlog. The Executive Chair of Tribunals Ontario noted in a public presentation²² in the fall of 2022 that a pilot project known as “WASH” (Weekends and Statutory Holidays) would be introduced that would involve its constituent tribunals, including the Board, scheduling matters on weekends and statutory holidays. At the time, the

²² “Discussion with Sean Weir”, *supra* note 13.

Board had also recently introduced a “self-scheduling” feature for some applications through its new case management portal.

- 146** While most of the delayed applications awaiting scheduling were filed by landlords, we discovered that in January 2023, the backlog of some 38,000 applications included thousands from tenants. Of the 9,323 unresolved tenant applications, two date back to 2017, 13 to 2018, and 78 to 2019.
- 147** One tenant who reached out to our Office filed an application in April 2018 for maintenance and tenant’s rights relating to harassment. The tenant required additional time to present his case due to a brain injury, as well as the volume of documentation he had filed to support his claims, including 500 documents, 90 pictures and 30 videos. The Board scheduled a hearing for May 2018, but the presiding member ran out of time to complete hearing the case, and adjourned the matter. The hearing continued in June 2019, but again, there was insufficient time allotted to complete the matter. The presiding member recommended scheduling a series of hearings in two-hour increments, but the Board did not follow through on this recommendation. In June 2022, the tenant told us he was still waiting for the hearing to continue. When we made inquiries with the Board, an official told us the Board would need to find a full day in the member’s schedule for the case to be heard. By January 2023, the matter had been pending for four years, and the Board still had still not managed to fit it into the hearing schedule.
- 148** A Tribunals Ontario official explained to us that, unlike eviction applications for non-payment of rent, which are relatively straightforward, it is difficult to predict how long it will take to hear a tenant application, and scheduling initial applications or adjourned matters can be challenging. The official said the Board generally prioritized scheduling of landlord applications to reduce the backlog, because it could hear more applications in the available time. While tenant applications may be more time intensive, this does not justify shelving them in order to process landlord matters that can be more expeditiously disposed of. The Board should immediately triage the outstanding tenant matters. In particular, it should identify applications that have been languishing for years, and schedule them for hearing as soon as possible. It is unconscionable to permit tenant applications to lie dormant for up to six years.

Recommendation 15

The Landlord and Tenant Board should immediately triage outstanding tenant applications, and identify and schedule matters that are significantly aged.

149 The Board schedules approximately 240 tenant applications for hearing a month. Despite knowing that tenant applications typically take longer to be heard, it generally only allots 30 minutes and sometimes 60 minutes per hearing. Unsurprisingly, this often leads to the matters being adjourned and returning to the queue for rescheduling. If the Board continues with this approach, it will make negligible progress in tackling the backlog of tenant matters. It must change its strategy as soon as possible to ensure that more tenant applications are scheduled and more realistic hearing timeframes are set.

Recommendation 16

The Landlord and Tenant Board should schedule tenant applications more frequently and set more realistic timeframes for hearings of these matters.

Expediting hearing scheduling

150 The *Residential Tenancies Act, 2006* and the Board's Rules of Procedure allow individuals to request an expedited hearing date by submitting a request to "shorten the time" to the hearing. Board members adjudicate these requests and the expectation is that they will do so quickly, as the whole point of the process is to minimize delay that could be causing hardship. In considering requests for expedited hearings, they may consider the factors set out in Rule 16.4 of the Board's Rules of Procedure:

- The length of the delay, and the reason for it;
- Any prejudice a party may experience;
- Whether any potential prejudice may be remedied;
- Whether the request is made in good faith; and
- Any other relevant factors.²³

151 The Board has a form available on its website that it recommends individuals use when seeking an expedited hearing, although use of the form is not mandatory. The ability to request an expedited hearing has become an increasingly important tool, given the extended delays the Board has experienced.

152 During the first moratorium on evictions, from March 19 to July 21, 2020, the Board decided it would only hear eviction applications where there were urgent circumstances. It created a separate process for considering requests for urgent

²³ Landlord and Tenant Board, *Rule 16 - Request to Extend or Shorten Time*, r 16.4.

hearings that applied only to cases involving serious and ongoing health or safety issues or serious illegal acts. Our Office learned in 2021 that some Board members continued to apply the more limited test established during the moratorium when later considering requests for expedited hearings after it had been lifted. The Board told us that once it became aware of this situation, it provided remedial direction.

153 We also received numerous complaints about the Board’s expedited hearing process, including about the lack of clarity on what such a request required, the Board’s failure to process requests that weren’t made via its form, delays in receiving decisions, and the reasons given for denying requests for expedited hearings.

154 Some of the confusion lies with the Board’s Request to Extend or Shorten Time (REST) form, which covers not just requests for expedited hearings, but also the many instances in which parties may wish to request an extension of certain steps in the process. It is not evident on the face of the form that it can be used for requesting an expedited hearing date. Its title includes reference to requests to “extend” time and there is no mention of the word “hearing.” This situation is particularly challenging for self-represented individuals.

155 Another issue we noted when first reviewing the form in 2020 was that, unlike some of the other forms the Board used, the REST lacked any useful guidance. For instance, there was no reference to the criteria the Board applied when considering requests for expedited hearings. The form simply instructed applicants: “Explain why you believe your request should be granted.” It then noted: “If the Board refuses your request to extend or shorten time, you may not make any further requests regarding the same time requirement.”

156 In the fall of 2020, our Office began discussing the complaints we had received, as well as our own observations about the expedited hearing process, with senior Board and Tribunals Ontario officials. One case we discussed several times with the Board was particularly striking, and clearly illustrated the gaps in the Board’s existing practices.

Unsafe and unheard

157 A tenant contacted us in November 2020 about the intolerable conditions he and his wife had been living in since 2019. They are both legally blind, and relied on Ontario Disability Support Program benefits to pay their rent on the one-bedroom apartment they shared. The year 2020 had been a particularly difficult one for the man’s wife, who had been in hospital 21 times due to her deteriorating health. The state of the couple’s rental unit was contributing to their distress. They had

experienced serial bedbug and rodent infestations, along with a litany of maintenance problems, including a collapsed bathroom ceiling and broken windows. A broken intercom put them at risk, as the husband frequently had to run down the stairs to let paramedics into the building to assist his wife. It had also led to medical supply deliveries going missing from the lobby. When the tenant contacted us there were four outstanding work orders against the building relating to pest control. The couple's personal support workers and nurses were also refusing to enter some areas of the apartment because of safety concerns.

- 158** The tenant told us that in July 2020, with the assistance of caseworkers, the couple were able to file an application for maintenance with the Board. At a virtual case management hearing in September 2020, it was suggested that they apply for an expedited hearing, but they were not directed to use any particular form. A caseworker sent a request for an expedited hearing by email. Two months passed without a reply; meanwhile, the apartment became overrun with mice as well as bedbugs.
- 159** The couple's caseworker followed up with the Board, and received an email indicating there was no longer an urgent hearing request process – and that even if it were still in effect, the caseworker had not used the designated form. The Board's response was inaccurate on several counts. First, it had not generally done away with the urgent hearing request process. Second, the special process it put in place during the moratorium on evictions never applied to tenant applications – and third, there is no requirement that parties use the REST form to request expedited hearings.
- 160** After our Office made inquiries, the couple finally had their day before the Board in June 2021 – but by then they had already left the unsafe apartment.
- 161** In response to our raising this and other cases, the Board indicated that it intended to improve the process and a group had been created to review the rule regarding expedited hearings. The Board later acknowledged that some decisions about requests for expedited hearings had “slipped through the cracks” and been delayed several weeks due to the large work volumes it was dealing with.
- 162** By December 2020, the Board had assigned responsibility to specific administrative staff and adjudicators for processing, tracking, and issuing expedited hearing request decisions. Under this new procedure, the timeline set for the handling of expedited hearing requests was seven days. The change in approach resulted in reducing the time taken to process requests to a few days. The Board later shifted responsibility for monitoring these requests to a larger group. It now provides guidance for its members in new operational procedures relating to requests for expedited hearings, including around issuing reasons when requests are denied.

- 163** In February 2021, the Board also committed to develop a standardized response for its staff to use when replying to requests for expedited hearings that are not made via its REST form. The final version of this response, which we received in summer 2021, contains useful information about the process. It encourages requestors to use its REST form, which it provides with the response, and sets out the information that should be included with a request, along with contact details for sending requests by letter or email.
- 164** In addition, after further discussions with our Office, the Board undertook a review of the REST form. On June 23, 2021, it posted a revised form to its website, which includes some information about the criteria members use to consider requests. It also posted a separate instruction manual regarding the form. The manual contains information on when the form can be used, including reference to requests for quicker hearing dates, guidance on how to complete the form along with examples, and the criteria used to consider requests. The Board also updated its Frequently Asked Questions page to include information for individuals seeking expedited hearing dates.
- 165** The Board has been responsive to the issues we identified with the expedited hearing process, but there are still some further steps that may improve its efficiency and accessibility. While the Board now has a standard response to be used when requests for expedited hearings are made using a method other than its REST form, this is not reflected in its new operational procedures. To ensure clarity and consistency, the Board should include information for administrative staff about the response in its procedures.

Recommendation 17

The Landlord and Tenant Board should revise its operational procedures concerning requests for expedited hearings to include reference to the standardized response to be used by staff in replying to individuals who have not used the Request to Extend or Shorten Time form.

- 166** While the revised REST form is an improvement over the previous version, the name of the form remains confusing, as it does not specifically refer to expedited hearing requests. Rather than using a combined form for requests to extend and shorten time, the Board should create a separate form for requests to shorten the time before hearings take place.

Recommendation 18

The Landlord and Tenant Board should develop a separate form for requests to shorten the time before hearings take place.

- 167** In addition, the Board told us that historically, a certain category of landlord applications were considered inherently urgent and automatically sent to the priority scheduling queue – those to end a tenancy because of illegal acts or for causing serious problems in a rental unit or residential complex. When such applications were filed, it was unnecessary for a landlord to specifically request that the time before a hearing be shortened. The Board paused this practice for a period of time, but it was reinstated when the new case management system portal was launched in December 2021. Not only did the Board not publicize this practice, but the REST Instruction Guide continued to use these situations as examples justifying submission of a REST form. We heard from one landlord who filed an application to evict a tenant who was running an escort business out of their unit and causing serious problems in the residential complex as a result. The landlord filed a REST form along with the application, but this actually slowed down the hearing scheduling process, given the large volume of such requests the Board receives. When we followed up on this case, the Board confirmed the REST form was unnecessary. More recently, it began a review of its practice of automatically sending this type of landlord application for priority scheduling, due to concerns that many did not truly warrant priority scheduling. As of February 2023, the practice had stopped, pending the outcome of the review.
- 168** The Board advised us on July 18, 2022, that it was experiencing delays of one to two weeks in processing requests to shorten the time to a hearing. The uptick in requests coincided with its communications about its average seven-to-eight-month scheduling delay. By the end of October 2022, the Board was addressing a backlog of some 300 requests to shorten the time before a hearing. Throughout mid-November to December 2022, it focused on clearing this backlog – and by January 22, 2023, there were 67 requests outstanding. The oldest dated back to January 3, 2023. From December 2021 to February 2023, the confusing language in the REST Instruction Guide might well have contributed to the increased volume of requests and scheduling delays. If the Board reinstates its practice of prioritizing applications for termination of tenancies based on illegal acts or for causing serious problems in a rental unit or residential complex, it should inform the public that these applications are normally processed as urgent and a REST form is not required. It should also amend its REST Instruction Guide accordingly.

Recommendation 19

The Landlord and Tenant Board should, if it reinstitutes its practice of expediting applications to end a tenancy for illegal acts and causing serious problems in a rental unit or residential complex, indicate on the applications and any corresponding instructions that they are considered urgent and submission of a Request to Extend or Shorten Time form is unnecessary.

Recommendation 20

The Landlord and Tenant Board should, if it reinstitutes its practice of expediting applications to end a tenancy for illegal acts and causing serious problems in a rental unit or residential complex, revise the Request to Extend or Shorten Time Instruction Guide to clarify that an application to end a tenancy because of illegal acts or for causing serious problems in a rental unit or residential complex is considered urgent and does not require submission of the form.

You say it's urgent

- 169** In addition to procedural issues regarding requests for expedited hearings, some complained to us about the quality of the decision making process. Several individuals told us they couldn't understand how the Board had determined their situations were not urgent. We also reviewed many cases in which it was unclear to us how the Board was applying the standard of urgency, or how the specific circumstances did not meet this standard.
- 170** For instance, the Board initially granted a request for an expedited hearing in the case of the woman (referenced in paragraph 128) with stage 4 lung cancer, who was trying to evict tenants from the upper unit in her home. After her first application for eviction based on personal use was dismissed for a technical error, she filed another one relating to non-payment of rent. This time, her request for an expedited hearing was refused on the basis that she had not demonstrated "a direct impact from the rent arrears," or articulated "the significant prejudice experienced as a result of the arrears." As her tenant's arrears were mounting, the woman's primary concern was to die in peace, free from harassing conduct. Tragically, this did not occur.
- 171** Then there was the couple who could not obtain necessary autism services for their two-year-old son in Ontario, so they left the province with their four children and rented out their home in April 2020. They told us their tenant stopped paying rent after the first month, damaged the property, and then demanded that they sell him the home if they wanted to receive rent arrears. They filed an application with

the Board in August 2020 to end the tenancy, along with a request to expedite the hearing of the matter, which was refused. They later returned to Ontario, where they were forced to borrow money to cover their own rent and the mortgage on the rental property, without sufficient means to fund the private care their son required.

