



Legal clinic housing issues committee
Comité des cliniques juridiques en matière de logement

c/o Marcos Gomez, Staff Lawyer
Algoma Community Legal Clinic
marcos.gomez@algo.clcj.ca

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Sean Weir
Executive Chair, Tribunals Ontario
Sean.Weir@ontario.ca

Mira Gamsa
Director of Operations, Tribunals Ontario
Mira.Gamsa@ontario.ca

Harry Gousopoulos
Executive Director, Tribunals Ontario
Harry.Gousopoulos@ontario.ca

Lindiwe Bridgewater
Registrar, Landlord and Tenant Board
Lindiwe.Bridgewater@ontario.ca

Ian Speers
Associate Chair, Landlord and Tenant Board
Ian.Speers@ontario.ca

Sent via e-mail

Dear Mr. Weir, Ms. Gamsa, Mr. Gousopoulos, Ms. Bridgewater, and Mr. Speers:

Re: Proposed LTB Evening and Weekend Schedule

As you know, the Legal Clinic Housing Issues Committee (LCHIC) is a province-wide group of legal workers who assist low-income tenants through Ontario's community legal clinics. We last wrote to you on November 10th with our concerns regarding scheduling, urgent tenant filings and interim orders, and on the Tribunals Ontario Portal.

This letter expands on our previous comments on the evening or weekend hearing schedule proposal after additional information was provided by the LTB at its stakeholder consultation session on November 30th. Our position is that expanding hearings to evenings and weekends is unnecessary and could create additional barriers for tenants at their LTB hearings.

There are several factors for the current delays that have resulted in parties having to wait seven to twelve months for their applications to be heard. Those factors include several years of providing remote-only hearings,¹ the removal of in-person counter services, the

¹ <https://www.blogto.com/real-estate-toronto/2022/08/ontario-landlord-tenant-board-state-crisis/>

<https://www.iheartradio.ca/newstalk-1010/audio/podcasts/toronto-lawyer-marc-goldgrub-explains-to-moore-in-the-morning-his-claim-that-ontario-s-landlord-and-tenant-board-is-in-a-total-state-of-crisis-1.18403244>

exodus of experienced adjudicators and LTB staff, and provincial scheduling of LTB hearings which favours large urban centres with higher application volumes over rural and smaller centres. It also results in significantly more hearing blocks created to accommodate this new schedule.²

The problems were exacerbated by the decision to schedule LTB hearings by application type. Multiple applications involving the same address are each scheduled in their own hearing block instead of being heard together. This scheduling model prioritized L1s, and scheduled tenant applications months later to the detriment of tenants.

Prior to the pandemic, scheduling was regional, matters were held mostly in-person, counter staff were present, and applications of all types were scheduled together except for L1 blocks. That model provided more effective and efficient adjudicative services for Ontarians. Delays existed even then and led the Ombudsman's office to launch an investigation in January 2020. However, the delays were only seven weeks to hear a landlord application and nine weeks for tenant applications compared to the current wait time of more than seven months.³

LCHIC recommends that the LTB reconsider the return of in-person hearings and regional scheduling as it provided better access to local supports for parties, heard matters more expeditiously, and offered greater access to justice for all parties. We strongly support the Advocacy Centre for Tenants Ontario's regional scheduling proposal rather than expanding hearing blocks to evenings and weekends as it will:

- a. Prevent evictions by ensuring tenants can connect with local support services and community clinics who can assist the tenant to maintain their tenancy.

<https://toronto.ctvnews.ca/landlord-and-tenant-board-s-digital-first-system-harms-vulnerable-renters-advocate-1.5968789>

<https://www.ottawalawyers.com/blog/attorney-michael-thieles-interviewed-on-ctv-about-the-ltb-backlog/>

[Mom, daughter face homelessness after buying home and tenant refuses to leave | CBC News](#)

[Ontario's online rental dispute tribunal 'frustrating for everyone': Hamilton legal clinic | TheSpec.com](#)

<https://www.theglobeandmail.com/real-estate/article-both-tenants-landlords-exasperated-by-delays-at-ontarios-rental/>

² The Thunder Bay DSSAB identified this problem in its recent ROMA [position paper](#):

"When the hearings were in person the adjudicator would call one at a time, so the overlap was not an issue. However, recently a TBDSSAB representative had two virtual hearings booked simultaneously and was actively in one hearing when called to the other. The Adjudicator marked the SPM as absent for that hearing."

³ <https://www.cbc.ca/news/canada/toronto/ontario-landlord-tenant-board-ombudsman-1.5420860>

- b. Reduce the Board's backlog and expenses by grouping matters together, facilitating more resolutions outside of the hearing and using hearing blocks more efficiently.

The LTB should prioritize the regional scheduling plan and provide stakeholders with a timeline for its implementation.

Additional Comments on Evening and Weekend Hearings Proposal

Should the LTB proceed with Evening and Weekend Hearings, it should consider the following:

1. Hearings on Consent of Parties and for Prima Facie Urgent Matters

Evening and weekend hearings should be scheduled only on consent of the parties (with the exception of deciding ex-parte requests) and motions that require immediate decisions, such as when Sheriff enforcement is imminent or for reinstating a tenant or prohibiting a landlord from re-renting a unit after illegally evicting a tenant.

