

Chapter 3

Section **3.01**

Ministry of the Attorney General

Assessment Review Board and Ontario Municipal Board

1.0 Summary

In Ontario, boards and tribunals are created by the provincial government to facilitate mediation or make decisions independent of the government settling disputes between people or disputes between people and the government. Because the boards and tribunals hear evidence, engage in fact-finding, and make decisions that affect personal rights the way a court does, they are known as “quasi-judicial” agencies. The cases they hear are decided by board members, called adjudicators, and the process is known as adjudication.

Our audit focuses on the operations of the Assessment Review Board (Review Board) and the Ontario Municipal Board (Municipal Board), which form part of Environment and Land Tribunals Ontario.

Assessment Review Board (Review Board)

The Review Board hears appeals mainly about residential and non-residential property assessments and classification. The Municipal Property Assessment Corporation (MPAC) assesses and classifies all properties in Ontario, which affects how much property tax owners must pay to municipalities. If property owners dispute a property assessment from MPAC, they can appeal to the Review Board.

Our audit of the Review Board found that it was taking longer to resolve appeals than its targeted times and had about 16,600 appeals outstanding as of March 2017. Many property owners are waiting years (1,811 appeals have been outstanding for more than four years) for their assessment appeals to be settled, which leaves them at risk of not receiving a property tax refund in a timely manner if a decision is finally rendered in their favour. These delays can be particularly onerous for municipalities because they rely on property taxes to fund their operating budgets. Being required to refund millions in property taxes can cause financial difficulty for smaller municipalities.

Our specific concerns related to the Review Board are as follows:

- **Large backlog of unresolved appeals continues, with some appeals dating back to 1998.** Despite the decrease in the total number of appeals received since 2009, the Review Board has been struggling to eliminate its backlog. As of March 2017, we noted that the Review Board still had approximately 16,600 unresolved appeals, which were close to three times higher than the 5,830 outstanding appeals that it considered acceptable. While 14,790 appeals have been outstanding for four years or less, the Review Board could not provide us with a breakdown of these appeals between residential and

non-residential appeals but informed us they were largely non-residential. The remaining 1,811 appeals have been outstanding for more than four years, of which 564 of them have been outstanding between eight and 19 years. Of the 1,811 appeals, about 1,740 (or 96%) of them were non-residential appeals and the other 70 (or 4%) were residential appeals.

- **Delays in resolving large-dollar, non-residential appeals have created uncertainty for small municipalities.** Delays in resolving high-dollar assessment appeals negatively impair the small municipalities' ability to manage their fiscal affairs because the property taxes generated from these non-residential properties cover a significant portion of their communities' tax base. For example, the Review Board took approximately one-and-a-half years and four years respectively to resolve two non-residential appeals. The outcome of the Review Board's decisions significantly reduced the assessment value of two properties located in two small communities. Both municipalities were required to refund a total of \$10.7 million in property taxes previously paid by the property owners during the 2009 to 2012 taxation years.
- **Annual caseload statistics reported to the public have been overstated for many years.** The *Assessment Act* (Act) provides that a person may file an appeal in any year of the four-year property assessment cycle. When an appeal is filed for a taxation year, but is not resolved in that taxation year, the Act stipulates that the appellant is "deemed to have brought the same appeal" for each subsequent year in the assessment cycle, which is called a "deemed appeal." The Review Board will automatically create a new appeal for the next tax year and repeat it until the end of the cycle if the appeal is not resolved earlier. Although the deeming rule is defined under the Act, determining which set of numbers and how the numbers should be presented are at the

discretion of the Review Board. Because the Review Board chose to publicly report the number of original appeals and the deemed appeals together, the number of appeals received (32,000) reported in its annual report were overstated as much as 507% (the actual number of original appeals received was 5,272) in 2015/16.

- **The Review Board does not conduct quality reviews of members' oral decisions.** At the conclusion of a hearing, board members use their professional judgment, based on the evidence presented, to render either an oral decision or issue a written decision at a later date. Oral decisions represent approximately 80% of all board members' decisions. Unlike written decisions, oral decisions are not subject to peer quality assurance review.
- **The decision-making process by board members could be more transparent.** Decisions are discretionary: members exercise their professional judgment based on the evidence provided, and the majority of residential and non-residential appeals are decided orally by a single board member. But the Review Board does not audio record its hearings to allow for preserving the hearing for internal reviews, following up on complaints, protecting members from allegations of misconduct, serving as a memory aid for members when writing their decisions, and aiding evaluations of members' performance.
- **The actual work time reported by the Review Board's full-time members is not consistent or analyzed.** The Review Board does not have a formal policy requiring its full-time members (12) to record how the members spent their work hours. However, board members do have a practice of completing timesheets, but they were completed inconsistently. Also, we noted that between 2013 and 2016 about 1,540 hearings were cancelled three or fewer days before the hearing dates. Due to the short notices, it was very

difficult for the Review Board to reassign the full-time members to other hearings. We were informed that the full-time members would perform other duties, such as decision writing and/or other special assignments. However, since there are no requirements for the full-time members to consistently record how they spend their time, when their time became free after the short-notice cancellation of hearings, there was no formal record supporting how that freed-up time was spent.

- **Evaluation of the Review Board's overall performance needs improvement.** The Review Board reports publicly on only two performance measures: timeliness in resolving residential appeals (non-residential appeals are not included); and timeliness in issuing a decision. Overall performance measures, such as users' satisfaction and cost per appeal recommended by the Ministry of the Attorney General in 2015 were not reported.
- **Board members ranked low during a recruitment competition were appointed.** The *Adjudicative Tribunals Accountability, Governance and Appointments Act, 2009* requires that the selection process for the appointment of members to an adjudicative tribunal be competitive and merit-based. We found that it was not always clear that the selection process was followed. For example, in 2014, the Review Board re-interviewed and subsequently appointed three of the 17 unsuccessful candidates from the 2013 recruitment competition using a different panel. The Review Board's correspondence to the Ministry of the Attorney General indicated that these candidates had placed highly in the 2013 competition. However, board documentation did not support this as two of the three selected candidates did not receive high scores from the 2013 recruitment competition.

Ontario Municipal Board (Municipal Board)

The Municipal Board hears appeals primarily related to a wide range of land-use planning matters, such as amendments to municipalities' Official Plans and zoning bylaws, and minor variances. A minor variance is when a property owner asks a municipal Committee of Adjustment for permission to not meet a zoning bylaw, such as to place a shed where it does not meet setback requirements on the property. If owners are denied the minor variance, they can appeal to the Municipal Board. Appeals on cases other than minor variances, such as an amendment of an Official Plan to permit property developments, are usually more complicated and take longer to resolve.