- 172** Board members who consider requests for expedited hearings are independent decision makers and have considerable discretion. Different members may arrive at different decisions based on similar fact situations, potentially resulting in inconsistency across cases. For instance, one man told us he applied to the Board in March 2020 to end a tenancy so he could move a live-in personal support worker into the basement unit of his home. The worker was to help care for his 25-year-old daughter, who has a rare genetic neurological disorder affecting her ability to speak, walk, eat, and breathe. He was concerned that he would lose the caregiver if he wasn't able to move her into the home. He was denied an expedited hearing on the basis that there was no safety issue. Yet we heard a similar account from someone acting as a power of attorney for a woman whose health was deteriorating rapidly and who needed to move a personal caregiver into a basement rental unit to assist her. This application was filed in February 2021 and the woman was also at risk of losing the live-in caregiver. However, unlike the 2020 case, the Board granted an expedited hearing in this situation and heard the matter on July 2021. Although the order was not issued for another three months, the situation might have been substantially worse had the Board denied the request for an expedited hearing.
- 173** In another case, a single mother called us about two applications she filed to terminate a tenancy – one for personal use filed in May 2022, and one for non-payment of rent, filed in July 2022. The woman originally purchased the rental property in April 2022 with the intention of living there and sending her four-year-old daughter, who requires treatment for autism, to a school in the area with special programming. However, she inherited tenants who refused to leave or pay her rent. The tenants were hostile towards her, threatened her, barricaded the front door, changed the locks, and refused to let her in to inspect the property. The woman became increasingly desperate, as she could not afford to pay her own rent where she was living as well as the mortgage on her house. As a last resort, she borrowed money from different lines of credit, causing her to lose her job as a financial advisor after her credit score dropped.
- 174** The woman's financial and personal circumstances continued to decline. Without employment, she fell behind in paying her own rent, and received a notice of nonpayment from her landlord. When we spoke with her, she was making inquiries with local homeless shelters in preparation for her potential eviction. In the hope that, given her harrowing circumstances, the Board might grant her an expedited hearing, she requested one in August 2022. However, her request was denied in September.

- 175** Concerned by the woman’s situation, we reached out to senior Board officials, who agreed to look into it further. They later acknowledged that requests for expedited hearings had been granted in similar circumstances and that the adjudicator might not have considered the impact of the nonpayment of rent in denying the woman’s request. The officials noted that those dissatisfied with decisions on expedited hearing requests have no recourse to appeal. Decisions are occasionally audited, but concerns are generally only identified in the wake of complaints. In this case, the officials agreed to take the exceptional measure of reconsidering the decision on the Board’s own initiative. The woman’s request to schedule the hearing on an urgent basis was granted and it was eventually scheduled for December 12, 2022. However, she told us the Board then postponed the hearing date due to the tenant’s belated request for a French hearing, even though the assigned adjudicator was bilingual.
- 176** The Board’s form for requesting an expedited hearing contains only one line for requestors to fill in the relevant application number. In cases where there are multiple related applications, it would be helpful for requestors to be able to reference more than one application, if the circumstances are relevant to the request. In this particular case, the combined information from the woman’s two applications provided a more complete picture of her compelling circumstances. Due to the limitations of the form, she only identified one application number in the space provided, although she did reference both applications in other areas. If more than one application is relevant to a request, there should be adequate room on the form to include multiple application numbers. The Board should revise its form accordingly.

Recommendation 21

The Landlord and Tenant Board should revise its form for requesting an expedited hearing to ensure that there is adequate room for requestors to include multiple application numbers.

- 177** The complaints we received about the quality of decision-making on requests for expedited hearings are worrisome. Although parties have a right to request a further review of many of the decisions made by Board members, there is no effective recourse to challenge decisions on requests for expedited hearings – and there are no regular checks and balances to monitor the quality of decision making in this area. Normally, in such circumstances I would simply recommend that the Board create a formal review process. However, I am not convinced that implementing a formal right to request review of decisions regarding expedited hearings would remedy the situation and suspect that it would simply add another step and layer of potential delay to an already protracted process.

178 The Board should take further steps to address the quality of decision making in this area. It should train its members on adjudicating requests for expedited hearings, including using case examples to illustrate situations in which such requests have been granted. It should also implement regular audits of decisions on requests for expedited hearings in order to identify concerns, further training needs and areas requiring process improvement.

Recommendation 22

The Landlord and Tenant Board should train members on adjudicating requests for expedited hearings including using case examples.

Recommendation 23

The Landlord and Tenant Board should regularly audit decisions regarding expedited hearing requests to identify concerns, further training needs, and areas requiring process improvement.

Scheduling urgent hearings

179 In 2021, the Board told us that for applications that have been approved for expedited hearings, it sets aside two to three full day blocks of urgent matters a week. By mid-February 2021, it was generally able to schedule hearings 20 to 30 days after they were approved for hearing on an urgent basis. It also advised us that it was trying to schedule the most serious matters, such as those involving illegal lockouts and major health and safety issues, within a week. We were told its aim was to reduce the wait time for hearing “urgent” files by half.

180 We requested additional documentation on the Board’s scheduling strategy for urgent cases and the extent of backlogs for various types of Board matters. The documents we received in response did not provide us with a clear sense of how or when the Board intended to reach its goal.

181 Our investigation found that even matters the Board had agreed were urgent were not necessarily scheduled expeditiously. Some remained languishing in the queue for long periods.

Not-so-urgent response

182 For example, in January 2020, a landlord filed an application for non-payment of rent and overcrowding on the ground floor unit of a two-unit rental building. A hearing was initially scheduled for May 2020, but it was cancelled because of the

pandemic. The landlord told us police were regularly called to the unit, sometimes several times a week. The situation was interfering with the other tenant's enjoyment of the property, and police frequently went to that unit looking for suspects and information regarding various assaults and thefts.

- 183** The landlord retained a paralegal, who filed additional applications in October 2020 for termination of the tenancy based on illegal acts and causing serious problems in the rental property. The next month, someone was thrown out of the window of the ground floor unit. After this incident, the paralegal asked that the matter be scheduled on an urgent basis. The request was apparently granted in November 2020, but the paralegal did not learn of this development until January 2021. Even then, the Board took no steps to schedule the hearing until May 2021.
- 184** In the end, the matter was not heard until July 2021, eight months after the Board agreed it should be considered on an urgent basis. When we spoke to the Board about the case, it acknowledged that there were three notes in its case management system confirming the hearing was to be expedited. The only explanation it could provide for the oversight was "they just didn't schedule it."
- 185** Another man filed an application to terminate a tenancy in March 2022, as he was booked for surgery in October 2022, and his cardiologist recommended that he recover somewhere that could accommodate his accessibility needs. A request to expedite the hearing was granted on July 15. A hearing was scheduled for August 25, but adjourned to be heard by the same member at a later date. The member wrote on the adjournment sheet that it should be scheduled on a "priority basis." However, with only two weeks to the man's surgery remaining, there was no hearing in sight.
- 186** In response to our inquiries, a Board official explained that the earliest an urgent matter can be scheduled is six weeks, to allow for notice. He said in this case, the tenant required accommodation to access the hearing, which would likely add a couple of weeks to the scheduling. More significantly, the presiding member's hearing schedule was full up to mid-December. Eventually, the matter was heard on December 9, 2022, after the man's surgery had already taken place.
- 187** According to the same Board official, by the fall of 2022 the Board was typically scheduling urgent matters in blocks for Fridays. He told us that when a matter is identified as urgent, it is added to the scheduling queue. The only exceptions are urgent cases such as this one, where a specific member has adjourned the case and remains seized of it. In that situation, scheduling is dependent on the member's schedule. The official noted that the Board does not distinguish between cases that have recently been approved for expedited treatment and older cases. For instance, no particular consideration is given to delays resulting from

adjournments due to “overflow” – the Board’s term for when there is insufficient time to hear all of the cases scheduled to be heard on the same day.

- 188** There is no systematic triaging of urgent cases to distinguish those that have been significantly delayed. To avoid urgent cases becoming grievously delayed as a result of adjournments and other factors, the Board should develop a process for triaging urgent cases to identify those that are particularly time sensitive. It should adapt its new case management system so it can produce reports on the age of cases awaiting urgent scheduling. Such reports could assist in prioritizing urgent cases for hearing. If the Board cannot modify its case management system to allow for this type of reporting, it should find an alternative solution for generating such reports.

Recommendation 24

The Landlord and Tenant Board should implement a process for triaging urgent cases for scheduling.

Recommendation 25

To assist with prioritizing applications for hearing, the Landlord and Tenant Board should configure its new case management system to produce reports showing the length of time urgent matters have been outstanding, or alternatively develop another method for producing such reports.

Issuing notices of hearing

- 189** Once a hearing has been scheduled, in accordance with the Board’s Rules of Procedure, the Board sends out a notice of hearing and related materials to the parties.²⁴ When the pandemic arrived, staff were generating notices of hearing manually. When they began working remotely, it caused additional delays in processing notices of hearing, as they didn’t have access to office printers. More recently, the Board’s notices have been system-generated. Parties using the new portal can consent to receiving correspondence by email, otherwise they will receive it by ordinary mail.

²⁴ The Board has established Rules under s. 176 of the *Residential Tenancies Act, 2006* (*supra* note 1) and s. 25.1 of the *Statutory Powers Procedures Act*, RSO 1990, c S.22. Rule 5 addresses service of notices of hearing and provides that the Board will serve the notice of hearing together with the application, motion, or request on all parties unless the Rules or the Act require otherwise or the Board exercises its discretion to order a party to serve them: Landlord and Tenant Board, *Rule 5 - Service of Application and Notice of Hearing*, r 5.1.

- 190** After the end of the first moratorium on evictions on July 31, 2020, the Board began to gradually schedule eviction matters for hearing. As it did so, our Office started to hear from concerned landlords and tenants. Some complainants told us they only received a notice of hearing mere days before the scheduled date, leaving them insufficient time to prepare and file their evidence. Others claimed they never received a notice and missed their hearings as a result. This situation led to landlords having their applications dismissed and tenants having eviction orders made against them in their absence. While there are processes available to reopen an application or challenge an eviction order, having to resort to them subjects parties to additional and unnecessary delay.
- 191** In the past, the Board would send a notice of hearing two or three months before the hearing date. As of January 2021, it was sending such notices just three weeks in advance.
- 192** By June 2022, the Board was sending notices within four to six weeks of hearing dates. Under the present practice, the time that participants have to prepare for a hearing varies. It would help if the Board established a standard timeframe for hearings to take place after a notice of hearing has been issued, so participants know what to expect and have adequate time to prepare. In doing so, the Board could set out exceptions where a condensed notice period would be permitted.

Recommendation 26

The Landlord and Tenant Board should establish a set notice period between issuance of a hearing notice and the date of hearing, subject to defined exceptions where a shorter notice period would be permitted.

Conducting hearings

- 193** The Board may hear matters in person, electronically and in writing. It may also conduct case management hearings to provide parties an opportunity to explore settlement. However, these are usually conducted by hearing or dispute resolution officers, who are not members. Only appointed members can hear the merits of applications.
- 194** Prior to March 2020, most hearings took place in person, with hundreds of people filling the Board's hearing rooms each day. With the onset of the pandemic and the moratorium on evictions in March 2020, the landscape shifted dramatically. The Board heard some matters by telephone beginning in April 2020, and after the first

moratorium ended July 31, 2020, most applications were addressed using virtual platforms. Since September 2020, online hearings have been the norm at the Board, consistent with Tribunals Ontario's new "digital first" approach.

- 195** In November 2020, Tribunals Ontario issued an updated Practice Direction on Hearing Formats for all tribunals, noting that going forward there were only two exceptions that would justify in-person hearings. The first exception applies when an accommodation is required for an *Ontario Human Rights Code*-related need; the second where a party can establish that the digital hearing format will result in an unfair hearing. In the summer of 2021, the Board advised us that between May and August 31 that year, it only received requests for in-person hearings in 0.07% of all hearings held. More recently, it reported that it received 255 requests for in-person hearings in fiscal 2021-2022, and 107 from April 1, 2022 to October 31 (11 of the requests for this period were granted).
- 196** In May 2021, Tribunals Ontario began to transition to the Zoom platform for its hearings. As of the fall of 2021, Zoom is the only videoconference service it uses, as it allows for breakout rooms for mediation and consultation with duty counsel and legal representatives.
- 197** The Board still conducts a limited number of hearings in writing. In such cases, the parties file an explanation of their positions and supporting documents, which the member considers in making their decision. Written hearings are most commonly used to decide applications for an above-guideline increase and to vary the amount of a rent reduction.

