

## Publisher's Note

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# Robert W. Macaulay and James L.H. Sprague Practice and Procedure Before Administrative Tribunals

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## AUTHOR'S NOTE

In December 2018, the Ontario Government announced, effective January 1, 2019, the creation of Tribunals Ontario, which will combine the 19 tribunals now organized within three existing tribunal clusters:

1) Environment and Lands Tribunal Ontario (ELTO), which brings together the Assessment Review Board, Board of Negotiation, Conservation Review Board, Environmental Review Tribunal, Local Planning Appeal Tribunal and the Mining and Lands Tribunal;

2) Social Justice Tribunals Ontario (SJTO), which brings together Child and Family Services Review Board, Criminal Injuries Compensation Board, Custody Review Board, Human Rights Tribunal of Ontario, Landlord and Tenant Board, Ontario Special Education (English) Tribunal and Ontario Special Education (French) Tribunal and Social Benefits Tribunal; and

3) Safety, Licensing Appeals and Standards Tribunals Ontario (SLASTO) which brings together the Animal Care Review Board, Fire Safety Commission, License Appeal Tribunal, Ontario Civilian Police Commission and the Ontario Parole Board.

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In announcing the creation of this new organization, and the appointment of SLASTO Executive Chair Linda Lamoureux as its first Executive Chair, the Government announced that, “The change will help improve front-line service delivery to the thousands of people who access the tribunals each year” and that, “These changes are 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.” (<https://news.ontario.ca/mag/en/2018/12/executive-chair-appointed-to-lead-tribunals-ontario.html>)

This significant consolidation raises, once again, the question of the optimal structure, organization and institutional culture for administrative justice. As Jamie Baxter and I explored in “Ontario’s Administrative Tribunal Clusters: A Glass Half-Full or Half-Empty for Administrative Justice?” (2012) 12 *Oxford University Commonwealth Law Journal*. Volume 157-187, the cluster model represented a half-way house between the patchwork quilt of specialized tribunals, and a single and integrated administrative justice system.

The cluster model was envisioned along with other reforms to the transparency, efficiency, independence and effectiveness established through the *Adjudicative Tribunals Accountability, Governance and Appointments Act, 2009*, S.O. 2009, c. 33, Sched. 5 (ATAGAA). While it is too early to know what legislative changes, or changes to rules and practices within and outside the new Tribunals Ontario will ensue, here are the key questions which will need to be addressed through this reform initiative.

- Which lessons will be taken from these past years of tribunal operations in the cluster era? What degree of autonomy will the 19 tribunals and boards that now make up Tribunals Ontario maintain their autonomy?
- The ATAGAA model created a template for the creation of additional clusters. Will Tribunals Ontario include additional tribunals? If not, what will be the rationale for excluding tribunals with similar characteristics to those within Tribunals Ontario?
- Will new legislation set out the standard of review, *Charter* jurisdiction and other elements of Tribunals Ontario tribunals and boards along the lines of the B.C. *Administrative Tribunals Act* S.B.C. 2004, ch. 45?

- What lessons will Ontario learn from other experiments with system integration in administrative justice — notably the short-lived “Tribunals Service,” which was an executive agency of the Ministry of Justice in the United Kingdom between April 2006 and March 2011 (before merging with the “Courts Service” to become the “United Kingdom Courts and Tribunal Service”).
- How will the success of Tribunals Ontario be measured — by budgetary savings? by enhanced service standards? by greater effectiveness or innovation in its adjudication, user satisfaction or by some combination of these and/or other sets of metrics?

I look forward to returning to this important development in future updates to explore the answers to some of the questions above.

This Update includes substantial revisions to two chapters: chapter 10 — previously entitled “Bias the Role of Counsel and the Agency” and chapter 39, entitled “Bias.” With the goal of avoiding duplication, and enhancing the focus on the evolving doctrine of bias and the role of the board counsel, chapter 10 will now be entitled, “The Role of Board Counsel” and an expanded chapter 39 will continue to cover “Bias.”

L.S.