In June 2016, the Ontario Government announced a comprehensive review of how the Municipal Board operates and its role in the Province's land-use planning system in an attempt to make it more affordable and accessible to all Ontario residents. In May 2017, the government introduced Bill 139. If the bill is passed, the Municipal Board would be re-named as the Local Planning Appeal Tribunal (Appeal Tribunal). One of the key proposed legislation changes related to complex land-use planning appeals is that the new Appeal Tribunal would only be able to overturn a municipal decision if it does not follow provincial policies or municipal Official Plans. The government's review is discussed further in **Section 2.4.4**.

Over the last several years, the public, including citizens and municipal councils, have criticized that Municipal Board decisions lacked objective and clear rationale, especially when the Municipal Board rendered decisions in overturning sections of municipal Official Plans. Also, citizen groups complained that they lacked a level playing field when appealing against complex land-use proposals from developers.

Our audit identified several operational issues that the Municipal Board should address before transitioning to the new Appeal Tribunal to help ensure it will function efficiently and cost-effectively in resolving land-use related disputes. Among our findings:

- **Operations of the Municipal Board need improvement before its transformation to a new tribunal.** We noted that some municipalities and appellants raised concerns whether board members were making fair and unbiased decisions, and some of them appealed the Municipal Board decisions to the court system. Also, several municipalities told us that they spent millions of dollars of taxpayer money to defend their Official Plans that were already approved by their elected councils and the Province. While the proposed legislation excludes the new Appeal Tribunal from hearing certain cases against municipal Official Plans, it does not address the operational issues related to the hearing process. The Municipal Board informed us that cases were assigned to board members based on factors such as members' background, their experience and workloads; however, in the majority of cases, only one member was assigned to hearings, and one-member decisions could be subjective. Similar to the Review Board, audio recordings of the hearings were not available at the Municipal Board for subsequent internal and/or external reviews, when needed.
- **Many appeals, both minor variances and complex cases, took an extensive period of time to resolve.** In 2016/17, the Municipal Board scheduled 1,349 new land-use appeal cases for a hearing, of which 421 or 30% were minor variances. The other 928 or 70% of the cases were more complicated land-use appeal cases. The Municipal Board did not establish a reasonable and acceptable turnaround time for both types of appeals. Based on an internal report prepared by the Municipal Board, we noted the following:
 - In 2016/17, the average number of days taken (from appeal received to decision issued) to resolve a minor variance case was, on average, 227 days. The Municipal Board also struggled in meeting its target of scheduling 85% of minor variance cases for a hearing within 120 days of the receipt of a complete package. The actual performance in 2016/17 was only 44%, significantly down from 81% in 2012/13.
 - For complex cases that were closed in 2015/16 (the most recent data readily available), the number of days taken from case received to case closed ranged from 10 months to almost seven years. In 2016/17, the Municipal Board scheduled 74% of complex cases for a first hearing within 180 days of the receipt of a complete appeal package. It was behind its 85% target.
- **Despite 80% of decisions being issued within 60 days after the end of a hearing, many others took almost a year to get done.** The Municipal Board's performance target is 85% of decisions will be issued within 60 days after the end of a hearing for all types of appeals. We noted that the Municipal Board was close to meeting its target at 80% in 2016/17. Of the 1,087 decisions issued in the same year, 218 of them took between 60 days and a year to complete. We noted that six of the 27 board members accounted for about 40% of the decisions that took longer than 60 days to issue between 2012/13 and 2016/17.
- **Target setting and evaluation of mediation efforts needed.** The Municipal Board intended to develop its capacity for mediation of appeals; however, it has not yet set a target nor did it measure the success or outcomes of mediation. The Municipal Board also stated that it had been encouraging mediation of appeals by the parties involved but was unable to demonstrate the success of its efforts. We noted that the Human Rights Tribunal of Ontario reports annually on the number of mediations held and the percentage of cases settled at mediation, but these measures were not used by the Municipal Board.

- **The actual work time reported by board members is not complete or analyzed.**

Board members are a key resource to the Municipal Board because they facilitate mediations, conduct hearings and render decisions on appeals. However, the Municipal Board does not track the hourly work of its 20 full-time members to determine whether they were managing their caseload effectively and efficiently. Also, the Municipal Board has not done any analysis to determine whether the number of members was sufficient to handle existing workloads and to eliminate the backlogs. Backlogs are defined as those cases not meeting the Municipal Board's performance targets.

- **Insufficient documentation to justify the hiring of board members.** The *Adjudicative Tribunals Accountability, Governance and Appointments Act, 2009* requires that the selection process for the appointment of members to an adjudicative tribunal be competitive and merit-based. However, we found that this was not always the case. In 2016, five candidates were interviewed by a two-member panel for two full-time member positions. We found one of the members from the panel did not score any of the five candidates interviewed, and the other member of the panel did not provide a complete scoring for two of the five candidates. As a result, documentation was incomplete to demonstrate how the two successful candidates were selected.

This report contains 13 recommendations, consisting of 24 actions, to address our audit findings.

Overall Conclusion

Our audit concluded that although the Assessment Review Board (Review Board) had fulfilled its mandate to handle property assessments and other disputes in accordance with applicable legislation and regulations, it did not always do so efficiently as evidenced by the continuing backlog of appeals.

In addition, we concluded that the Ontario Municipal Board (Municipal Board) had fulfilled its mandate to handle land-use planning and other disputes in accordance with applicable legislation and regulations. However, its operations need improvement to help it function more efficiently and effectively before its transition to a pending new tribunal.

Both the Review Board and Municipal Board also did not have accurate and complete data, such as caseload statistics and cost of an appeal to assess their cost-effectiveness, for decision-making, operations improvements, and public reporting. We found that the Review Board and Municipal Board did not have effective systems and procedures to ensure that board resources, such as board members' time, are best utilized to address the Review Board's backlogs and the Municipal Board's delays in scheduling and resolving appeals. Further, both boards did not always document their rationale for selecting board members.

OVERALL MINISTRY RESPONSE

Assessment Review Board

The Ministry of the Attorney General (Ministry) appreciates the Auditor General's observations and recommendations regarding the Assessment Review Board (ARB).

The Ministry recognizes the importance of ARB operations being conducted in accordance with applicable legislation, regulations, and in an efficient and cost-effective manner. Access to justice for all Ontarians is of paramount concern to the Government of Ontario. Adjudicative tribunals play a vital role in Ontario's justice system. Tribunals use their specialized expertise to adjudicate on a wide variety of disputes in an independent and impartial manner.

The ARB is a constituent tribunal of the Environment and Land Tribunals Ontario (ELTO) cluster, which consists of five tribunals that operate in the area of land use. Tribunal clustering is part of the government's strategy to promote cross-agency co-operation and

co-ordination of operations and administration. It enhances consistency in tribunal practices, procedures and decision-making.