Accessibility challenges

- 198** After the Board moved to virtual hearings, we heard from tenants, legal clinics and others who were concerned about the sometimes insurmountable challenges many tenants experienced in accessing online hearings. Many tenants do not have access to computers or phones. The Board has acknowledged that a significant number of tenants, in contrast to landlords, do not have access to video technology and must participate in hearings by phone. It has also recognized that some individuals lack access to phones, rendering their participation in virtual hearings impossible without accommodation.
- 199** In response to accessibility challenges, on February 1, 2021, Tribunals Ontario opened terminals in Toronto for the public to use to participate in hearings. Since then, parties who wish to use a terminal can make "a request for an alternative hearing format" after they receive their notice of hearing. Such requests are evaluated on a case-by-case basis. Later that year, the Board had opened additional terminals in Hamilton, London, Ottawa and Sudbury, bringing the total to

13 across Ontario. As of August 2021, it had received 550 requests for access to a terminal and granted 173. In other cases, it accommodated parties through other means, such as the use of interpreters, closed captioning or hearings in writing. In April 2023, Tribunals Ontario announced the introduction of mobile access terminals.

- 200** The Board advised our Office that the use of the terminals is quite low. However, we also heard from complainants who commented that the Board’s terminals are located in major city centres and are not always accessible by those living outside them.
- 201** In September 2021, the Board told us Tribunals Ontario was exploring additional options to support low-income clients and others who have difficulty accessing phone services. Some options being considered included a flip phone lending program, and topping up phone plans for people who have limited airtime talk minutes. The phone lending program is now a permanent feature at the Board. By July 2022, it had offered loaner phones or topped up participants’ phone plans in 10 situations.

Hearing blocks

- 202** Hearings are assigned to members in blocks, with one member hearing multiple applications on the same day. All applications in a hearing block are scheduled to start at the same time. A senior official with Tribunals Ontario told us longer hearing blocks allow for greater flexibility when some parties may be engaged in negotiation, mediation, or interacting with tenant duty counsel. She also noted that longer hearing blocks give members more control over the flow of the day, allowing them to adjust for matters requiring more hearing time.
- 203** In December 2019, when most hearings took place in person, members were generally assigned 50-60 cases a day to be heard. The number of cases assigned to members has varied since then. We were told by some members in March 2021 that they were often assigned 60-80 cases in a hearing block, leaving them only a few minutes to deal with each case.
- 204** Members told our Office that dealing with the large volume of assigned cases was taxing. One problem they identified is that certain applications require more time to address. In particular, they noted hearings into landlord applications to terminate a tenancy, for reasons other than non-payment of rent and tenant’s applications relating to maintenance, generally take longer than the allotted 30 minutes. Members routinely find that they have to adjourn cases to manage the volume. For example, from May to July 2021, members adjourned seven to eight matters a day for each block of cases because of “overflow.” As one member told us:

We had one member go from 9 a.m. to 9 p.m. You have others going to 7p.m. People moderating, who are unionized, and admin staff are not sticking around, so the member has to deal with it on their own. It starts to feel like an assembly line. Not all people are being adequately heard as a result. This can come back onto the member. You want members to have enough time in the hearing block to hear the case.

- 205** The Board told our Office that as of June 2022, it introduced a new approach for a six-month trial period, which would be reviewed in December 2022. The trial involved reducing the number of cases assigned to each member, depending on the nature of the application. For instance, members might initially be assigned 30 applications to evict a tenant for non-payment of rent, 10 cases involving ending a tenancy for other reasons, and 10 tenant applications per hearing block. The Board indicated it intended to slowly increase the number of cases to see what number was manageable and realistic. As of January 2023, the standard caseload was 25 eviction applications for non-payment of rent, and eight tenant applications per hearing block. The Board continues to consult with adjudicators and assess optimal hearing block volumes.

Hearing preparation

- 206** Prior to the pandemic, Board members were provided with physical files, organized by support staff, containing all the documentation they would need to prepare for their hearings. When the Board pivoted to remote hearings in March 2020, members had to use the existing case management system to access documents. We were told this was a time-consuming process. In addition, given the substantial volume of evidence that parties submitted by email, evidence was sometimes not uploaded to the case management system in time for hearings. This situation contributed to adjournments and further delays.
- 207** In late 2020, Tribunals Ontario introduced a process to allow for all documentation relating to individual files to be uploaded to an online platform for members. In June 2021, in response to members' complaints that they were not receiving all the evidence for hearings, the Board created a separate email address for parties to submit evidence, which was monitored by staff daily. However, one member we spoke to told us it was still difficult to navigate the information using this system, given the way it was arranged. He also noted that some documents still had to be downloaded from the old case management system.
- 208** Another member commented that because there is no standard naming protocol for documents, he would have to search a large volume to identify relevant ones.

- 209** As one member put it: “[Finding a document] is what takes a lot of time in the hearing room [...]. It can be very difficult to find that document and share it on the screen to ensure everyone has the opportunity to look at it and to ensure we are all looking at the same thing.”
- 210** Since May 2022, the Board’s new case management system allows members to produce a list of all cases on their dockets, and they can more easily access and download related documentation.

Virtual hearings

- 211** We heard from tenants, landlords, and advocates about how confusing and disorganized entering a virtual hearing can be. Initially, the Board used its members and other staff as moderators. As multiple participants came online at the same time for a scheduled hearing block, moderators had to sort through and identify parties as well as direct them to mediation and duty counsel breakout rooms, as appropriate. Members told us this process often significantly delayed the start of hearings. In an attempt to remedy the situation, in the spring of 2021 the Board asked participants to sign in an hour early for hearings.
- 212** From May 17 to August 27, 2021, the Board used 19 summer students on a full-time and part-time basis as hearing moderators. Fifteen students remained under contract in this role until October 22, 2021. However, according to some members we interviewed, this was of limited assistance due to the students’ lack of experience and knowledge of the subject matter, and the fact that they only worked until 4:15 p.m.
- 213** In September 2021, the Board advised our Office that in response to delays with the sign-in process, it had instituted changes, including assigning three moderators to high-volume hearing blocks and increasing the number of moderators during peak hours. It also tasked some moderators with signing in participants who joined by phone, as they apparently can experience difficulty with unmuting themselves. As well, it revised the notice of hearing to specify when a party should enter the virtual hearing room, so the sign-in process could begin sooner. Since January 2022, the Board has used the services of an external moderator to act as a “virtual concierge” to assist hearing participants.
- 214** We also heard concerns that tenant duty counsel and landlord and tenant representatives were often overbooked, and had to attend multiple hearing rooms at the same time. One member told us this situation led to parties waiting without even knowing if duty counsel would arrive. One solution the Board attempted beginning January 18, 2021, was to assign hearing blocks regionally to reduce the possibility of representatives being scheduled to be in multiple rooms

simultaneously. However, the Board moved back to a provincial hearing schedule on June 20, 2022, which continues to be a source of concern for some legal representatives.

Technical glitches

- 215** Several complainants and members we interviewed described the virtual hearing process as chaotic, given the volume of participants online, and technological glitches that caused some parties to drop out suddenly. We also heard about the frustration parties faced when they tried to contact the Board to alert it to the technical challenges they were experiencing.
- 216** When we raised these concerns with the Board, it explained that it does not have its own technology department. Tribunals Ontario has some in-house technology support, but it has been in high demand since the onset of the pandemic. We were told that the Justice Technology Service Division at the Ministry of the Solicitor General is intended to address technical issues across justice organizations. However, as one senior Board official told us, the situation is “not optimal.”
- 217** In 2021, the Board’s Associate Chair, along with some members, explained to us that the use of virtual technology had slowed the Board down and there were concerns about the adequacy of the technical support members were receiving. One member commented that it is “horrible” when there is a technical issue. They have to call an Ontario Public Service help line, which results in a minimum 15-minute wait. We were told the Board’s scheduling team can sometimes help members experiencing technical issues during hearings, but they are not always available.
- 218** The use of online technology has also presented significant issues for participants trying to join hearings, or interact during them. Sometimes they lose audio connection, sometimes they are disconnected entirely, and in some cases, participants have received wrong links for joining their hearings. The Board has posted several YouTube videos on joining and participating in hearings. Unfortunately, it has no mechanism available to participants to communicate the issues they are experiencing in real time. The Board acknowledged this service gap remains a problem.

Hearing on hold

- 219** One landlord told us she applied for an eviction order for non-payment of rent and damages to property on September 9, 2020. A case management hearing was scheduled for February 25, 2021. The landlord logged onto the online meeting platform a few minutes before her scheduled hearing time and was placed into the

waiting room queue. After waiting 15 minutes, she emailed the Board for assistance. No one responded. She then called the Board and waited on hold for 40 minutes. Eventually, she sent another email to the Board, noting that after the prolonged wait she had decided to log off from the meeting. She eventually received a generic response from the Board on March 9, 2021, acknowledging her email. Several days later, she received another email indicating that someone from the Board would be in touch with her. Two months later, after hearing nothing further, she escalated her concerns to Tribunals Ontario. On May 13, 2021, she learned a hearing was scheduled for June 16, 2021. When the landlord started the process, her tenant owed \$3,000 in property damage and \$11,000 in arrears – in the intervening period, the arrears owing had more than doubled.

Delayed entry

- 220** More recently, a woman contacted us about a hearing scheduled for October 31, 2022. She said she began trying to log in at 8 a.m., and finally succeeded in entering the virtual waiting room at 8:30. A moderator eventually logged her into the hearing room at 10:14, but when she arrived there, the Board member told her he had called her case at 9:15 a.m. The woman tried to explain the situation, but was told her application had been dismissed in her absence. She later connected with the moderator, who apologized. The moderator reportedly discussed the circumstances with the Board member, who maintained that the decision was final. After already waiting 10 months for a hearing, the woman was faced with the prospect of paying another filing fee and starting the process all over again. In response to our inquiries, the member changed their decision, and the matter is now awaiting rescheduling.
- 221** Given Tribunals Ontario's new digital-first approach and the Board's continuing challenges with virtual hearing technology, they should be providing technical supports for members adjudicating application hearings and those participating in them. Technical glitches are a reality of the virtual world. There should be dedicated technical assistance available to members and hearing participants in real time. The absence of easily accessible, timely, and proficient technical assistance can result in delays, frustration, and unfairness.

Recommendation 27

Tribunals Ontario and the Landlord and Tenant Board should provide dedicated real-time technical assistance to its members and hearing participants to improve the accessibility and timeliness of its hearing processes.

- 222** It is fundamentally unfair for parties to be prejudiced as a result of technical glitches or issues with moderators admitting them to virtual hearing rooms. The Board should review its virtual hearing processes and make necessary adjustments to ensure that technical glitches or the order in which moderators admit participants into virtual hearing rooms do not negatively impact the adjudication of their matters. The Board must also implement a process to expeditiously address situations where such problems occur.

Recommendation 28

The Landlord and Tenant Board should review and revise its hearing processes to ensure that technical glitches and the order in which moderators admit participants into hearing rooms do not negatively impact the adjudication of their matters.

Recommendation 29

The Landlord and Tenant Board should implement a process to expeditiously address problems that arise at hearings due to technical glitches and the timing of moderated admission into hearing rooms.

Adjournments and rescheduling

- 223** Members may adjourn hearings for a variety of reasons, including if the member runs out of time to finish a hearing or to hear all their scheduled cases. Adjournments can add substantial time to the process. Before March 2020, in the days of in-person hearings, members could identify the need for an adjourned case to be rescheduled on an expedited basis and ensure that it was slotted into an available opening. However, when the Board moved online, the process for rescheduling adjourned cases changed.
- 224** For over a year after the Board switched to online hearings, adjourned matters were placed back in the general queue, to be scheduled based on the date they were submitted. There were days set aside to hear adjourned matters. Starting in July 2021, the Board scheduled hearing blocks every Friday morning to deal specifically with adjourned matters. For several months, starting February 2021, it considered members to be “seized of” (i.e., responsible for) any cases they were assigned for hearing, even if they were simply adjourned on the consent of the parties or because of overflow. This meant that rescheduling of cases for hearing could be significantly delayed, as it was dependent of the assigned member’s schedule, despite their limited connection to the case. One member told us this practice caused an “uproar,” because members felt they were being punished for

adjourning matters. Now unheard matters are returned to the regular scheduling queue without being assigned to a specific member. A Tribunals Ontario official did note, however, that if a Board member specifically estimates that a matter will take a longer time to be heard at the point it is adjourned, efforts will be made to assign that member to the matter. The Board's prior practice of continuing to connect members to cases to which they were initially assigned, but did not hear, contributed to prolonging delays. The Board should ensure that it does not return to this practice.

Recommendation 30

The Landlord and Tenant Board should ensure that in future it does not consider members that have been assigned cases for hearing seized of any matters that they have adjourned without hearing.

- 225** We were also told that even in situations when a member has ordered that the adjourned matter be expedited or made recommendations for rescheduling (for example, with respect to the time needed to complete the hearing), this does not always occur. There is nowhere in the case management system to record these instructions. Members simply note them on the adjournment sheet, which is submitted to the Scheduling Unit.
- 226** A Board official recently explained to us that there is still no way for the Board to easily identify cases with multiple adjournments and prioritize them for scheduling. It also can't distinguish cases adjourned by parties' request from those that are adjourned because of overflow. It is grossly unfair that a party whose matter was adjourned due to the Board's overly ambitious scheduling is relegated back to the queue along with everyone else. Specific member instructions and recommendations about rescheduling should also be recorded in the Board's system so they are easily accessible to scheduling staff. The Board should configure its new case management system to track adjournment details and member recommendations to assist in prioritizing and scheduling cases that have been significantly affected by adjournments due to the Board's own scheduling issues. If its system cannot be adapted to this purpose, it should implement another means to ensure that adjournments are properly tracked and cases appropriately prioritized. Whenever possible, such cases should be scheduled before new matters.

