

## Online and In-Person

Many have called for the return to in-person hearings. Whether it be fully returning to the 44 locations that make up the Landlord and Tenant Board, or running hearings in some other, more informal location, the call is clear. For some it's bring

For Tribunals Watch, a watchdog organization dedicated to watching over Ontario's tribunal, the message is clear<sup>1</sup>:

### Re-establish Regional In-person Hearings to Promote Settlements

Tribunals Ontario must re-introduce regional in-person hearings at the Landlord and Tenant Board as the default hearing format for most applications. Electronic hearings should be readily available as an option, as is the case at other tribunals, with parties free to choose this format. In addition to promoting access to justice, the return of local in-person hearings, with attending duty counsel and the availability of municipal rent bank staff and housing standards inspectors, can be expected to facilitate settlements in up to 30% of cases, leading to an immediate reduction in the continuing build-up of the backlog.

These numbers on in-person settlements appear to be widely cited. But why would settlements happen more often face to face versus online? The idea is that much of the pre-hearing mediation can take place outside of the courtroom.. Mediators and legal aid council could walk among the respondents and speak to them directly before the hearing starts, likely leading to less time used in hearings (online this discussion has to happen

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<sup>1</sup> LTB Statement of concern: The numbers speak for themselves – Tribunal Watch Ontario. (n.d.). <https://tribunalwatch.ca/2024/ltb-statement-of-concern-the-numbers-speak-for-themselves/>

during hearing block time), and given the nature of interpersonal relations, the more likely a resolution is reached.

Let me talk about that for a moment. The reality with humans is that when we're faced with a need to compromise or confront unresolved issues, those that sit behind a computer are more likely to be bold, reckless and less willing to find a resolution. This idea has been coined the "online disinhibition effect." A study by John Suler, Ph.D., from Rider University<sup>2</sup> looked at how people behaved online. The idea is that a person can distance themselves online (especially with disabled cameras in the hearing) leads to all sorts of separation from the bindings we face in person. Not being seen in physical proximity seems to inhibit the feelings of shame for reckless behaviour. The setting of a courtroom, with others watching you tends to tamp down most people's impulses to act out. Contrast that with a Zoom hearing and nameless, faceless silent observers have almost no effect on these shame dynamics.

This is not a terribly popular among paralegals. It makes sense because online hearings have been a boon for their business. They used to have to trudge out to a court house and face traffic, only to be in one hearing at a time. With online hearings, they can now juggle multiple appearances, leading to much higher revenue base while lowering expenses. In addition, paralegals no longer need to be considered local entities, they could work from anywhere in the province. Conferring all these benefits on a paralegal and asking them to walk it back to in-person hearings is likely to be met with extreme resistance.

And, as if like clockwork, a recent media appearance<sup>3</sup> in a government-focused media outlet brought out this disagreement. In it, I'm quoted saying, "The online hearings, rather counterintuitively, have slowed things down," and explained that if we pushed for in-person hearings, we'd be able to bring back the efficiency level the LTB enjoyed long before COVID-19.

Bruce Parsons, a paralegal at Paladin LLP based out of Mississauga Ontario, had this to say about the idea in an August, 2024 Facebook

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<sup>2</sup> Suler, John. "The Online Disinhibition Effect." *Cyberpsychology & Behavior* 7, no. 3 (2004): 321-326. <https://doi.org/10.1089/1094931041291295>.

<sup>3</sup> Hauen, Jack. "Landlords and Tenants Agree: It's Time to Bring Back In-person Hearings for Their Disputes." *The Trillium*, August 7, 2024. <https://www.the.trillium.ca/municipalities-newsletter/landlords-and-tenants-agree-its-time-to-bring-back-in-person-hearings-for-their-disputes-9321926>.

comment:

I don't see how adding in commute times, parking fees and such, plus reducing the ability to be in more than one location for hearings ( LL's and Rep benefit) would speed things up. the system is improving, it has a ways to go. But to scrap it and try something different would be a great cause for delay and in person hearings....imagine you as LL make the trek to the Board, with a rep you pay for the day and the TT gets an adjournment for whatever type emergency. That would not be reducing your frustration levels. I get the urge to do something but doing just anything is not at all useful. Focus on reducing times, increasing service and results, and apply political pressure to the most important issues. There may be a dozen ways to effectively run a tribunal but changing your system every 4 or 5 years would not be one of them.

While he appears to be responding to the idea of only in-person hearings, his frustration is clear. It's not clear what "improving" means, but if after four years, the delay in hearings has hardly budged, this is not improvement. It is not working.

Another reasoning for in-person hearings is that they tend to serve the local area better. Not only do the people that work in these tribunals come from the area, the paralegals understand local housing pressures better than anyone else. You could make a case that hearings run better when everyone understands local challenges. In addition, access to hearings is a real challenge. While the LTB has set up local access points with computers and video conferencing access, those that don't have a basic technological knowledge may still be left behind. Often, nothing can replace the in-person help of someone staffed at an information desk.

Filing application is better in person too. There is a higher likelihood that a person at a counter will pick up any small mistakes that could case an application to be dismissed. The person taking these forms can also provide much needed quick triage in the event of an error. Conversely, online forms are filed immediately with or without the fatal flaws, making it far more likely that an application would be dismissed. We don't have statistics on how many applications are withdrawn or dismissed on technicalities, but rest assured the numbers are higher for online hearings.

Ultimately, this solution calls for a full-on hybrid attack. During the COVID-19 pandemic, many courts in Ontario took this sort of approach. Every trial was heard online and in-person and those involved could chose how they wanted to appear. My suggestion is that the LTB take this even

further:

1. For those respondents that all agree to have a hearing online or in person, grant that specific request.
2. Schedule a full slate of online hearings (as they are now).
3. Schedule a full slate of in-person hearings.
4. Run a full slate of hearings on evening and weekends.

The above only lets up when the LTB has established that files for every type of matter is producing hearings and subsequent orders under 30 days. This will mean hiring more adjudicators, but the Ontario Government has already committed to that. This is a big swing at the problem and it also stands as the only reasonable way the LTB can show that it's serious about ending this years-long backlog.