The Ministry appreciates the efforts of the Office of the Auditor General in making recommendations to continue improve operations of adjudicative tribunals. The Ministry will continue to work with ELTO to monitor and track the recommendations to improve efficiency and cost-effectiveness in ARB operations.

Ontario Municipal Board

The Ministry of the Attorney General (Ministry) appreciates the Auditor General's observations and recommendations regarding the Ontario Municipal Board.

The Ministry recognizes the importance of OMB operations being conducted in accordance with applicable legislation, regulations, and in an efficient and cost-effective manner. Access to justice for all Ontarians is of paramount concern to the Government of Ontario. Adjudicative tribunals play a vital role in Ontario's justice system.

The OMB is a constituent tribunal of the Environment and Land Tribunals Ontario (ELTO) cluster, which consists of five tribunals that operate in the area of land use. Tribunal clustering is part of the government's strategy to promote cross-agency co-operation and co-ordination of operations and administration. It enhances consistency in tribunal practices, procedures and decision-making.

Additionally, the government has introduced legislation to overhaul the province's land-use planning appeal system.

The *Building Better Communities and Conserving Watersheds Act* seeks to create the Local Planning Appeal Tribunal (Tribunal), which would, if passed, replace the OMB. The result would be more efficient decision-making process at the Tribunal.

The Ministry appreciates the efforts of the Office of the Auditor General in making recommendations to continue improve operations of

adjudicative tribunals. The Ministry will continue to work with ELTO to monitor and track the recommendations to improve efficiency and cost-effectiveness in OMB operations before it transitions to the prospective new Local Planning Appeal Tribunal.

OVERALL RESPONSE FROM ENVIRONMENT AND LAND TRIBUNALS ONTARIO

Assessment Review Board

The Assessment Review Board (ARB) appreciates the work of the Auditor General and welcomes advice on how to further improve our services. We are committed to addressing the recommendations for improvements to effectively and efficiently resolve disputes related to property assessment in Ontario.

The ARB intends to resolve 100% of its current and new caseload within the next four-year cycle ending March 31, 2021. Following extensive consultation with stakeholders, the ARB has introduced new processes and Rules of Practice to achieve this goal.

In addition, the ARB is also committed to refining performance measures, implementing public satisfaction surveys, and providing greater transparency for figures presented in the Annual Reports.

Ontario Municipal Board

The Ontario Municipal Board (OMB) appreciates the work of the Auditor General and welcomes advice on how to further improve our services. We are committed to addressing the recommendations for improvements to effectively and efficiently resolve disputes related to land use planning and other matters in Ontario.

Bill 139 and related regulations are expected to set out specific timelines for the resolution of the matters brought before the new Local Planning Appeal Tribunal (replacing the OMB). We will endeavour to measure and report on compliance with the legislated timelines in our Annual Report and Business Plans.

Environment and Land Tribunals Ontario and the OMB will be implementing new processes and Rules of Practice to support the timely resolution of appeals. In addition, we are also committed to refining performance measures and implementing public satisfaction surveys that will be reported on in our Annual Report.

2.0 Background

2.1 Overview of Environment and Land Tribunals Ontario

Environment and Land Tribunals Ontario (Tribunals) is a cluster of boards/tribunal that was created in 2010 under the authority of the *Adjudicative Tribunals Accountability, Governance and Appointments Act, 2009*. The primary purpose of establishing adjudicative agencies is to provide an easier and timely access to justice by diverting cases from the already overcrowded court system to a less expensive tribunal system.

The Tribunals consists of four boards and one tribunal:

- Assessment Review Board;
- Ontario Municipal Board;
- Board of Negotiation;
- Conservation Review Board; and
- Environmental Review Tribunal.

The mandate of the boards/tribunal is to effectively and efficiently resolve disputes related to property assessment, land-use planning, land valuation, environmental and heritage protection, and other matters. Their mission is to deliver modern, fair, responsive, accessible, effective and efficient dispute resolution services that support strong, healthy communities and the public interest.

For the year ended March 31, 2017, the Tribunals' total expenditure was \$17.1 million, a decrease of 8% from \$18.5 million in 2010/11 when it was established. The decrease was a result of the government's overall initiatives to meet savings targets

imposed throughout the years. The total expenditure was not broken down by individual board or tribunal because the Tribunals is funded as one entity by the Ontario Government; funding is not provided directly to individual boards or tribunal.

This audit focused on the operations of two of the five boards and tribunal: the Assessment Review Board (Review Board) and the Ontario Municipal Board (Municipal Board). Both boards are adjudicative agencies that resolve disputes by facilitating mediated settlements or by making independent quasi-judicial decisions that are required to be evidence-based and compliant with provincial laws and policies.

The Review Board hears appeals about property assessment, classification and municipal tax appeals. Municipal tax appeals are when property owners seek a reduction of property taxes that were already levied because of special circumstances, such as a change in the physical condition of the building as a result of fire or demolition.

The Municipal Board hears appeals or disputes primarily related to land-use planning matters, such as Official Plans and zoning bylaws and their amendments, sub-divisions, and minor variances, as well as non-planning matters, such as development charges, heritage issues and expropriations.

The presiding member(s) are required to hear from parties involved in an appeal and make decisions based on the evidence and the relevant laws and policies.