Recommendation 31

The Landlord and Tenant Board should configure its new case management system to track adjournments, reasons for adjournment, and member instructions relating to adjournments in order to identify cases for priority scheduling and increase scheduling efficiency or alternatively, the Board should develop another effective means for tracking this information.

- 227** The Board also advised us that the new case management system has the ability to keep track of adjourned cases assigned to specific members, which can assist with rescheduling. However, members must specifically change the case “ownership” in the system to the “adjournment team” for this to occur. Members sometimes miss this step, causing adjourned cases to be overlooked for rescheduling. In one case (discussed in detail later in this report), a member did not file the adjournment sheet or enter information about the adjournment into the system for eight months, significantly contributing to delay in rescheduling the matter.
- 228** Rather than rely on members to take administrative steps to record adjournments, the Board should designate a staff person to be responsible for updating the system after hearings, and ensuring adjourned cases are assigned to the rescheduling queue.

Recommendation 32

The Landlord and Tenant Board should designate a staff person to update the case management system after hearings and ensure adjourned cases are assigned for rescheduling and appropriately identified for priority scheduling.

Order preparation and issuance

- 229** Many individuals contacted our Office in frustration, complaining that they waited months after a hearing for an order to materialize. Delayed issuance of orders was one of the most common concerns we heard before and during this investigation. For instance, one woman rented out a property in northern Ontario in April 2020. After her tenant stopped paying rent in November, she filed an application with the Board to end the tenancy in February 2021. The Board heard the case in July 2021, but she had still not received an order by the time she wrote to us that December. She said she was on the brink of bankruptcy and described her distress in detail:

In the meantime, the tenant is destroying my house. We have had to change the locks 4 times because she keeps changing them without permission. The last time we were able to enter, we saw that there was a leak in the ceiling that she didn't notify us of and it seems to be causing quite a lot of damage. She also has garbage and debris in the basement troughs along the wall [...] and now there is black mold [...] The toilet is filled with feces, along with maggots and larvae. I have made several attempts to gain access to work on repairs but she always manages to stop us from entering, usually by changing the locks or her latest tactic where she claimed that she has COVID and needs to be left alone as she is in quarantine [...]

I no longer wish to have this house as a rental property. It is destroying my life [...] I have almost maxed out my line of credit with no means to pay it back. I have maxed out a \$7500 credit card and I've had to quit my job [...] because I cannot afford to put my daughter in daycare [...]

- 230** In January 2022, another woman told us she feared for her safety, as her tenants continued to threaten her while she sat waiting for a resolution of her application to terminate their tenancy. She filed her application in August 2021, and given the safety concerns, the Board approved her application for an expedited hearing, which took place in November 2021. However, she had not yet received an order, and the stress of her living situation was affecting her health. When she used the Board's online status check, she saw the file was shown as "closed." When she followed up with the Board, she was told the file was still with the adjudicator, and that she should call the police if she continued to fear for her safety. When we contacted the Board to discuss the case, staff could not explain why the file had been closed without an order. They could also not confirm who had actually heard the case. An order was eventually issued on May 26, 2022, but it related to the wrong case. It was not until June 15 that the woman finally received the order she had been expecting for more than six months.
- 231** Prior to the pandemic, the Board's service standards stated that orders relating to landlord applications to evict for non-payment of rent and to collect rent would be issued within four business days of the final hearing. All other orders would be issued within 10 business days, except for applications for an above-guideline increase and to vary the amount of a rent reduction, which were subject to a standard of 20 business days. The Board has far exceeded the original timeframes it established for several years.
- 232** At the outset of this investigation, the Board acknowledged delayed issuance of orders was a significant source of complaints. It noted that back in 2018, approximately 20% of the complaints it received related to this issue and by 2019,

that had jumped to 50%. We were told the increasing delay in order production coincided with a rise in the volume of applications received and a decrease in the number of members available to hear applications and issue orders. While the problem with delayed orders existed before the pandemic, the shift to remote hearings and the moratorium on evictions compounded the situation. In the fall of 2020, the Board revised its service standard, setting 30 calendar days as the goal for issuing orders on landlord applications for less complex matters (such as eviction for non-payment of rent and to collect arrears), and 60 days for other applications. In January 2021, the Board's then Associate Chair admitted, "this is not ideal – let me be clear. We used to do 4 [days], now we're at 30. We have a serious problem." The then Associate Chair told us she was hopeful that the situation would improve over the next six months.

- 233** While the Board did not change the standard publicly, in a note on its website dated February 8, 2021, it stated: "Orders are taking approximately 30 days for hearings related to [landlord applications for eviction for non-payment of rent and to collect rent] and approximately 60 days for other application types."
- 234** At some point in 2021, it set an "internal" standard of 21 days for order issuance, including 14 days for members to write their decision and seven days for operations staff to prepare the order for release. The Board did not publicly communicate this 21-day goal and the former Associate Chair told us that it preferred to "under-promise" and "over-deliver" instead of "overpromising." The Board's website continues to refer to an average time for processing orders of 30 days after a hearing for certain applications and 60 days for others.
- 235** According to the Board's statistics, by August 2021, it was meeting the revised standard in only 7% of landlord applications for eviction for non-payment of rent and averaging 20 days for order issuance. It was not meeting the standard at all in applications for an above-guideline increase or to vary the amount of a rent reduction, which were averaging 148 days for order issuance. In the case of all other applications, the Board was only meeting the standard half the time. By November 2021, the Board's time to issue orders was trending upwards, with the average time to issue an order at 32 days.
- 236** Some of the delay in issuing orders may be attributable to cases where members were using the Board's outdated technology, which involves many ponderous steps to produce an order. Other Board practices also contributed to delay. For instance, beginning in 2021, certain regions only issued orders on specific days. Even if an order was ready, its official issuance might be delayed for administrative convenience – e.g., orders sent to the Toronto South region had to be dated a week later to accommodate the set mailing dates. The Board now sends orders out by email in many cases, which speeds up the process. As of July 28, 2022, communication by email is the default setting once users log onto the new case

management system portal. They can change this setting if they do not wish to receive electronic documents.

- 237** The Board had for some time followed a practice where support staff would assist in drafting orders at the direction of adjudicators. However, as of January 18, 2021, adjudicators became responsible for writing their own orders, with minor exceptions. After this change, delays in issuing orders continued, and by the summer, the Board shifted back to using support staff to assist with writing simple orders. In July 2021, it launched a three-week pilot project involving two members working with two support staff to prepare orders for landlord applications for eviction for non-payment of rent and to collect arrears. Members were solely responsible for writing more complex orders. This approach resulted in faster issuance of orders, and the Board implemented this model more broadly in the fall of 2021. The Board told us in June 2022 that it no longer uses this model, as most applications of this type are submitted through the new portal, and it has reduced the number of cases assigned to each member for hearing.
- 238** As of May 4, 2022, the Board updated its service standard webpage, indicating that orders were “taking approximately 30 days for hearings related to applications to terminate a tenancy for non-payment of rent and to collect rent and approximately 60 days for other application types.” As of May 31, 2022, there were 852 orders that had been pending for over 60 days. One order had been outstanding for 538 days, and another for 300 days since the hearing.

Tracking of orders

- 239** The Board’s Outstanding Order Reports: Process and Protocol requires all members to file a report each month, listing all of their cases in which an order has been outstanding for more than 30, 45 or 60 days after the hearing concluded. Monthly “Regional Office Summary Reports” are also prepared by Vice Chairs, summarizing delayed orders across their regions and commenting on any specific reasons for delay.
- 240** The Board has set thresholds to trigger a response by a Vice Chair or the Associate Chair – for instance, if the member has more than 10 files where the order has been outstanding for longer than 30 days, or 5 orders outstanding for longer than 45 or 60 days. According to the protocol, if a member has a “higher number” of outstanding orders and repeated issues, efforts will be made to identify and develop a “concrete action plan to support the member to eliminate the backlog and produce orders within performance standards.”

241 The protocol notes that:

[The steps] to support Members with outstanding order issues can include mentoring, training, assistance from the Vice-Chair, staff or other adjudicators, or other supports and resources. In serious cases, temporary changes to the schedule may be required to ensure the Member brings all outstanding orders up to date. Vice-Chairs will monitor the Member's progress weekly to assess progress. Repeated cases of outstanding orders, and failure to remedy the problem, will be documented as a performance issue.

242 In January 2021, the Board amended its outstanding order reporting and monitoring process so that a single Vice Chair is now responsible for managing the process and overseeing order production for all adjudicators. In addition, this Vice Chair is also responsible for following up with adjudicators to address order issuance delays, working with support staff to identify order production issues and ensuring that the Board meets its order production timelines generally. The Board's protocol has not been updated to reflect this process change.

243 Unfortunately, the Board's older information system did not effectively allow it or its members to identify which member had a particular file, or to run reports on specific members' outstanding orders. We spoke to some members who explained that they manually tracked their outstanding decisions electronically on an Excel spreadsheet, while others relied on handwritten notes – e.g., on printed pages of the hearing dockets. One former member told us the Board's lack of a systematic way of tracking outstanding orders “completely creates the risk that something will fall through the cracks.” Another observed that, absent a complaint from one of the parties about the status of their file, it was “absolutely, definitely” common for some cases to fall off the radar.

244 Another complication of the Board's process for tracking outstanding orders is that members might submit their reports late. We heard conflicting opinions on whether the Board's older information system is able to run reports to independently verify whether orders on specific files are outstanding. However, management at the Board and Tribunals Ontario confirmed that even though the system produces some reports, the data is generally not reliable. For instance, in January 2021, the Board provided us with a report purporting to show all outstanding orders and how aged they were. The document revealed that only eight cases had an order outstanding, significantly underrepresenting the number of delayed orders. In sending us the report, the Board said:

Please note, however, that this report is not reliable. It relies on members entering in [the system] that their matters were heard – it's this that triggers the timelines and enables the file to show up in the report. The

members don't do this consistently. Efforts have been made to remind members to do this, however many do not follow through on ensuring the current status of the file is up to date on [the system]. Ultimately, this has been an historical issue. This is why we now rely almost exclusively on self-reporting from the members [...]

- 245** The system also did not identify cases where a matter had been adjourned and assigned to another adjudicator. When the new case management system was first implemented in December 2021, members were able to track their own cases.
- 246** Several members we spoke to said it is a challenge to produce orders within the set standards. One part-time member with a full-time legal practice noted that a 30-day standard is doable for a member who has one hearing block a week, but two is “a real stretch.” The member also observed that meeting the standard involved “late nights and weekends getting things done.”
- 247** One full-time member spoke to our investigators about falling behind in preparing orders in 2020 and seeking assistance three times. The first time, a Vice Chair said the request would reflect poorly on the member and suggested waiting a month. During the next month, the member fell further behind, and reached out two more times. It was only after complaints from applicants started to pile up that the Board decided to remove the member from the hearing schedule to focus on order writing. By then, the member had outstanding orders in 600 cases. The member described the personal impact as follows:

It was horrible. Professionally, I was already struggling between not knowing what I was doing [...]. I come from a background where I have always been in charge, and to suddenly find myself in a position where I couldn't even write an order because I didn't know how. [...] And I have had enough training. And you know, I'm putting all of those responsibilities on my colleagues to try to nurse me through. Yeah, it was horrible. It was horrible. It was a horrible experience.

- 248** The member eventually cleared their backlog in June 2021. They suggested the main problem they experienced was the uncertainty around where to go to get help. By July 2022, members were more easily able to track their cases in the new case management system to determine if orders were outstanding. The Board advised that this development has also led to more consistent reporting by members of outstanding orders. However, scheduling staff informed us that cases can still be missed. In the new system, members must assign files to themselves in order for the Board to identify which file is attached to which member. There is no independent verification of which member has a particular file. To ensure that it has more accurate and complete information about file assignments, the Board

should designate a staff person to record in its case management system the applications assigned to specific members.

Recommendation 33

The Landlord and Tenant Board should designate a staff person to record in its case management system the members assigned to cases and responsible for issuing orders following hearings.

- 249** The Board's current practice relies on adjudicators to track their own outstanding orders and report their status. It would be more efficient and reliable if it could track and monitor the status of cases independent of its individual members. For instance, in the case of one part-time member, referenced at paragraph 260, the number of outstanding orders was significantly underreported. The member had self-reported that they had 120 outstanding orders. However, the actual number was over three times that amount. While the adjudicators are independent decision makers, Tribunals Ontario and the Board are generally accountable for the effective and efficient administration of the Board's functions. They must have the means available to accurately monitor the status of outstanding orders. The Board and Tribunals Ontario should adapt the case management system to ensure it has the capacity to generate comprehensive reports of all outstanding orders, including the length of delays, and the adjudicators responsible for preparing them.

