

# THE EMACIATION OF ONTARIO'S LABOUR RELATIONS BOARD AND HUMAN RIGHTS TRIBUNAL

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According to a report of the Society of Adjudicators and Regulators (SOAR),<sup>[1]</sup> Ontario's Labour Relations Board, Human Rights Tribunal and other administrative tribunals will soon face significant negative effects on their ability to perform their mandates.

Why is this occurring, how will it impact our clients and what can be done about it?

## The Problem

An Addendum to the Government Appointees Directive states that effective September 1, 2006, subject to certain exceptions, the term of appointment to a given position on a regulatory or adjudicative agency is a maximum of 10 years.<sup>[2]</sup>

At first blush, this may seem like a positive directive. It may appear that limiting appointment terms to adjudicative tribunals would be conducive to renewal and diversity. However, the data collected by SOAR is less encouraging.

## Impact of the Addendum 10 Year Cap

SOAR concluded that, based on the data it reviewed, some tribunals stand to lose over 50% of their current appointees in a two-year period.<sup>[3]</sup> The tribunals that will be most directly and clearly affected are those that require a high degree of subject matter expertise and who have historically relied on a cadre of experienced, long-term appointees and where change of appointee status is not a regular feature of the tribunal.<sup>[4]</sup>

Two of the most clearly impacted tribunals are the Ontario Labour Relations Board (OLRB) and the Human Rights Tribunal of Ontario (HRTO). SOAR predicts that the OLRB will lose 48% of its Order in Council appointees and that the change in average years of experience will drop from 10.3 years to 3.5 years. The HRTO is predicted to lose 50% of its Order in Council appointees, with a change in average years in experience from 6.2 to 3.2.<sup>[5]</sup>

Other tribunals, hearing matters often outside the scope of the work performed by our firm, will be similarly affected.<sup>[6]</sup>

## SOAR's report states:

*"The study shows that the impact of the Directive will vary considerably among [...] tribunals. For some, there will be a profound impact to the point that, if fully implemented, the Directive will mean that the tribunal will be unable to fulfill its statutory mandate. In some cases, the impact will be delayed beyond 2016."*<sup>[7]</sup>

If nothing is done to prevent these impending changes, we predict that our clients with matters before these tribunals will note obvious difficulties as a result of a lack of adjudicative personnel. Chief among them are likely to be the time in which matters are heard, the time in which decisions are rendered and the consistency of decisions given.

## Solutions

There is surprisingly little discourse on the impending changes that Ontario's tribunals, including the HRTO and OLRB, will face. There are obvious practical restrictions on the ability of appointees to seek publicity regarding these changes.

There are some practical solutions available if the Public Appointees Secretariat chooses to implement them. They include: staggering the implementation of the "10 year cap"; granting "exceptions" to tribunals when in the public interest; and each tribunal taking steps to manage its appointments in a way that will permit them to retain expertise.<sup>[8]</sup>

It remains to be seen whether any of these changes will be implemented or if the "10 year cap" will be implemented as originally planned. Hopefully, increased awareness of this potential problem – brought to the forefront by SOAR and others<sup>[9]</sup> – will encourage the government to take steps to avoid a detrimental impact to Ontario's tribunals.

by Adam D.H. Chisholm and Paul Boshyk

[1] [ps2id id='1' target='']/SOAR Advocacy and Innovation Committee, "Study On The Impact Of The Government Directive On Term Limits For OIC Appointments", [https://soar.on.ca/images/Files\\_Not\\_in\\_Doc\\_Library/SOAR\\_Report\\_on\\_the\\_impact\\_of\\_the\\_Directive-on\\_term-limits-for\\_tribunal\\_members.pdf](https://soar.on.ca/images/Files_Not_in_Doc_Library/SOAR_Report_on_the_impact_of_the_Directive-on_term-limits-for_tribunal_members.pdf) ["SOAR Report"].

[2] [ps2id id='2' target='']/SOAR Report at p. 1.

[3] [ps2id id='3' target='']/SOAR Report at p.3.

[4] [ps2id id='4' target='']/SOAR Report at p. 3.

[5] [ps2id id='5' target='']/SOAR Report at p. 3.

[6] [ps2id id='6' target='']/E.g. Social Benefits Tribunal, Criminal Injuries Compensation Board, etc.

[7] [ps2id id='7' target='']/SOAR Report at p. 1.

[8] [ps2id id='8' target="']SOAR Report.

[9] [ps2id id='9' target="']See e.g. S. Ronald Ellis, Q.C., What Happens After the Cap Kicks In, 2014, <http://www.oba.org/Sections/Administrative-Law/Articles/Articles-2015/April-2015/What-Happens-After-the-Cap-Kicks-in>.

### **A Cautionary Note**

The foregoing provides only an overview and does not constitute legal advice. Readers are cautioned against making any decisions based on this material alone. Rather, specific legal advice should be obtained.

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