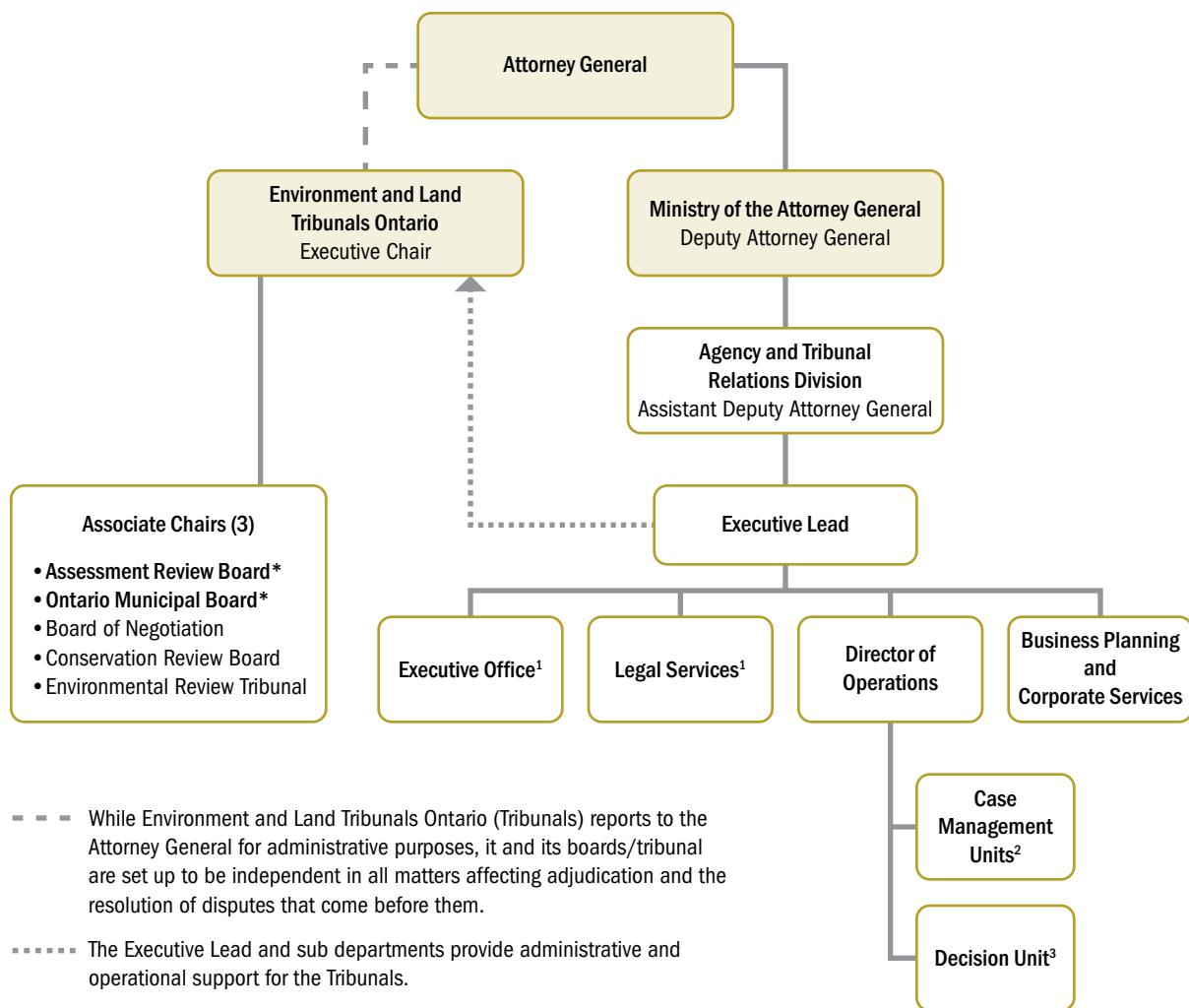
2.1.1 Reporting and Accountability Structure of Environment and Land Tribunals Ontario

Environment and Land Tribunals Ontario (Tribunals) is accountable to the Ministry of the Attorney General (Ministry) for administrative purposes, such as its annual funding and preparing and submitting annual reports. The Tribunals reports operational and financial performance, including reporting against set performance targets.

The Tribunals' boards/tribunal are set up to be independent in all matters affecting adjudication

Figure 1: Reporting and Accountability Structure of Environment and Land Tribunals Ontario

Source of data: Environment and Land Tribunals Ontario



* Focus of this audit

1. Executive Office and Legal Services also report to Environment and Land Tribunals Executive Chair.
2. The Case Management Units provide support for intake, review and verification of all appeals filed within the Tribunals, to ensure that applications for appeal meet the legislative deadline and jurisdictional requirements, and to collect all required data and information in preparation for any appeal hearing events.
3. The Decision Unit provides support for board and tribunal members by ensuring that their decisions are in compliance with the required hearing report format and that the members' decision reports contain no grammatical or spelling errors. This Unit is not permitted to interfere in the decision-making process followed by board members.

and the resolution of disputes that come before them. **Figure 1** shows the reporting and accountability structure of the Tribunals.

2.2 Appointment of Board Members and Their Responsibilities

Because both the Assessment Review Board (Review Board) and Ontario Municipal Board

(Municipal Board) are responsible for making independent quasi-judicial decisions, the skills and qualifications of their members are essential to achieve their mandates. The *Adjudicative Tribunals Accountability, Governance and Appointments Act, 2009* requires that the selection process for the appointment of members to an adjudicative tribunal be competitive and merit-based. See **Appendix 1** for the process of new appointment of board members.

Under the Agencies and Appointments Directive, upon recommendation of the Executive Chair, a member can be appointed for an initial term of two years and after that the appointee is eligible for re-appointment for a three-year term. After completion of terms totalling five years and on the recommendation of the Executive Chair, the appointee is eligible for re-appointment for a further term of five years.

Board members are responsible for resolving disputes under applicable legislation, policies and statutes using a variety of dispute resolution methods. As an adjudicator, a member is required to do the following:

- understand and apply the relevant laws, policies and regulations;
- maintain impartiality and open-mindedness while conducting the hearing process;
- review and analyze all evidence and submissions thoroughly; and
- issue independent decisions that are timely and based on evidence and policy, sound and reasonable.

Board members are also required to comply with the Tribunals' conflict-of-interest rules and code of conduct.

As of March 2017, the Review Board had 21 members (12 full-time and nine part-time) and the Municipal Board had 27 members (20 full-time and seven part-time).

2.3 Assessment Review Board

2.3.1 Mandate of the Assessment Review Board

The Assessment Review Board (Review Board) is an independent adjudicative tribunal established under the *Assessment Review Board Act*, with a mandate to hear appeals about property assessment and classification and municipal tax appeals.

Property assessment appeals are typically filed with the Review Board by property owners who believe that their property has been incorrectly assessed or classified by the Municipal Property

Assessment Corporation (MPAC). MPAC is a not-for-profit organization that delivers assessment services on behalf of all municipalities in Ontario. Our Office last audited MPAC in 2010. Since 2009, all residential property owners must file a Request for Reconsideration with MPAC as the first step in attempting to settle their appeal with MPAC before going to the Review Board.

The Review Board hears property assessment appeals under the *Assessment Act* and municipal tax appeals under the *Municipal Act, 2001*, the *City of Toronto Act, 2006*, and the *Provincial Land Tax Act, 2006*.

2.3.2 Property Assessment and Taxation in Ontario

Ontario's current property assessment and tax system plays a fundamental role in funding local municipal services as well as the Province's elementary and secondary school system.

Property taxes raise approximately \$27 billion per year in Ontario. Approximately 65% of that amount relates to residential properties and 35% relates to business properties. There are approximately five million properties in Ontario.

As is the practice in many other North American jurisdictions, property tax in Ontario is calculated by multiplying a property's assessed value by an applicable tax rate. The tax rate is the sum of two numbers:

- multiple tax rates set by a municipality to enable it to meet its own budgetary needs; plus
- the education tax rate, set by the Province, to fund school boards.

The determination of each property's assessed value is critical because it ultimately determines how much tax a property owner must pay.