Recommendation 34

The Landlord and Tenant Board and Tribunals Ontario should implement a case management system modification that allows for comprehensive monitoring of outstanding orders, including capacity to track the length of time orders are outstanding and the specific members responsible for them.

- 250** The Board should also revise its Outstanding Order Reports: Process and Protocol to reflect its most current expectations and practices. It should also clearly set out how members can request assistance when they fall behind in drafting orders and ensure that timely assistance is provided when such requests are made.

Recommendation 35

The Landlord and Tenant Board should revise its Outstanding Order Reports: Process and Protocol to reflect its current expectations and practices.

Recommendation 36

The Landlord and Tenant Board should ensure that the Outstanding Order Reports: Process and Protocol includes clear information about how members can request assistance when they fall behind in order production.

Recommendation 37

The Landlord and Tenant Board should ensure that members, who fall behind in the preparation of orders, are provided with assistance expeditiously when they reach out for help.

Limited Remedies

- 251** The Board has explained that it is limited in what it can do to help members finish outstanding orders, since as independent decision makers they are entitled to complete the decision-making process. As its protocol mentions, if appropriate, it will take steps to help members complete outstanding orders, such as temporarily adjusting the hearing schedule. However, it has repeatedly told us that it cannot simply assign a matter for rehearing to another member, regardless of the length of time an order has been outstanding. The Board's inability to address significant delays on the part of individual adjudicators can have extreme impacts on participants awaiting resolution. This situation is illustrated in the case of a specific member, whose difficulties in issuing timely orders resulted in **five** individuals complaining to our Office. When we began to inquire about these cases, we learned that the end of the member's term was rapidly approaching.
- 252** The **first** complainant, a landlord, filed an application on June 5, 2020, for eviction for non-payment of rent. The original hearing was scheduled for December 8, 2020, but was adjourned by the member in question. The member was scheduled to rehear it on February 17, 2021, but no one appeared to preside over the hearing that day. The tenant then filed an application in February 2021, regarding an illegal lockout and the Board issued an interim order on March 31, 2021, preventing the landlord from renting out the unit and ordering that the tenant be allowed back into the rental unit. On April 20, 2021, the member heard both applications. However, a year later, no orders had been issued. In May 2022, the landlord asked the Board to grant him an expedited hearing before another adjudicator. This request was denied, since a hearing had already been held back in April 2021. The order was still outstanding in December 2021, at which point the tenant owed arrears of over \$19,000. Another interim order on the tenant's application was issued on October 11, 2022, but the prolonged delay and presiding member's imminent departure resulted in both the landlord's and the tenant's applications being scheduled for a new hearing before another adjudicator on November 9, 2022.

- 253** The **second** complainant was the tenant in the same dispute. He also complained to our Office about the member's failure to issue a final order. He alleged that the landlord had illegally removed his belongings to claim that he had abandoned the rental unit. According to the tenant, the landlord sold the property prior to the hearing on April 20, 2021, and the new owners were occupying it. He complained that the longer the delay, the more he was prejudiced by the situation.
- 254** The **third** complainant filed an application on January 7, 2020 to end a tenancy because she required the rental unit for personal use. The original hearing was scheduled for May 8, 2020, but was cancelled due to the pandemic. The matter was heard on December 18, 2020, and an order issued on December 22. However, the tenant requested a review of the order, which was heard by the member on April 12, 2021. Seventeen months later, the order was still outstanding, and the landlord told us she and her family had to live in "substandard conditions" while waiting for a decision "with no end in sight." On November 24, 2022, an order was finally issued on the review, dismissing the December 2020 order and requiring a new hearing on the original application for eviction to be scheduled – almost three years after the landlord's application was filed.
- 255** The **fourth** complaint regarding the same member involved a landlord's application to end a tenancy because the tenant had failed to meet conditions of a previous order. The application was filed on February 24, 2021, and an order was granted on March 19, 2021. The tenant then filed a motion to set aside the order, and a hearing was scheduled for April 22, 2021. The member heard the motion, but over a year later had not issued an order. While the tenant eventually left the property, the landlord was stuck with \$11,000 in rent arrears that she has not been able to pursue. It wasn't until December 2, 2022, that the order was finally issued, denying the tenant's motion and lifting the stay of the eviction.
- 256** In response to various inquiries our Office made with the Board concerning these matters, it explained that by April 2021, the member had 30 outstanding orders, and they were taken off the hearing schedule in June 2021. The Board noted that in such situations, the Board will meet with the member to develop a plan, determine how much time they require to catch up and outline expectations. Members will not be returned to the hearing rotation until they have completed their outstanding orders. However, by November 5, 2021, the number of outstanding orders attributed to this specific member had risen to 108 pending orders. When questioned about this increase, the Board responded that it was the result of the member continuing to hear cases that she had been assigned prior to her removal from the hearing schedule. When we inquired again with the Board in October 2022, we learned that the member still had approximately 30 orders pending. The Board explained that it had no choice but to wait until the end of the member's term for orders to be completed and after that, any outstanding matters

would be reassigned for rehearing. We were told the only exception is if a member indicates that they are unable or unwilling to continue.

- 257** In the **fifth** complaint involving the same member, a landlord filed two applications with the Board in an attempt to evict a tenant. The first was heard before the member in February 2021. The hearing wasn't completed on that day and the member said she would hear both applications at a later date. However, the member did not record this direction with the Board until October 2021. In the meantime, the second application was scheduled for a separate hearing before another member in June 2021, but adjourned because there was insufficient time for it to be heard. The matters were finally both heard together on June 13, 2022. When the complainant contacted us in October 2022, he was still waiting for the matters to be resolved. He told us he is owed arrears of \$44,000, a sum that continues to grow as he waits for the orders to be issued. He said this was his first experience with renting out a property, and he has incurred financial hardship as a result of the situation. When we spoke to the Board about the case, we were told the order should be produced by the end of November – in the end, it was not produced until January 4, 2023.
- 258** As of September 2022, the member had 16 cases outstanding, and the expiry of her appointment was quickly approaching. The Board assured us that the member was on track to issue all of the orders on her caseload by then. However, when the member's term ended, the Board had to assign eight cases to other members to be reheard, forcing the affected parties, who had already been waiting substantial periods, to repeat the process again.
- 259** It is a fundamental principle of administrative law that the person who hears a case must decide it. Accordingly, the Board is limited in its options when a member is significantly behind in issuing orders, as it cannot simply transfer a matter that has already been heard. There may be many circumstances beyond an adjudicator's control that result in delays in issuing a decision. An adjudicator may be on leave for an extended period, e.g., due to illness or to care for a newborn child. In such circumstances, it is quite likely that none of their outstanding orders will be issued until they return. The Board must also accommodate members who require workload adjustments under the *Human Rights Code*. We were told of one case in which it reassigned a case for rehearing at the request of a member (who was on a prolonged medical leave) and with the consent of the parties. However, we understand that this was an exceptional situation.
- 260** The situation with the Board member in the five cases we reviewed is not an isolated occurrence. In December 2022, we learned that a part-time member had been removed from the hearing schedule to focus on writing 120 orders they'd reported as outstanding. This situation came to our attention when a landlord told our Office that after an August 2022 hearing, she contacted the Board's call centre

multiple times to find out the status of her order, and received conflicting information each time. As of January 11, 2023, she had still not received the order. In another case involving the same member, another small landlord complained to us after applying to evict a tenant for non-payment of rent in February 2022. The tenant had stopped paying rent in October 2021. At the August 2022 hearing, the member indicated that the order would be issued within 30 days – but it was still outstanding six months later. The landlord told us he was experiencing severe financial hardship and emotional turmoil. He was struggling to pay the mortgage, property taxes and other fees for the rental property and finding it difficult to feed his family and pay to heat his own home. At one point, he disclosed he was contemplating suicide “as a way out of this nightmare.” As of February 2023, the order was still outstanding. In response to our inquiries, the Board advised that it was conducting its own review to confirm the actual number of outstanding orders connected with this member. It noted that it was unclear whether the member had properly updated the case management system to reflect all the matters on their caseload. It also explained that despite repeated efforts to contact them, the member, who had not produced any orders since December 2022, did not respond. In March 2023, the Board confirmed that the member was on a leave of absence, and that it had identified 388 matters that would be assigned to other members for rehearing.

- 261** While in most instances the Board is limited in what it can do to address excessive delay in issuing orders, in many Canadian jurisdictions judicial authorities have the ability to reassign cases where a decision is subject to extreme delay. For instance, section 123(5) of Ontario’s *Courts of Justice Act* provides that if a judge after hearing a case fails to make a decision within a specified timeframe (six months for judgments and three months in any other case), the chief judge may extend the time for making a decision and relieve the judge of other duties until the decision is issued.²⁵ If the decision is still pending beyond the extended time, unless another extension is granted, the chief judge will report the failure to the appropriate judicial council. At that point a party is entitled to make a motion to the chief judge for an order that the matter be reheard.
- 262** At least one tribunal dealing with tenancies in another jurisdiction has adopted a process for addressing protracted delays in decision making. The Quebec Administrative Housing Tribunal rules of procedure provide that decisions must be rendered within three months of the date they were “taken under advisement.” If a decision maker fails to render a decision within that time frame, the Tribunal chair or Vice Chair may remove them and order that the case be assigned to another adjudicator.

²⁵ *Courts of Justice Act*, RSO 1990, c C.43, s 123(5).

263 The Government of Ontario should consider amending the *Residential Tenancies Act, 2006* to provide the authority to the Associate Chair of the Board to reassign a case to another decision maker on an expedited basis where an order has been subject to extreme delay. I recognize that such a remedy would be exceptional, as it would require the application to be heard again from the beginning before another member (the Board refers to these as “de novo” hearings). However, in extreme cases, such a process might substantially shorten delays for the participants.

Recommendation 38

The Government of Ontario should consider amending the *Residential Tenancies Act, 2006* to provide the Associate Chair of the Landlord and Tenant Board with the authority to address serious delay in issuing orders through re-assigning applications to another member for re-hearing.

Term expiries

264 Another complication giving rise to delays involves situations where members resign or their terms expire. The *Residential Tenancies Act, 2006* allows adjudicators to issue orders within four weeks of the expiry of their terms. However, if an order is still outstanding after that period, the whole matter has to be heard again.

265 We received several complaints about particularly egregious circumstances connected with members leaving the Board.

Once more from the beginning

266 Unfortunately for some applicants, the requirement to hold a new hearing after a member has left the Board comes on top of other lengthy delays. We heard from a landlord who filed an application for eviction in June 2019 for the personal use of the rental unit for his daughter. The Board heard the matter on September 10 and December 19, 2019. On February 6, 2020, the landlord received notice that the presiding member was no longer with the Board, and the hearing would have to begin afresh. It was scheduled for March 16, 2020, but cancelled due to the arrival of the pandemic. A new hearing didn’t take place until February 12, 2021.

- 267** Another small landlord’s application to end a tenancy for non-payment of rent was initially scheduled for May 13, 2020, but postponed due the moratorium on evictions. It was rescheduled to October, when it was adjourned at the tenant’s request. It was finally heard on December 11, 2020. The eviction order was not issued until July 2021. The tenant then requested a review of the order. In August, the landlord asked the Board to expedite scheduling of the review hearing. She was still awaiting a decision on that request when she learned on October 1, 2021, that hers was one of 59 matters that required a new hearing because the original adjudicator was no longer with the Board. By then, the arrears owed to her were more than \$38,000. As a result, she was behind in her mortgage payments on both the rental property and her own home, and was struggling to pay the \$40,000 that her two children living on the autism spectrum required for therapy.
- 268** Then there was the tenant who filed an application for rent reduction on October 3, 2019. A hearing was scheduled for March 12, 2020, but cancelled due to the pandemic and rescheduled to October 6, 2021. After that hearing, the member resigned before issuing an order. The matter was only finally heard by another member on January 12, 2022 – more than two years after the application was filed.

Hearing Groundhog Day

- 269** In one exceptional case, an application was scheduled for a new hearing twice. The landlord filed an application to evict a tenant for non-payment of rent on February 8, 2021. The hearing was originally scheduled for June 16, 2021. It was then adjourned to be heard by the same member at a later date, but the member’s appointment expired before the hearing was rescheduled. On December 16, 2021, the Board ordered the matter to be heard again by someone else, and the hearing took place on January 26, 2022. However, the member who had presided at the second hearing resigned before issuing an order. By mid-June, the matter had still not been rescheduled, and the landlord reached out to our Office for help. The Board told us the case would be scheduled for hearing in August. By that point, rental arrears had reached \$19,000. As of January 9, 2023, the landlord was still waiting for an order.

Adjourned?

- 270** In another case, the Board’s record keeping appears to have contributed to a frustrating series of events. A landlord filed an application to end a tenancy for non-payment of rent on March 10, 2020. The hearing was initially scheduled for November 23, 2020, and the parties reached an agreement on that date, which the tenant later breached. The landlord wanted to file a new application based on that breach, but was waiting for the order from the November hearing to do so. The

Board's case management system did not clearly indicate that a hearing had taken place. There was a notation that it was adjourned, but the file did not contain an adjournment sheet. The recording of the hearing could not be located, and the adjudicator's name was not listed on the file. By process of elimination, the Board eventually identified the member who must have dealt with the matter, but that member had since left the Board. It scheduled the application to be heard as an adjourned matter, which took place on July 28, 2022 – more than two years after the application was filed.

