

April 21, 2021

SENT BY EMAIL: prabmeet.sarkaria@pc.ola.org

Hon. Prabmeet Singh Sarkaria
Associate Minister of Small Business and Red Tape Reduction
Ministry of Economic Development, Job Creation and Trade
7th Floor
56 Wellesley St. W
Toronto, ON
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Dear Associate Minister Sarkaria;

Re: Bill 276, Supporting Recovery and Competitiveness Act, 2021

I am writing on behalf of the Advocacy Centre for Tenants Ontario (ACTO), a community legal clinic funded by Legal Aid Ontario to provide legal services to low-income tenants across Ontario on issues that affect their ability to provide and maintain decent homes for themselves and their families. This includes managing and providing tenant duty counsel services for Ontarians at the Landlord and Tenant Board. Every day tenant duty counsel provides legal services to some of the most marginalized people in the province.

ACTO opposes Bill 276 in its present form and believes it is unlikely any amendments can improve it. This proposed amendment to the Statutory Powers and Procedures Act is a solution to a non-existent problem and a poor use of legislative time during the COVID-19 pandemic.

The strict fines proposed are inappropriate for the Landlord and Tenant Board ("LTB"). Although similar in many respects, the LTB is not a court and rules that work in the court system do not automatically translate to the LTB context, for several reasons.

First, the LTB is a lay tribunal. Adjudicators are appointed from a variety of backgrounds and increasingly receive only brief training before they begin deciding cases. The need for public scrutiny is therefore heightened and should not be "chilled" by the imposition of these massive fines.

Second, unlike the courts where many parties are represented by licensees of the Law Society of Ontario, the LTB processes a huge volume of applications each year and many parties, including the vast majority of tenants, are self-represented. Self-represented parties are unlikely to be familiar with the law and

may inadvertently breach procedural rules while representing themselves. Such breaches should be handled flexibly and tolerantly, not with punitive fines.

Setting such restrictions is also inconsistent with the open courts principle (*Toronto Star v. AG Ontario*, [2018 ONSC 2586](#) (CanLII), where the Superior Court of Justice confirmed that the “open courts principle” applies to Ontario’s tribunals) in a 21st century context. The Court opined that

“administrative hearings governed by the Statutory Powers Procedure Act (“SPPA”) are required to be open to the public. In principle, therefore, it is uncontroversial that “[t]he ‘open court’ principle” – at least in some version – “is a cornerstone of accountability for decision-making tribunals and courts.”

The Court went on to say that,

“The open court principle is the fundamental one and the personal information and privacy concerns are secondary to it. That principle directs administrative tribunals to protect confidentiality only where a party seeking it establishes that it is necessary to protect important interests. Although the decision-maker may be exercising a statutory discretion taking into account the context on a case by case basis, the onus must remain on the party seeking to keep the information from the public rather than the other way around.”

The LTB itself has consistently asked for patience and flexibility from stakeholders while it implements its “Digital First” strategy and adapts to the COVID-19 pandemic. In fact, the Court suggests that privacy concerns are best addressed by the tribunal when a party is seeking it. These proposed changes are inimical to a spirit of flexibility and openness.

Furthermore there are other powers in the Criminal Code (i.e. harassment, stalking) and in the RTA itself (i.e. fines against parties or an observer could be removed from the proceeding) to ensure that parties do not interfere with the work of the Board. People who feel they are being harassed or defamed also have civil remedies available. The LTB itself has the power to levy costs, payable either to another party or to the Board itself, and it is worth noting that traditionally these costs, on the rare occasions they are ordered, tend to be a few hundred dollars, not thousands.

Lastly, these fines raise potential issues regarding access to justice and accommodation under the Ontario Human Rights Code. Many people are not good at taking notes by hand and do not have flawless recall; some people, especially unrepresented parties, might resort to recording a proceeding to assist their comprehension of it. This may be especially tempting to people for whom English is not their first language. Such “self-help” approaches to navigating a

difficult, complicated and stressful legal process should not result in being fined thousands of dollars.

ACTO urges the legislature to reconsider the proposed amendments. Ontarians, in particular tenants, especially low-income, racialized and Indigenous people, are already reeling after a year of COVID-19 restrictions. We are in the third wave of the pandemic. Now is not the time to add further barriers to public participation in the LTB process. Time and energy would be better spent on ensuring that tenant rights are adequately protected and that the LTB works fairly and efficiently for all.

Sincerely,

ADVOCACY CENTRE FOR TENANTS ONTARIO



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