The Ministry of Finance, municipalities, MPAC, the Review Board and property owners are key players involved in the property tax and assessment system in Ontario. Their roles and responsibilities are summarized in **Figure 2**.

Figure 2: Key Players Involved in the Property Tax and Assessment System

Source of data: Assessment Review Board and Municipal Property Assessment Corporation

Key Player	Role and Responsibility
Provincial Government	The Ministry of Finance governs the property tax system in Ontario by establishing the following: <ul style="list-style-type: none"> • assessment policies • municipal tax parameters • education tax rate policies • other laws and regulations regarding property assessment
Municipalities	Administer the property tax system: <ul style="list-style-type: none"> • set municipal tax rates; and • bill and collect property taxes
Municipal Property Assessment Corporation (MPAC)	Provides assessment services on behalf of all municipalities in Ontario. Administers the property assessment system, including the classification and establishment of the assessed values for all properties across the province. MPAC's role in the appeal process is to prove the accuracy of its assessment.
Assessment Review Board	Hears appeals from property owners or municipalities who disagree with the accuracy of the assessment or classification that MPAC has established for a property.
Property owners	File an appeal with the Assessment Review Board if they disagree with their property assessment or believe their property is incorrectly classified based on their current use. Property owners can hire agents and lawyers, at their own cost, to represent them during the appeal process.

Under the *Assessment Act* (Act), MPAC assesses all properties in Ontario every four years to determine the most current assessed value. Each property is valued as of a valuation date, which the Act specifies is January 1 of the year preceding the four-year assessment cycle. The assessed value of a property for the current assessment cycle might be higher than its assessed value for the previous cycle. If this occurs, the property owner's taxes typically will increase. In such cases, the Act provides for a process known as "phasing." Rather than imposing the full tax increase on the property owner in the first year of the assessment cycle, the tax increase is imposed in stages. The property owner pays 25% of the tax increase for the first year, 50% in the second, 75% in the third, and 100% in the fourth year.

The Act sets both the year of assessment and the assessment cycle being covered. **Figure 3** indicates the last four assessment durations and the assessment cycles. For instance, effective January 1, 2016, MPAC issued assessment notices to property owners

that indicated the assessed value of each property they owned. It also stated that the 2016 assessed value will be used to determine the property tax amount the owner has to pay during the upcoming four-year cycle—from 2017 to 2020.

The Review Board estimated that of the five million properties in Ontario that were assessed by MPAC, about 1% of these property assessments were appealed to the Review Board during a four-year property assessment cycle. Of these, approximately 70% were resolved or settled by the parties without a formal hearing on the merits held by the Review Board and only about 30% required a hearing by the Review Board within a four-year assessment cycle.

2.3.3 Assessment Appeal Process in Other Provinces

Overall, the assessment appeals system in other provinces differs than the system in Ontario in two main areas: the length of the property

Figure 3: Date of Property Assessment Valuation and the Assessment Cycles, 2005, 2008, 2012, and 2016

Source of data: Assessment Review Board and Municipal Property Assessment Corporation

Property Assessment	Period Covered for Each Assessment Cycle
Valuation Date*	
January 1, 2005	2006, 2007, 2008 (3 years)
January 1, 2008	2009, 2010, 2011, 2012 (4 years)
January 1, 2012	2013, 2014, 2015, 2016 (4 years)
January 1, 2016	2017, 2018, 2019, 2020 (upcoming 4 years)

* The Municipal Property Assessment Corporation is responsible for issuing assessment notices to all property owners in Ontario.

assessment cycle, and the party who conducts the property assessments.

With respect to the length of the property assessment cycle, we noted the following lengths:

- Saskatchewan: four years, which is the same as in Ontario;
- Manitoba: two years; and
- Alberta, British Columbia and Nova Scotia: annually.

While an annual assessment can provide a quicker reflection of changes in property values, the longer cycle could provide greater stability and predictability to property owners and municipalities because the increase of property taxes based on the changes in property values can be adjusted gradually over the phase-in period.

With respect to the party who conducts the property assessments, in British Columbia, the BC Assessment, a Crown corporation, functions similarly to MPAC in Ontario. Both Nova Scotia and Saskatchewan also have a corporation or agency that is responsible for property assessments, although municipalities in Saskatchewan are also able to arrange their own assessments. In Alberta, municipalities are responsible for performing the assessments with the Province retaining responsibility to assess only specialized classes of property, such as property used for power generation and transmission, telecommunications, pipelines and wells. In Manitoba, the Province is responsible for property assessments—with the exception of the City of Winnipeg, which is responsible for conducting its own assessments.

All Provinces provide property owners with the opportunity to formally appeal the results of their property assessment, but the appeal process varies. Highlights of the processes in British Columbia, Alberta, Saskatchewan, Manitoba and Nova Scotia are in **Appendix 2**.

2.4 Ontario Municipal Board

2.4.1 Land-Use Planning in Ontario

Land-use planning is a process of managing land and resources. **Appendix 3** summarizes the key legislation and authorities of land-use planning in Ontario.

The *Planning Act* (Act) is the basis for Ontario's land-use planning system. The Act defines the approach to planning and development in Ontario as well as the roles of the key participants, such as elected municipal councils. The key components of the land-use planning system include:

- provision for public consultation and input into decision making;
- procedures for the preparation of Official Plans, zoning bylaws, and the process considering land-use planning applications;
- municipal empowerment and accountability; and
- the role of the Ontario Municipal Board (Municipal Board) in adjudicating appeals related to land-use planning decisions.

The provincial government issues the Provincial Policy Statement and provincial plans that set out the matters of provincial interest regulating the development and land use throughout Ontario. The Provincial Policy Statement integrates the government's land use interests and applies to the entire province. The Ministry of Municipal Affairs is responsible for updating the Act and the Provincial Policy Statement and other provincial plans. This provincial-led policy regime is to be implemented by municipalities through their Official Plans and zoning bylaws. Official Plans establish broad land-use principles, whereas zoning bylaws are specific in their permissions or restrictions.

The current land-use planning process has resulted in greater local responsibility for managing land-use planning matters. Local communities set out their own goals and rules in their Official Plans, which control how they grow and develop. A municipality can amend its Official Plan at any time.

The Act requires public input in the planning process, especially in regard to a municipality's Official Plan. The Act provides the legal authority and procedures that decision-makers must follow. The Act also provides that approval authorities must ensure that their decisions are consistent with the Provincial Policy Statement and conform, or not conflict, with various provincial plans that are in effect. The Act generally creates the right of appeal for the public and proponent related to planning decisions.

2.4.2 Land-Use Appeal Process in Ontario and Role of the Ontario Municipal Board

The Ontario Municipal Board (Municipal Board) is set up as an independent adjudicative tribunal that renders decisions at arm's length from the government. The Municipal Board is authorized to hear appeals under the Act, such as Official Plans and zoning bylaws and their amendments. Board members' decisions are required to comply with the *Planning Act*, the Provincial Policy Statement, and

other applicable provincial plans, and are in the public interest.