Social impacts of delays

271 The Executive Director of a municipal not-for-profit agency that provides affordable housing to low-income and vulnerable households called our attention to the social impact that the Board's delays can have on certain tenants. Her agency applied on October 21, 2020 to evict a tenant for non-payment of rent. The application was heard on April 27, 2021, but was adjourned after it started, to be heard by the same member at a later date. The agency heard nothing further until June 13, 2022, when it received notice that the member was no longer with the Board. The hearing was rescheduled for August 9, 2022. The Executive Director observed that the Board's delay had broader social, economic and housing implications. She said vulnerable tenants like the individual in this case would never be able to pay the high arrears accumulated while waiting for a hearing and order. She told us that this would also affect the tenant's future ability to secure affordable housing, as under the *Housing Services Act, 2011*, individuals must maintain a positive housing record to qualify for housing.²⁶ She also noted that given the shortage of community housing, the Board's delay prevented other eligible candidates from having access to the unit.

Not-so-expedited hearing

272 Another landlord filed an application to end a tenancy for illegal acts on January 17, 2021, after the tenant was charged with 24 offences relating to possession of illegal weapons, and significant cash and drugs were found at the rental unit. The landlord alleged that the tenant was selling cocaine and other drugs at the rental unit. Given the seriousness of the situation, the landlord requested an expedited hearing on January 18, 2021, which was granted on January 22. The application was heard on March 3, 2021. However, the member who heard the case left the Board without issuing an order. The application was finally reheard on October 1, 2021, and the order issued on October 6, 2021. By that date, as a result of the criminal charges, the tenant was no longer residing at the unit.

²⁶ See O Reg. 367/11, s 26(1), made under the *Housing Services Act, 2011*, SO 2011, c 6, Sched. 1.

Delay fueling frustration

273 A tenant contacted us about an application she filed on January 19, 2021 regarding her rights. The matter was heard jointly with an application filed by her landlord on November 16, 2021. An order regarding the landlord's application was issued on November 23, but the tenant heard nothing about hers until April 1, 2022, when the Board informed her the member who had heard the case had left the Board without issuing an order. A new hearing was set for November 25, 2022. The tenant complained to our Office about the unfairness of having to incur more legal fees to have her application reheard. She also told us that in March 2022, while she continued to wait for the Board to address concerns she had raised more than a year earlier, her landlord removed propane tanks serving her unit, leaving her with no heat or hot water for 15 days.

Newlyweds without a home

274 A man and his new bride purchased a house from his grandparents. In order to move into the home, he had to file an application with the Board to evict the existing tenants on the basis that he required the property for personal use. He filed the application on June 2, 2021, and a hearing took place on November 8. Then there was silence for seven months, until the Board notified him that the member who heard the case had left the board, and a new hearing would be held on June 29, 2022. He told us he had experienced severe financial troubles because of the Board's delays, as he had to pay the mortgage on the property as well as additional living expenses over a prolonged period.

Tracking of term expiries

275 Tribunals Ontario told us it tracks appointments on an Excel spreadsheet to identify when they are due to expire. The spreadsheet is generally reviewed daily, and at a minimum, weekly. The Board said it attempts to notify members of the impending end of their appointments within four to seven months of their expiry dates. Approximately three months in advance of the expiry of a member's term, the Board will identify the number of cases that the member is "seized of." The Board co-ordinates with the member with the goal of having all matters concluded at least 30 days prior to the term expiry. It then determines the number of outstanding orders and adapts the member's schedule accordingly.

276 Four weeks after a member's term expires, the Board starts scheduling new hearings for any matters where no orders have been issued. We were told that on average, it takes the Board 45-60 days to schedule a new hearing. In July 2022, there were 78 cases waiting for new hearings to be scheduled. Once the matter

has been reheard, the average wait time before an order is issued is 30-60 days. The Board does not specifically track outstanding orders from such hearings.

- 277** As demonstrated by the complaints my Office received, it can be extremely vexing for participants, particularly if they have already experienced substantial delay before a matter is heard, to learn that their case has to be rescheduled for hearing before another member. While the Board may not be able to predict when a member is about to resign, it can foresee the expiration of member terms. Tribunals Ontario and the Board should develop a more rigorous process for tracking term expiries that includes careful consideration of the number and age of outstanding orders associated with members whose terms are about to end. In doing so, they should also review historical information about the number of new hearings required as a result of the expiration of member terms. Using this data, the Board should evaluate whether the three-month timeframe it currently uses to trigger close review of a member's outstanding orders is reasonable, or whether a longer period should be adopted.
- 278** The Board should also ensure that no new matters are assigned to members whose terms are due to expire and who are significantly behind in issuing orders. It should also avoid assigning cases that have already been substantially delayed to members who have limited time left in their appointments.

Recommendation 39

Tribunals Ontario and the Landlord and Tenant Board should develop a rigorous process for tracking members whose terms are about to expire, which takes into consideration the number and age of outstanding orders associated with such members.

Recommendation 40

Tribunals Ontario and the Landlord and Tenant Board in developing the process referred to in Recommendation 39, should consider historical information about de novo hearings and select a reasonable time period for detailed examination of outstanding orders associated with members whose terms are due to expire.

Recommendation 41

The Landlord and Tenant Board should avoid assigning applications for hearing to members whose terms are due to expire, and who have a significant inventory of pending orders.

Recommendation 42

The Landlord and Tenant Board should avoid assigning applications in which there have already been significant delays to members whose terms are due to expire.

279 One solution for such situations might simply be for the Government, the Ministry, Tribunals Ontario, and the Board to develop an expedited process allowing for brief reappointments. Given the normally cumbersome nature of the appointment process, this may present a challenge. However, it is worth the effort if it succeeds in eliminating the prejudice to parties that currently results when member departures necessitate rehearing of cases that have already been significantly delayed.

Recommendation 43

The Government of Ontario, the Ministry of the Attorney General, Tribunals Ontario and the Landlord and Tenant Board should develop an expedited process for short-term reappointments of members to allow them to complete outstanding orders.

280 It may also be time for the Government of Ontario to consider revisiting the section of the *Residential Tenancies Act, 2006*, which places a four-week limit on extensions of members' terms to allow them to finish outstanding decisions.²⁷ Not all tribunal members in Ontario are similarly restricted. The *Statutory Powers Procedure Act*, which applies to many tribunals in the province, including other tribunals clustered under Tribunals Ontario, deems member terms to continue past expiry for the purpose of participating in decision-making.²⁸ There is no time limit prescribed for this purpose. In the case of the Board, the *Residential Tenancies Act, 2006* expressly excludes the operation of this provision. Given the chronic delays the Board has experienced in holding hearings and in issuing orders, the Government should reconsider the four-week limit and expand the period that members may continue to work on their orders after their terms expire. Such an amendment would also be helpful during election periods, and could be used to address the concern targeted by Recommendation 9.

Recommendation 44

The Government of Ontario should consider amending the *Residential Tenancies Act, 2006* to extend the time that member terms are deemed to continue for the purpose of completing outstanding orders.

²⁷ RTA, *supra* note 1, s 173.

²⁸ *Statutory Powers Procedures Act*, *supra* note 24, s 4.3.

Tracking mediation

- 281** In addition to its challenges with tracking outstanding adjudicator orders, the Board has limited insight into the status of mediated matters. Not all applications proceed to hearing; in some cases, the parties are offered mediation. If they consent, the matter is diverted to the Board's mediation stream. Board staff known as dispute resolution officers are responsible for conducting mediations and facilitating mediated settlements. Dispute resolution officers can self-assign files from the system. They retain carriage of cases until they are either resolved through mediation or forwarded for hearing, if mediation is unsuccessful. The Board does not record any mediation activities in its case management system, or track which cases are assigned to which dispute resolution officers. Occasionally, an officer or an adjudicator might note in the system that a matter has gone to mediation. The rationale given by the Board for limiting references to mediation in its system is that settlement discussions are considered privileged and confidential.
- 282** Unfortunately, the Board's failure to track mediation leaves it unaware of how many matters are in the process of mediation, or the status of those matters. For instance, in response to a recent inquiry about a case in which the application fee was refunded to a landlord, the Board was unable to determine whether the matter had been heard by an adjudicator or mediated, and why the refund was issued, as there was no relevant information in its system.
- 283** Even when the Board can determine which dispute resolution officer was assigned to a file, it does not actively monitor outstanding matters. We followed up on a case in which the parties mediated a settlement of an eviction application based on personal use. While the landlord was waiting for the Board's formal confirmation of the terms, the tenant breached the agreement. We were told that the Board was able to determine which dispute resolution officer had been assigned to the case, but it was reassigned because the officer was on leave. In January 2023, after our inquiries about its mediation record-keeping practices, the Board instituted a process where a designated staff person assigns mediation files to specific dispute resolution officers and records the information on a "tracker" document outside of its case management system. The tracker indicates all cases involving requests for mediation. However, the Board still has limited information about mediation files in its case management system and does not specifically track mediation status and outcomes, which has generated complaints to my Office.
- 284** I fail to see how keeping track of the status of mediations, including information on whether or not a mediated settlement has been reached, would undermine the confidentiality of settlements. The Board should expand the mediation information

that it tracks in its case management system. If necessary, it can address any issues relating to privilege by limiting access to this information. The Board should also establish a process to address situations where the parties fail to arrive at a mediated settlement or where a party indicates that a mediation agreement has been breached.

Recommendation 45

The Landlord and Tenant Board should configure its case management system in order to track mediation assignments to dispute resolution officers, and the status of mediations.

Recommendation 46

The Landlord and Tenant Board should establish a process to address cases where mediation is unsuccessful and where parties indicate a mediated settlement has been breached.

French language services

- 285** The Board is a government agency within the meaning of the *French Language Services Act* and, as such, must provide services to the public and related communications in French at its head office and in designated areas. In 2019, Tribunals Ontario adopted a policy, updated in November 2022, undertaking to provide service in French throughout Ontario. Tribunals Ontario's commitment includes ensuring that bilingual and French-language proceedings are scheduled within timeframes equivalent to those applying to proceedings in English.
- 286** During the course of our investigation, we identified several issues impacting the timeliness of Board hearings, orders and decisions in French.

Requests for French services

- 287** Prior to the pandemic, the Board normally assigned bilingual members to hear blocks of cases in the Eastern Region, where participants frequently require service in French. However, with the Board's transition to virtual hearings because of the pandemic, French-speaking landlords and tenants from this region were no longer able to rely on the presiding member having the capacity to function in French. In order to guarantee French service, participants were required to file their application in French, or contact the Board to request services in French if they were the responding party to a matter filed in English. If they did not take this action, the matter would likely be assigned to a member who did not speak French.

- 288** For applications filed in English, the Board sends respondents a notice of hearing in English, with a line at the bottom indicating that they should contact the Board if they wish to receive the notice in French. Several individuals told us that responding parties who attempted to contact the Board to request French language services experienced excessive wait times and dropped calls at the Board's contact centre. The Board subsequently told our investigators it had added information to its website explaining that requests for French language services could also be made by email, not only by phone. It returned to a regional scheduling model in January 2021, but reverted to a provincial scheduling model in June 2022.
- 289** Our Office's French Language Services Unit also received complaints in the latter half of 2020 about premature phone disconnections and extended wait times for French language service options at the Board. We brought these issues to the Board's attention, and in January 2021, it advised our French Language Services Unit that it had hired three additional bilingual customer service representatives, leading to reduced wait times.
- 290** The Board also updated its forms to make it easier for an applicant to identify their French language service needs. However, the current request form only addresses the needs of the applicant. There is no option for an English-speaking applicant to identify that the respondent is French-speaking. The Board relies on the respondent requesting services in French. The hearing package sent to respondents includes information about requesting services in French. However, if a respondent does not do so, the matter might not be assigned to a bilingual member, and could result in an adjournment on the hearing day. The Board has an obligation to ensure that parties are aware that they can request a hearing in French, and that a respondent's need for a French hearing is identified well in advance. Failure to do so can result in needless delays while matters are adjourned awaiting assignment to a bilingual member.
- 291** In order to avoid such delays, the Board must ensure that it identifies the French language requirements of participants at the earliest opportunity. The Board's notices of hearing should clearly indicate the steps that parties must take to inform the Board of their desire to exercise the right to a bilingual hearing. The Board should also implement a simple process for making such requests – for instance, by enabling parties to do so online without the need to contact the Board by phone or email. It should also make further refinements to its application forms to allow applicants to identify if respondents may require services in French. Where such situations are identified, the Board should follow up directly with respondents who may require hearing services in French to confirm whether a bilingual member is required, or automatically schedule a bilingual member to hear the matter.

Recommendation 47

The Landlord and Tenant Board should amend its notices of hearing to clearly outline the steps parties can take to make requests for bilingual hearings.

Recommendation 48

The Landlord and Tenant Board should implement a simplified online process for respondents to identify their French language service needs.

Recommendation 49

The Landlord and Tenant Board should amend its application forms to enable applicants to identify potential French language service needs of the respondent.