The LTB suggested at the stakeholder consultation that consents and urgent matters would be scheduled in these new blocks. We recommend that the LTB narrowly define what is considered urgent. Some may argue that illegal act applications should be deemed urgent matters, however, under the *Residential Tenancies Act*, illegal acts can range from criminal activity to allegations that a tenant installed a satellite dish without their landlord's permission. Similarly applications for impairment of safety and substantial interference could include allegations ranging from trivial matters to more serious claims. Furthermore, there may be underlying human rights considerations underlying the tenant's alleged conduct.

The range of possible interpretations of urgent is far more limited in tenant applications for illegal lockout situations, where a landlord is withholding the supply of a vital service or on requests for a stay to suspend an impending enforcement of an eviction order or a request for an interim order after an eviction has been enforced. These types of hearings would be suitable for scheduling on evenings and weekends, subject to a specific request made by the tenant.

2. Proposal Should be Guided with the User as its Focus

It is well documented by landlords, tenants, and their representatives that the move to remote hearings has created a [digital divide](#).⁴ This is most acutely experienced by Ontarians living with low incomes, language barriers, literacy and numeracy issues, disability, and in rural and remote communities.⁵ Tenants share a larger portion of these characteristics than the general population. Tenants are also more likely to work more than one job, less likely to work 9 to 5, and have fewer opportunities to access after-school and weekend programs for their children than other Ontarians.

⁴ *Supra*, note 1

⁵ <https://www.thestar.com/news/gta/2022/11/22/how-the-pandemic-exposed-the-depth-of-the-digital-divide.html>

Scheduling a hearing without parties' consent in the evening or on the weekend may result in more instances where tenants are unable to participate because they are working or have child rearing responsibilities in addition to the existing barriers with the digital divide. We request that prior to expanding to an evening and weekend remote-hearing model that the LTB conduct a comprehensive analysis of its users to better understand them and design initiatives that are responsive to their circumstances. It is critical that their ability to access justice not be further impaired with this proposal. A user survey such as the one offered to Social Security Tribunal users could be very helpful for this purpose.⁶

3. Parties Would be Without Important Supports and Witnesses

Evening and weekend hearings will take place at times of reduced availability of legal advice and representation services for all parties to LTB hearings, as well as other public services that parties rely upon to help resolve LTB matters such as rent bank services. Parties will also experience reduced access to expert witnesses such as municipal bylaw inspectors and other public officials. The quality of evidence before the LTB will suffer as a result. Tenants would also have far less access to community services that are normally available during regular business hours. These essential supports include interpreters, mental health workers, and outreach workers who support tenants asserting their rights during a hearing.

4. LTB Staff Should be Available at All Hearings

Prior to the pandemic, dispute resolution officers ("DRO") were present at every hearing block to assist parties in resolving their matters on the day of their hearing. Since the move to remote hearings, DROs were restricted to only L1 matters and moderators were only assigned to the busiest blocks. As a result, most hearing blocks have adjudicators responsible for both adjudicating the issues between the parties and providing tech support and moving parties into and out of breakout rooms. This has created delays and posed added challenges for parties having difficulties accessing their hearing.

Any proposed expansion to an evening and weekend schedule should ensure that LTB staff are assigned and available to the parties at each hearing to respond to dropped calls and other IT issues and facilitate mediation conversations.

5. LTB Navigators Assigned to Parties for All Hearings

The LTB can create navigator staff to connect with parties prior to the hearing in order to determine their suitability to participate in a remote hearing and whether an alternative format would be more beneficial. The staff person would also inform tenants of TDC and other community services (e.g. interpreters) as well as offer mediation services ahead of their hearing.

⁶ <https://www1.canada.ca/en/sst/navigator-cppd-gdis.html>

This program would be similar to the successful navigator program that exists at the Social Security Tribunal.⁷ That program found that Appellants who received “time-bound information and guidance should demonstrate heightened preparations. Appellants who are properly prepared should signal readiness for their hearings sooner and in greater numbers. When those individuals interact with members for the first time, members should recognize an appellant better equipped to advocate their interests.”

The clinic system had advocated for such a program last year and we continue to believe that it would enhance access to justice at the LTB.

As outlined above, the evening and weekend hearing proposal may lead to greater inequities and will likely have a minimal impact in reducing the hearing backlog. It is therefore not an efficient use of Board resources. Dedicating these resources instead toward regional scheduling, a return to in-person hearings, and the provision of LTB services would result in a larger and faster reduction in the Board hearing backlog and significantly improve access to justice for tenants.

Sincerely,

A handwritten signature in black ink, appearing to read 'MG', with a long horizontal line extending to the right.

Marcos Gomez

On behalf of the Legal Clinic Housing Issues Committee

c. Hon. Doug Downey
Attorney General
Doug.Downey@pc.ola.org

Hon. Steve Clark
Minister of Municipal Affairs and Housing
minister.mah@ontario.ca

⁷ <https://www1.canada.ca/en/sst/navigator-cppd-gdis.html>