The Act creates the right of appeal by anyone or any party—for example, a corporation, a not-for-profit organization, a municipality or a concerned citizen—of municipal planning decisions. The Municipal Board has the authority to dismiss an appeal, or allow the appeal in whole or in part. The *Ontario Municipal Board Act* and the *Statutory Powers Procedures Act* define the Municipal Board's jurisdiction and authorities to conduct hearings.

The length of hearings can range from a few hours to several weeks, depending on the complexity of the appeal. The majority of hearings involve multiple parties, such as neighbours, proponents and municipalities. In addition, evidence is often given by experts, such as planning witnesses, with their evidence presented and cross-examined. During a hearing, a board member could hear evidence based on the Act, the Provincial Policy Statement, and municipal planning bylaws and rules. A board decision is required to tell the parties, particularly the side the decision goes against, how the decision was arrived at and the steps taken and evidence tested to ensure that the result was just and correct.

2.4.3 Land-Use Appeal Process in Other Jurisdictions

While other provinces, such as Alberta, Saskatchewan, Manitoba, New Brunswick, and Nova Scotia, have a provincial board that hears appeals related to land-use planning decisions, no provincial board in Canada has as extensive a jurisdiction over planning-related matters as the Ontario Municipal Board. This is because, in Ontario, more land-use matters are subject to appeal—from minor variance applications to major planning issues, such as the expansion of urban settlements.

Also, unlike Ontario, municipal Official Plans and similar planning documents in the majority of provinces cannot be appealed to their provincial boards. While the Manitoba Municipal Board

allows the appeals of Development Plans (similar to Official Plans in Ontario), these appeals need to be referred to them by the Minister of Indigenous and Municipal Relations and the Minister has the discretion as to whether or not they accept the board's recommendations following the board's review of the appeal.

The strongest contrast to the system in Ontario is in British Columbia, which has no formal land-use appeal board at the provincial or local government level. Local governments in British Columbia have been recognized as an independent, autonomous and accountable order of government since 1996. In British Columbia, if someone is not satisfied with a local government's land-use planning decision, he or she could consider initiating an action against the local government through the courts.

2.4.4 Government Review of the Ontario Municipal Board

Over the last several years, Ontario Municipal Board (Municipal Board) decisions have been criticized by the public as lacking objective and clear rationale, especially decisions that appeared to align with developers in overturning sections of municipal Official Plans and other zoning bylaws that took the municipalities years to develop. Citizen groups have also complained that they lacked a level playing field at the Municipal Board in dealing with complex proposals from developers.

In June 2016, the government announced a comprehensive review of how the Municipal Board operates and its role in the Province's land-use planning system in an attempt to make it more efficient and accessible to all Ontario residents. The government released a consultation paper in October 2016 that outlined the following five focus areas:

- the Municipal Board's jurisdiction and powers;
- citizen participation and local perspective;
- clear and predictable decision making;

- modern procedures and faster decisions; and
- alternative dispute resolution and fewer hearings.

The government review of the Municipal Board was largely based on over 1,000 submissions from stakeholders—such as municipalities, environmental groups, developers, and citizen associations—and from Ontarians who participated in any of the 12 public meetings held across the province.

The government heard a range of viewpoints regarding the Province's land-use planning system and the Municipal Board. These views included:

- citizens feel they do not have a meaningful voice in the process;
- more weight should be given to municipal decisions;
- board decisions are unpredictable;
- hearings cost too much and take too long; and
- there are too many hearings and more mediation should be used.

In May 2017, the government introduced Bill 139, an Act to enact the *Local Planning Appeal Tribunal Act, 2017* and the *Local Planning Appeal Support Centre Act, 2017* and to amend the *Planning Act*, the *Conservation Authorities Act* and various other Acts. The bill passed second reading in the Ontario Legislature in September 2017. The bill, if passed after its third reading and given royal assent, will further limit the scope of appeals that are currently heard by the Municipal Board under the *Planning Act* and will repeal the *Ontario Municipal Board Act*. The Municipal Board will be re-named as the Local Planning Appeal Tribunal (Appeal Tribunal).

The government's proposed reforms include the following:

- Giving greater weight to the decisions of local communities. For complex land-use planning appeals, the new Appeal Tribunal would only be able to overturn certain municipal decisions if they do not follow provincial policies or municipal Official Plans.
- Sheltering major planning decisions by the Province from appeal. Provincial approvals of

major planning documents would no longer be appealable.

- Making planning appeals more accessible to the public by creating the Local Planning Appeal Support Centre, a new independent agency that would provide free legal and planning support to Ontarians.
- Improving the hearing process at the Appeal Tribunal to make it faster, fairer and less adversarial, including:
 - requiring the Appeal Tribunal to hold a case-management conference in complex land-use planning appeals. This conference would be used to define and narrow the issues and discuss opportunities for settlement, including mandatory mediation for certain appeals;
 - increasing use of multi-member panels;
 - establishing timelines for hearing and pre-hearing processes. For example, limiting the time for oral presentations in major land-use planning appeals;
 - eliminating examination and cross examination by parties;
 - clarifying the Appeal Tribunal's power to guide a hearing, including asking questions, examining a party and requiring a party to produce evidence or witnesses. This active adjudication would keep the hearing focused and improve citizens' participation in the process;
 - improving predictability and accessibility through public posting of the Appeal Tribunal decisions, including executive summaries in plain language; and
 - the Minister may make regulations relating to practices and procedures of the Appeal Tribunal, including the conduct and format of hearing or pre-hearings, admission of evidence and format of decisions.

The government review did not look in depth at the operational issues of the Municipal Board, which is the primary focus of this audit.

3.0 Audit Objective and Scope

The objective of our audit was to assess whether the Assessment Review Board (Review Board) and Ontario Municipal Board (Municipal Board), in conjunction, when appropriate, with Environment and Land Tribunals Ontario (Tribunals) and the Ministry of the Attorney General (Ministry) had effective systems and procedures in place to ensure that:

- the Boards' resources for handling disputes are managed in an efficient and cost-effective manner, in accordance with applicable legislation and regulations; and
- accurate and complete data on the effectiveness of both Boards is collected, analyzed, and used for decision-making and operations improvements, and publicly reported in contributing to a fair, accessible and transparent justice system.

Both the Review Board and Municipal Board follow a quasi-judicial process in making their decisions. These decisions, and the judgment of the board members, were not a subject of this audit.

In planning for our work, we identified the audit criteria we would use to address our audit objective (see **Appendix 4** for criteria). These criteria were established based on the applicable legislation, directives, policies and procedures, internal and external studies, and best practices. Senior Ministry management and the Tribunals' executives reviewed and agreed with the suitability of our objectives and associated criteria.