Recommendation 50

The Landlord and Tenant Board should follow up directly with any respondents that applicants have identified as potentially requiring French language services in order to confirm whether a bilingual adjudicator should be scheduled to hear the matter or take other measures such as automatically scheduling a bilingual member to hear the matter in such circumstances.

Volume of French language services requests

- 292** Historically, the Board has not had the ability to accurately track all cases in which French language services have been requested and provided. It does monitor how many applications were filed in French, but does not keep track of instances where requests for service in French are made later in the process (for instance, when an application is made in English, but the respondent requests service in French on the hearing day). The Board also does not compile statistics that would allow comparison between the time taken to process files requiring French language services versus English-only files. Collecting this information would allow the Board and Tribunals Ontario to assess whether the Board is meeting its obligation of providing equivalent service without delay.
- 293** Tribunals Ontario should ensure that its new case management system has the capacity to collect information about all cases at the Board where French language services are provided, and track the length of time taken to process such files. The Board should use such information to conduct statistical analysis, to assess the

timeliness of the provision of French language services, and identify problem areas so these can be rectified.

Recommendation 51

Tribunals Ontario and the Landlord Tenant Board should ensure that the case management system has the capacity to collect information about all cases in which French language services are requested and provided and identify the length of time taken at each stage to process such files.

Recommendation 52

The Landlord and Tenant Board should conduct statistical analysis comparing the length of time taken to process files in which French language services are provided to the length of time taken to process files only in English.

Recommendation 53

The Landlord and Tenant Board should take steps to remedy any problem areas in the timeliness of service identified through the analysis referred to in Recommendation 52.

Adjournments

294 The Board cannot prevent parties from making last-minute requests for service in French on the day of a scheduled hearing. However, when this does occur, it should implement a robust process to ensure such adjourned matters are prioritized for rescheduling. This would enable French-speaking parties to feel confident that exercising their right to receive service in French will not create significant further delay, and that other parties to the proceeding are not negatively impacted by an extended delay.

Recommendation 54

The Landlord and Tenant Board should take steps to ensure that hearings adjourned because of last-minute requests for French language service are prioritized for rescheduling.

Issuing orders in French

295 Current and former Board members told us that the Board’s legacy case management system lacks adequate French capabilities and cannot generate orders in French. Some commented that if the system could issue orders in French, it would expedite the process. Tribunals Ontario and the Board should ensure that its new case management system has full bilingual functionality to assist with the efficient issuance of orders. We understand that a French template to assist in order preparation is being uploaded to its system. At present, orders are prepared in English then sent to a translation service.

Recommendation 55
Tribunals Ontario should ensure that its case management system has full bilingual functionality for issuing orders.

Ensuring sufficient bilingual members

296 The Board does not have any “designated” bilingual adjudicative positions nor a specific target for how many bilingual members it requires. One bilingual member told us that at one point in 2020, it had only one member capable of providing service in French, which limited its ability to handle such cases in a timely manner. The Board was subsequently able to increase its roster of bilingual members to eight, but that number has now decreased to four.

297 A senior Board official told us that it has engaged in recruitment specifically targeted to the Francophone legal community in the hope of increasing the number of French-speaking candidates. We were also advised that the Board attempts to maximize its bilingual resources. For instance, some members may not be sufficiently proficient to conduct oral hearings in French, but they can be assigned to conduct “written” hearings, which involve reviewing documents and issuing orders in French. Tribunals Ontario and the Board also told us that they identify members who have a solid base in French but are not quite capable of presiding over hearings, and offer them French lessons or other opportunities to improve their language skills so that they can increasingly assume responsibilities in French.

298 Tribunals Ontario and Board officials also observed that cross-appointments of members to multiple tribunals are especially useful for bilingual members. They noted that cross-appointments enable Tribunals Ontario to leverage bilingual human resources across tribunals and redeploy members where required to ensure equivalency of service in French. However, one Tribunals Ontario official

acknowledged that it is challenging to use cross-appointed members to address Board applications, given the complexity of its rules and the time required to train members.

- 299** Collection of comprehensive information about the nature of French language services at the Board would provide the Board with a more accurate picture of the true demand for such services. It would also help the Board identify the number of bilingual members required to provide timely bilingual coverage, and plan for recruitment of bilingual members. Tribunals Ontario and the Board should work together to formalize a recruitment and retention strategy directed at ensuring that the Board has sufficient qualified bilingual members to meet current and future demand for French language services.

Recommendation 56

The Landlord Tenant Board should analyze information relating to the number of cases in which French language services are provided to identify the number of bilingual members required for equivalent French language services without delay across the province.

Recommendation 57

Tribunals Ontario and the Landlord and Tenant Board should develop a formal recruitment and retention strategy for recruiting and retaining bilingual members.

French language services training

- 300** Tribunals Ontario told us it provides all adjudicators with initial French language services training during their orientation/onboarding at Tribunals Ontario. This training is available in French and English. The training provides an overview of the *French Language Services Act*, Tribunals Ontario’s French Language Services Policy, “active offer” (this involves bringing attention of the availability of French language services to those seeking services at the first contact with them),²⁹ and the conduct of hearings and mediation processes in French. French language services resources are also available for bilingual members.
- 301** As part of an ongoing training strategy to maximize the capacity of its bilingual adjudicator complement, Tribunals Ontario has provided French language training to bilingual adjudicators to maintain and develop their French skills in a legal context. In January 2022, Tribunals Ontario’s French Language Services Committee, in partnership with the Ministry’s Office of the Coordinator on French

²⁹ On April 1, 2023, prescribed measures regarding “active offer” came into effect. See O Reg. 544/22.

Language Services, held a two-day online French language services conference. This event included sessions on plain-language French in a legal setting, and interactive workshops allowing members to practice their French, including simulated adjudication sessions, which complemented Tribunals Ontario's training passport.

- 302** Since November 2022, all adjudicators have also been provided with links to Tribunals Ontario's French Language Services Policy. Tribunals Ontario provides additional training on "active offer" to ensure that French language services are "clearly visible, readily available, easily accessible, publicized, and of equivalent quality to services offered in English." In addition, it has formed a French Language Services Task Force to make recommendations to improve service in French.
- 303** Bilingual adjudicators are supported with resources in the Tribunals Ontario French Language Services SharePoint library, which was developed in 2021 as a centralized resource tool for French-speaking staff and adjudicators, and includes information such as lexicons, sample decisions, scripts, and templates.
- 304** Tribunals Ontario also regularly offers other opportunities for French language training to adjudicators, such as "French Language in a Legal Context" – specialized legal training provided in French by the Ministry. This year, it will also offer supplementary French training sessions tailored for individual tribunals, such as the Board, including hands-on mock hearing and mediation practice and adjudication and administrative law principles in French. The Board also holds best practice sessions with French-speaking members to refine French active adjudication skills.
- 305** As well, Tribunals Ontario counsel advised us they are working on a French language services resource for adjudicators and staff. This resource will provide an overview of French language services obligations, sample scenarios, and guidance on how to respond to and manage specific issues, procedures, and other items.

Administrative Justice Delayed

- 306** Despite the dozens of specific recommendations I have already made, addressed at improving efficiencies at the Board at virtually every stage, I believe that more is required to reverse the Board's fortunes in the short term. Over the past few years, the Board has proven itself unequipped for the task of reducing its extraordinary backlog of applications. More importantly, those applications represent tens of thousands of Ontarians suffering hardship caused by the Board's inability to

provide timely service. As an administrative tribunal, the Board is fundamentally failing in its role of providing swift justice to those seeking resolution of residential landlord and tenant issues. In doing so, it is denying justice to a significant segment of Ontarians. The Ministry, Tribunals Ontario, and the Board should work together to develop an aggressive strategy for reducing the backlog at the Board as soon as possible. I am also calling on the Government of Ontario to support them in this effort.

Recommendation 58

The Government of Ontario, the Ministry of the Attorney General, Tribunals Ontario and the Landlord and Tenant Board should work together to develop and implement a strategy for reducing the backlog at the Board as soon as possible.

Opinion

- 307** The phrase “perfect storm” is often overused, but it is undoubtedly apt in the case of the now-endemic delays at the Board. A combination of an election, change of government, antiquated technology, a host of inefficient practices, and a global pandemic contributed to a situation in which the Board has been overwhelmed by a multi-year backlog of tens of thousands of applications. Where once it took the Board a matter of days to schedule hearings, it now takes an average of seven to eight months – and scheduling of some tenant applications can take up to two years. Even after applications are finally heard, parties must often wait significant periods for orders to be issued. The Board’s excruciatingly long delays have had immense negative impacts on the thousands of landlords and tenants who depend on it to resolve their tenancy issues. We heard from many of those trapped in the queue on both sides of the landlord/tenant relationship – some forced to live in unsafe and substandard conditions, and others facing financial ruin.
- 308** The early signs of crisis at the Board emerged shortly after the 2018 provincial election, when the number of its adjudicators plummeted and significantly affected its ability to hear applications. I recognize that some delays in member appointments are inevitable, given the multi-party and multi-stage appointment process, as well as the political nature of elections. In light of this, I have recommended to the Government that it consider a legislative amendment that might reduce the risk of the Board’s roster of adjudicators being depleted in connection with future elections. However, my investigation also found that Tribunals Ontario, the Board and the Ministry of the Attorney General could have done much more to create efficiencies in the administrative process related to

member appointments. These bodies all bear some responsibility for the situation the Board found itself in when I began my investigation.

- 309** It is my opinion that the Ministry of the Attorney General’s conduct relating to the appointment process was unreasonable under s. 21(1)(b) of the *Ombudsman Act*.
- 310** Soon after my investigation commenced, the number of adjudicators available to the Board increased substantially. However, the Board has continued to struggle with a substantial backlog, to the detriment of those it serves. The global pandemic, along with two moratoriums on eviction, undoubtedly played a role in delays. But my investigation also identified many areas where practices were deficient, including recruitment and appointment of members, application screening, scheduling and case triage, managing adjournments, identification and processing of urgent cases, tracking of the expiration of member terms, order issuance, monitoring of outstanding orders and mediations, and identification and processing of cases requiring services in French. Accordingly, in my opinion, the conduct of the Landlord and Tenant Board and Tribunals Ontario, to which the Board has reported since January 2019, has also been unreasonable under s. 21(1)(b) of the *Ombudsman Act*.
- 311** I have made numerous recommendations addressed at improving the efficiency of the Board’s processes, which I hope will assist its efforts to manage applications and reduce waiting times. In addition to recommendations directed to the Landlord and Tenant Board, Tribunals Ontario and the Ministry of the Attorney General, I have made several recommendations to the Government of Ontario relating to maintaining an adequate complement of adjudicative resources at the Board and implementation of a strategy to reduce the backlog. These include recommendations that the Government consider legislative amendments to the *Residential Tenancies Act, 2006* to sustain an appropriate member complement and reduce protracted delays in issuing orders.
- 312** I am committed to monitoring the efforts of the Landlord and Tenant Board, Tribunals Ontario and the Ministry of the Attorney General to address my recommendations and the issues and concerns raised in this report.

Recommendation 59

The Landlord and Tenant Board should report back to my Office in six months’ time on its progress in implementing my recommendations, and at six-month intervals thereafter until such time as I am satisfied that adequate steps have been taken to address them.

Recommendation 60

Tribunals Ontario should report back to my Office in six months' time on its progress in implementing my recommendations, and at six-month intervals thereafter until such time as I am satisfied that adequate steps have been taken to address them.

Recommendation 61

The Ministry of the Attorney General should report back to my Office in six months' time on its progress in implementing my recommendations, and at six-month intervals thereafter until such time as I am satisfied that adequate steps have been taken to address them.

Recommendations

- 1. The Attorney General, Ministry of the Attorney General, Tribunals Ontario, and the Landlord and Tenant Board should enter a memorandum of agreement setting out a fixed complement of members for the Board and a method for revising the complement in response to changing circumstances.**
- 2. The Attorney General, Ministry of the Attorney General, Tribunals Ontario, and the Landlord and Tenant Board should include in the memorandum of agreement referred to in Recommendation 1, provision for additional operational resources to support any increased member complement.**
- 3. The Government of Ontario should take steps to ensure that the Landlord and Tenant Board's member and staff complement, as established in accordance with Recommendations 1 and 2, is maintained.**
- 4. The Ministry of the Attorney General, Tribunals Ontario, and the Landlord and Tenant Board should agree on a definition of part-time and cross-appointed work to ensure that there is a common understanding of the minimum time such appointees should be expected to dedicate to matters before the Board.**
- 5. Tribunals Ontario and the Landlord and Tenant Board should develop a policy relating to recruitment of members to enhance operational stability and better ensure that the Landlord and Tenant Board maintains adequate adjudicative capacity.**

- 6. Tribunals Ontario and the Landlord and Tenant Board should develop a policy and procedure for the timely reappointment of members to ensure that the Board's adjudicative services are not interrupted by a shortage of members.**
 - 7. The Ministry of the Attorney General should develop a more efficient mechanism for providing Tribunals Ontario with the necessary information and documentation regarding candidates to execute timelier appointments to tribunals, including the Landlord and Tenant Board.**
 - 8. Tribunals Ontario and the Ministry of the Attorney General should minimize duplication in the candidate vetting process and enter into an agreement for the sharing of relevant information about appointments that Tribunals Ontario has obtained through its vetting process.**
 - 9. The Government of Ontario should consider amending the *Residential Tenancies Act, 2006* to provide for extension of member terms for a period of time before and after a provincial election to ensure that the Landlord and Tenant Board retains sufficient members to effectively carry out functions under the Act.**
 - 10. Tribunals Ontario and the Landlord and Tenant Board should develop a formal strategy relating to recommendations for appointments, including term lengths, prior to election years.**
 - 11. The Ministry of the Attorney General, Tribunals Ontario and the Landlord and Tenant Board should work together to ensure that staggered appointment terms are proposed to ensure consistent adjudicative coverage for the Landlord and Tenant Board.**
 - 12. Tribunals Ontario and the Landlord and Tenant Board should ensure that the level of training required by the training passport is maintained and that training opportunities are not limited in future.**
 - 13. The Landlord and Tenant Board should establish a consistent and thorough screening process for early identification of errors to ensure applicants have an opportunity to remedy them prior to scheduling a hearing.**
 - 14. The Landlord and Tenant Board should include guidance with all notice forms for termination of a tenancy identifying what information must be included and cautioning that failure to include this information may result in the application being dismissed.**
 - 15. The Landlord and Tenant Board should immediately triage outstanding tenant applications, and identify and schedule matters that are significantly aged.**
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16. The Landlord and Tenant Board should schedule tenant applications more frequently and set more realistic time frames for hearings of these matters.