We conducted our audit between December 2016 and June 2017. We obtained written representation from the Ministry management and the Tribunals' executives that, effective November 10, 2017, they have provided us with all information they were aware of that could significantly affect the findings or the conclusion of this report.

Our audit work was conducted at the Boards' office in Toronto. In conducting our audit, we reviewed relevant documents and decisions, analyzed information, interviewed appropriate Ministry staff and board members and staff, and reviewed relevant research from Ontario and other provinces. The majority of our file review went back three to five years, with some trend analysis going back as far as 10 years. We also attended several hearings handled by both Boards to obtain more understanding of the actual hearing process.

We met with numerous representatives and stakeholder groups to get their perspectives on the operations of both Boards.

As for the Review Board, we met with representatives of the Ministry of Finance and the Municipal Property Assessment Corporation, which administers the property assessment system—including the classification and establishment of the assessed values for all properties across the province. In addition, we talked to representatives from stakeholder groups, including the Association of Municipalities of Ontario, the Ontario Municipal Tax and Revenue Association, the Municipal Finance Officers' Association of Ontario, several municipalities, and agent representatives for property owners.

To assist our understanding of the Municipal Board, we talked with representatives from stakeholder groups, including the Regional Planning Commissioners of Ontario, the Association of Municipalities of Ontario, the Building Industry and Land Development Association, and the Ontario Professional Planners Institute. We also held discussions with municipalities to gain their perspectives on the appeal process at the Municipal Board.

We reviewed relevant documents regarding the recent government review of the Municipal Board. These included information on the public consultations gathered from the town hall meetings in fall 2016; submissions by municipalities and stakeholder groups; briefing notes and presentations to Ministry senior management; and other internal documents.

We reviewed a sample of decisions rendered by the Municipal Board between 2013 and 2016, based on major complaints from the public. Our review of these cases was intended to identify areas in which the Municipal Board could improve its operations, not to question the merits of the decisions made by individual board members.

In 2013 and 2015, the Ministry's internal audit, among other things, reviewed the per diem payments to part-time board members at both the Review Board and Municipal Board. Since then, both Boards revised and strengthened their fee-for-service framework to compensate their part-time members starting in January 2017. As a result, our audit regarding the use of board members' work hours was largely focused on full-time members.

4.0 Detailed Audit Observations—Assessment Review Board

4.1 Property Owners Wait Years for Property Assessment Appeals To Be Resolved

4.1.1 Number of Property Assessment Appeals Decreased Since 2009, but Backlogs Significant

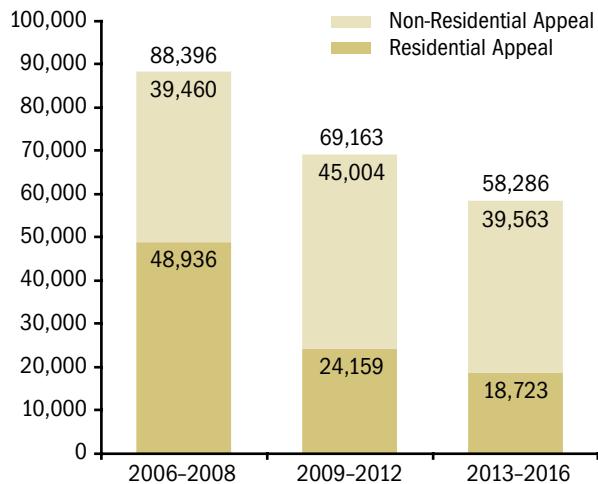
The Assessment Review Board (Review Board) categorizes property assessment appeals as two types: residential and non-residential.

Over the past three assessment cycles up to 2016, the total number of property assessment appeals received by the Review Board has decreased 34% from approximately 88,400 in the 2006–2008 cycle to approximately 58,290 in the 2013–2016 cycle. **Figure 4** shows the decreasing trend.

While the number of non-residential appeals remained relatively stable over the same period, the number of residential appeals decreased significantly—by 62%.

Figure 4: Number of Appeals Received by Assessment Review Board, by Type, by Property Assessment Cycle 2006–2008, 2009–2012, and 2013–2016

Source of data: Assessment Review Board



Note: The figures exclude the number of municipal tax appeals (about 960 during 2013–2016 cycle); and deemed appeals that are considered duplicated counts by the Office of the Auditor General (discussed in **Section 4.2**).

The decrease in residential appeals was primarily due to an amendment to the *Assessment Act* made in 2009. The amendment requires all residential property owners to file a mandatory Request for Reconsideration with the Municipal Property Assessment Corporation (MPAC) before owners can file a property assessment appeal with the Review Board.

4.1.2 Review Board's Previous Attempts to Reduce Backlogs Had Minimal Improvement

Although the total number of residential appeals has decreased significantly since 2009, the Assessment Review Board (Review Board) has been struggling to eliminate its backlog. **Sections 4.1.2 to 4.1.4** discuss the backlog issue.

The *Assessment Act* requires that appeals before the Review Board should be heard and disposed of by the Review Board “as soon as practicable,” which is up to the Review Board. As shown in **Figure 5**, the Review Board resolved the following percentage of appeals in its cycles:

- 75% in 2013–2016;
- 67% in 2009–2012; and
- 68% in 2006–2008.

In February 2013, the Review Board revised its “appeals streaming strategy” for the 2013–2016 assessment cycle. A key scheduling consideration was that adjournments would be granted at the discretion of the Review Board only in limited circumstances, such as emergencies. The Review Board’s goal was to resolve the entire backlog related to the tax years from the 2009–2012 cycle and earlier, and to resolve 90% of all appeals received during the 2013–2016 cycle.

During the 2013–2016 property assessment cycle, the Review Board received a total of 58,286 assessment appeals; 39,563 (68%) appeals on non-residential properties and 18,723 (32%) appeals on residential properties. Approximately 70% of the property assessment appeals were filed in 2013, the first year of the cycle.

If the Review Board had met its internal target, it would have resolved all outstanding property assessment appeals received during the 2009–2012 and earlier cycles, leaving approximately 5,830 property assessment appeals outstanding. This is based on the Review Board’s goal to resolve 90% of about 58,290 appeals outstanding at the end of the 2013–2016 cycle.

However, as of March 2017, we noted that the Review Board still had 16,601 unresolved appeals, which were close to three times higher than the targeted 5,830 outstanding appeals. **Figure 6** shows the breakdown of the 16,601 outstanding appeals by their filing dates. While 14,790 appeals have been outstanding for four years or less, the Review Board could not provide us with a breakdown of these appeals between residential and non-residential appeals but informed us they were largely non-residential. The remaining 1,811 appeals have been outstanding for more than four years, of which 564 of them have been outstanding between eight and 19 years. Of the 1,811 appeals, about 1,740 (or 96%) of them were non-residential appeals and the other 70 (or 4%) were residential appeals.