17. The Landlord and Tenant Board should revise its operational procedures concerning requests for expedited hearings to include reference to the standardized response to be used by staff in replying to individuals who have not used the Request to Extend or Shorten Time form.

18. The Landlord and Tenant Board should develop a separate form for requests to shorten the time before hearings take place.

19. The Landlord and Tenant Board should, if it reinstitutes its practice of expediting applications to end a tenancy for illegal acts and causing serious problems in a rental unit or residential complex, indicate on the applications and any corresponding instructions that they are considered urgent and submission of a Request to Extend or Shorten Time form is unnecessary.

20. The Landlord and Tenant Board should, if it reinstitutes its practice of expediting applications to end a tenancy for illegal acts and causing serious problems in a rental unit or residential complex, revise the Request to Extend or Shorten Time Instruction Guide to clarify that an application to end a tenancy because of illegal acts or for causing serious problems in a rental unit or residential complex is considered urgent and does not require submission of the form.

21. The Landlord and Tenant Board should revise its form for requesting an expedited hearing to ensure that there is adequate room for requestors to include multiple application numbers.

22. The Landlord and Tenant Board should train members on adjudicating requests for expedited hearings including using case examples.

23. The Landlord and Tenant Board should regularly audit decisions regarding expedited hearing requests to identify concerns, further training needs, and areas requiring process improvement.

24. The Landlord and Tenant Board should implement a process for triaging urgent cases for scheduling.

25. To assist with prioritizing applications for hearing, the Landlord and Tenant Board should configure its new case management system to produce reports showing the length of time urgent matters have been outstanding, or alternatively develop another method for producing such reports.

26. The Landlord and Tenant Board should establish a set notice period between issuance of a hearing notice and the date of hearing, subject to defined exceptions where a shorter notice period would be permitted.

27. Tribunals Ontario and the Landlord and Tenant Board should provide dedicated real-time technical assistance to its members and hearing participants to improve the accessibility and timeliness of its hearing processes.

28. The Landlord and Tenant Board should review and revise its hearing processes to ensure that technical glitches and the order in which moderators admit participants into hearing rooms do not negatively impact the adjudication of their matters.

29. The Landlord and Tenant Board should implement a process to expeditiously address problems that arise at hearings due to technical glitches and the timing of moderated admission into hearing rooms.

30. The Landlord and Tenant Board should ensure that in future it does not consider members that have been assigned cases for hearing seized of any matters that they have adjourned without hearing.

31. The Landlord and Tenant Board should configure its new case management system to track adjournments, reasons for adjournment, and member instructions relating to adjournments in order to identify cases for priority scheduling and increase scheduling efficiency or alternatively, the Board should develop another effective means for tracking this information.

32. The Landlord and Tenant Board should designate a staff person to update the case management system after hearings and ensure adjourned cases are assigned for rescheduling and appropriately identified for priority scheduling.

33. The Landlord and Tenant Board should designate a staff person to record in its case management system the members assigned to cases and responsible for issuing orders following hearings.

34. The Landlord and Tenant Board and Tribunals Ontario should implement a case management system modification that allows for comprehensive monitoring of outstanding orders, including capacity to track the length of time orders are outstanding and the specific members responsible for them.

35. The Landlord and Tenant Board should revise its Outstanding Order Reports: Process and Protocol to reflect its current expectations and practices.

36. The Landlord and Tenant Board should ensure that the Outstanding Order Reports: Process and Protocol includes clear information about how members can request assistance when they fall behind in order production.

37. The Landlord and Tenant Board should ensure that members, who fall behind in the preparation of orders, are provided with assistance expeditiously when they reach out for help.

38. The Government of Ontario should consider amending the *Residential Tenancies Act, 2006* to provide the Associate Chair of the Landlord and Tenant Board with the authority to address serious delay in issuing orders through re-assigning applications to another member for re-hearing.

39. Tribunals Ontario and the Landlord and Tenant Board should develop a rigorous process for tracking members whose terms are about to expire, which takes into consideration the number and age of outstanding orders associated with such members.

40. Tribunals Ontario and the Landlord and Tenant Board in developing the process referred to in Recommendation 39, should consider historical information about de novo hearings and select a reasonable time period for detailed examination of outstanding orders associated with members whose terms are due to expire.

41. The Landlord and Tenant Board should avoid assigning applications for hearing to members whose terms are due to expire, and who have a significant inventory of pending orders.

42. The Landlord and Tenant Board should avoid assigning applications in which there have already been significant delays to members whose terms are due to expire.

43. The Government of Ontario, the Ministry of the Attorney General, Tribunals Ontario and the Landlord and Tenant Board should develop an expedited process for short-term reappointments of members to allow them to complete outstanding orders.

- 44. The Government of Ontario should consider amending the *Residential Tenancies Act, 2006* to extend the time that member terms are deemed to continue for the purpose of completing outstanding orders.**
- 45. The Landlord and Tenant Board should configure its case management system in order to track mediation assignments to dispute resolution officers, and the status of mediations.**
- 46. The Landlord and Tenant Board should establish a process to address cases where mediation is unsuccessful and where parties indicate a mediated settlement has been breached.**
- 47. The Landlord and Tenant Board should amend its notices of hearing to clearly outline the steps parties can take to make requests for bilingual hearings.**
- 48. The Landlord and Tenant Board should implement a simplified online process for respondents to identify their French language service needs.**
- 49. The Landlord and Tenant Board should amend its application forms to enable applicants to identify potential French language service needs of the respondent.**
- 50. The Landlord and Tenant Board should follow up directly with any respondents that applicants have identified as potentially requiring French language services in order to confirm whether a bilingual adjudicator should be scheduled to hear the matter or take other measures such as automatically scheduling a bilingual member to hear the matter in such circumstances.**
- 51. Tribunals Ontario and the Landlord Tenant Board should ensure that the case management system has the capacity to collect information about all cases in which French language services are requested and provided and identify the length of time taken at each stage to process such files.**
- 52. The Landlord and Tenant Board should conduct statistical analysis comparing the length of time taken to process files in which French language services are provided to the length of time taken to process files only in English.**
- 53. The Landlord and Tenant Board should take steps to remedy any problem areas in the timeliness of service identified through the analysis referred to in Recommendation 52.**
- 54. The Landlord and Tenant Board should take steps to ensure that hearings adjourned because of last-minute requests for French language service are prioritized for rescheduling.**
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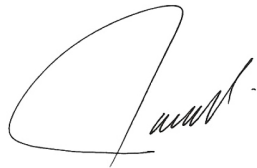
- 55. Tribunals Ontario should ensure that its case management system has full bilingual functionality for issuing orders.**
- 56. The Landlord Tenant Board should analyze information relating to the number of cases in which French language services are provided to identify the number of bilingual members required for equivalent French language services without delay across the province.**
- 57. Tribunals Ontario and the Landlord and Tenant Board should develop a formal recruitment and retention strategy for recruiting and retaining bilingual members.**
- 58. The Government of Ontario, the Ministry of the Attorney General, Tribunals Ontario and the Landlord and Tenant Board should work together to develop and implement a strategy for reducing the backlog at the Board as soon as possible.**
- 59. The Landlord and Tenant Board should report back to my Office in six months' time on its progress in implementing my recommendations, and at six-month intervals thereafter until such time as I am satisfied that adequate steps have been taken to address them.**
- 60. Tribunals Ontario should report back to my Office in six months' time on its progress in implementing my recommendations, and at six-month intervals thereafter until such time as I am satisfied that adequate steps have been taken to address them.**
- 61. The Ministry of the Attorney General should report back to my Office in six months' time on its progress in implementing my recommendations, and at six-month intervals thereafter until such time as I am satisfied that adequate steps have been taken to address them.**

Response

- 313** Tribunals Ontario and the Ministry of the Attorney General were given an opportunity to review and respond to my preliminary findings, opinion, and recommendations. Their comments have been incorporated, as warranted, into this final report.
- 314** Tribunals Ontario, which responded on behalf of the Board, acknowledged “the significance and value” of my report and observed that it was “thorough” and “fair.” It accepted all of my recommendations and told me that it is actively working to implement them as a “top priority.”

- 315** In addition, Tribunals Ontario provided comments related to specific recommendations. For instance, I have made several recommendations to address the existing limit on the ability of Board members to complete decision-making after their appointments expire (**Recommendations 9, 43, 44**). Tribunals Ontario commented that **Recommendation 43** – which calls for short-term extensions of members’ terms would lead to increased workload and delays. As an alternative, it noted the simplest way to address the issue would be to eliminate the limitation in the *Residential Tenancies Act, 2006*.
- 316** **Recommendation 13** addresses situations where cases collapse after many months because of fatal technical flaws in applications and calls for the Board to implement a process for early identification of errors. Tribunals Ontario indicated that it agreed with screening applications filed by individuals and small-scale landlords. But it commented that this would be labour-intensive and resources should not be expended on screening applications from professional representatives and large corporations. It said the cost of screening applications should be analyzed “compared to the cost of sending them to hearing where they may be ultimately dismissed.”
- 317** Tribunals Ontario also indicated that it could look at improving its forms (**Recommendation 14**) and that dedicated real-time technical assistance for hearing participants was launched on April 19, 2023 (addressing **Recommendation 27**, in part).
- 318** As for my recommendation that it and the Board develop a formal recruitment and retention strategy for recruiting and retaining bilingual members (**Recommendation 57**), Tribunals Ontario said it has implemented an outreach strategy in partnership with French-speaking associations to target French-speaking candidates. It has also communicated with the Ministry regarding potential additional partners to expand its outreach efforts.
- 319** Finally, Tribunals Ontario undertook to provide me with further details of its plans to address my recommendations and updates on its progress.
- 320** The Ministry of the Attorney General observed that my report was “comprehensive and thoughtful” and that it took my report and recommendations “very seriously.” It also noted that work is well underway at Tribunals Ontario and the Ministry “to address many of the issues identified in the report.” The Ministry agreed with my recommendations and to provide me with further details of its plans to address them, as well as updates on its progress.

- 321** In early April 2023, during the time the Ministry, Board and Tribunals Ontario were given to review my preliminary findings and prepare their responses, the Government of Ontario announced that it was “taking steps to support renters and rental housing providers by increasing the number of adjudicators and staff at the Landlord and Tenant Board to speed up decision timeframes, as well as strengthening a broad range of tenant protections.” It stated that it is investing \$6.5 million to appoint an additional 40 adjudicators, effectively doubling the number of full-time adjudicators, and to hire five staff at the Board. It said these changes are directed at improving service standards and reducing the number of active applications and decision timeframes.
- 322** I am cautiously optimistic that the planned infusion of adjudicative resources will help the Board provide more timely and efficient services to the public. However, I urge the Government of Ontario to act quickly to increase the Board’s adjudicative capacity and fund the additional staff required to support the new members. Otherwise, given the timelines involved in recruitment and training, the positive impacts of this initiative could be significantly delayed. In addition, as my investigation has revealed, there are numerous problems with the Board’s administrative functioning, some of which will require legislative changes to fix.
- 323** I am pleased with the commitments by Tribunals Ontario and the Ministry of the Attorney General to implement my recommendations and to work towards ensuring that the Board provides the level of service the public of Ontario deserves. I will closely follow the progress of Tribunals Ontario and the Ministry in tackling the Board’s chronic delays.



Paul Dubé
Ombudsman of Ontario

Our Values:

Fair treatment

Accountable administration

Independence, impartiality

Results: Achieving real change

Our Mission:

We strive to be an agent of positive change by promoting fairness, accountability and transparency in the public sector and promoting respect for French language service rights as well as the rights of children and youth.

Our Vision:

A public sector that serves citizens in a way that is fair, accountable, transparent and respectful of their rights.


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