Figure 5: Number of Appeals* Received and Resolved, for the 2006-2008, 2009-2012, and 2013-2016 Property Assessment Cycles

Source of data: Assessment Review Board

Cycle	# of Appeals* Received (A)	# of Appeals* Resolved Within the Same Cycle (B)		% Resolved
		Resolved Within the Same Cycle (B)	% Resolved	
2006-2008	88,400	60,440	68	
2009-2012	69,160	46,360	67	
2013-2016	58,290	43,500	75	

* Excludes the number of municipal tax appeals received by the Assessment Review Board. During the 2013-2016 cycle, the Review Board received about 960 municipal tax appeals.

As mentioned above, the Review Board was able to resolve 75% of appeals in the 2013–2016 cycle, but this rate was far from its 90% targeted resolution rate.

Appeals Streaming Strategy Not Effective

Although the 2013–2016 strategy was to address delays in processing appeals, the strategy did not prove to be as effective as the Review Board expected for the following reasons:

- The Review Board stated that it was not proactive in managing its caseload; rather, the parties controlled the movement of appeals through the system and the Review Board was reactive by granting repeated adjournments.
- Although the Review Board knew that, historically, approximately 70% of property assessment appeals are received in the first year of a four-year cycle, it did not consider whether the existing number of board members was sufficient to resolve the cases when they are filed in the first year.
- Based on our discussion with representatives from municipalities, board members, the Review Board's Associate Chair, and the Municipal Property Assessment Corporation (MPAC), we heard that the parties to an appeal often failed to provide complete and timely exchange of required information before their hearings occurred. All parties

contributed to the delays. However, the Review Board had no detailed information to further analyze the reasons for delays.

- The Review Board tried to impose a requirement that a pre-hearing be held within 18 months of receipt for all non-residential appeals, but failed because it did not enforce this timeline, nor establish any consequence for non-compliance. In many cases, the Review Board granted adjournments because one or more of the parties had not completed the pre-hearing exchange of pleadings or disclosure. The Review Board rarely rejected a request for an adjournment, even though it had the legislative authority to deny an adjournment unless warranted. We noted that the average number of adjournments had remained unchanged at three adjournments per appeal that went to a hearing from the 2009–2012 cycle to the 2013–2016 cycle.
- The Review Board attempted to use telephone conference calls with the parties to set pre-hearing dates. According to several board members, MPAC, and municipality representatives, the calls were not effective to establish pre-hearing dates because parties would not comply with a date. The time spent by board members in making those calls was not productive. During the 2013–2016 cycle, board members made a total of 7,500 calls. The Review Board estimated that the time to

Figure 6: Breakdown of the Number of Property Assessment Appeals Outstanding as of March 2017

Source of data: Assessment Review Board

Cycle(s)	# of Appeals Received that were Outstanding as of March 2017	Length of Time Unresolved as of March 2017
2013–2016	14,790 ¹	4 years or less
2009–2012	1,247	Over 4 years and up to 8 years
1998–2008	564 ²	Over 8 years and up to 19 years
Total	16,601	

1. Further breakdown of the 14,790 was unavailable. However, based on the best data available that was generated in another report, the breakdown of the number of 11,578 outstanding appeals was as follows:

- 2,206 appeals were filed for the taxation year 2016;
- 2,783 appeals were filed for the taxation year 2015;
- 1,636 appeals were filed for the taxation year 2014;
- 4,953 appeals were filed for the taxation year 2013.

2. Sixty-four of the 564 appeals were filed in 1998.

arrange and conduct a single telephone conference call required four to five hours of both administrative staff time and board members' time. Due to the telephone conference calls not being a productive tool to a timelier resolution of the appeals, by the end of 2016, the Review Board discontinued the use of these calls to establish pre-hearing dates.

Review Board Has Set Target to Clear All Backlogs by 2020

For the upcoming 2017–2020 cycle, the Review Board set a target to resolve all appeals—both existing backlogs and new appeals—by the end of 2020 using new established timelines. Once an appeal commences, all parties must follow the new timeline, which can only be amended or adjourned in exceptional circumstances. Examples of exceptional circumstances are serious illness of a party or family member, accidents, or storms. Vacations and scheduling conflicts are not considered exceptional circumstances.

Based on the Review Board's historical resolution rate of property assessment appeals over the past three tax cycles, its target for the 2017–2020 cycle may be optimistic. The Review Board indicated to us that it intended to increase the use of

mediation for non-residential appeals as an alternative dispute resolution so that more non-residential appeals can be settled without a formal hearing. However, we noted that the number of non-residential appeals scheduled for mediation was low—close to 1,450, which represented only 4% of the 39,563 non-residential appeals received during the 2013–2016 cycle.

Other Jurisdictions Use Advanced Technologies to Manage Files

We noted that other jurisdictions use advanced technologies that could help manage the appeal files more effectively. For example, the Assessment Review Board for the City of Calgary offers an e-portal that allows users to file and manage their appeals on property or business assessments. While Ontario allows users to file appeals electronically, the e-portal for the City of Calgary also allows users to submit evidence disclosures, request postponements, submit withdrawal requests and access the board decision through the same secure password-protected portal.

One of the tools used by the Property Assessment Appeal Board in British Columbia is online dispute resolution. This involves parties to an appeal communicating with each other in a secure

online platform with board facilitation in an effort to resolve their dispute. The Property Assessment Appeal Board of British Columbia reported in its 2016 annual report that while online dispute resolution took more time for parties and board members than a one-hour teleconference, the resolution rate using this method over the last four years was higher than when teleconferences were used.

Review Board Estimates It Needs 10 More Part-Time Members to Handle Caseload

After the end of our fieldwork, the Review Board prepared an internal document, dated July 31, 2017, that identifies the staffing needs for the 2017–2020 assessment cycle. Based on its historical data and assumptions, the Review Board estimated that it would require 10 part-time members by the end of 2018 in addition to the nine part-time and 12 full-time members as of March 2017. However, the Review Board had not yet forecast the financial requirement to pay for the additional part-time members in its proposal. The Review Board also stated that even a small change in the rates of mediation and settlement will significantly impact the number of members required to manage its caseload.

4.1.3 Large Number of Appeals Are Pending Resolution; Some Cases Date Back to 1998

As of March 2017, the Assessment Review Board (Review Board) had about 1,810 appeals that have been outstanding since they were filed between 1998 and 2012—about 1,740 related to non-residential properties and about 70 to residential properties. The assessment value of the properties being appealed totalled approximately \$20 billion. Sixty-one percent of these properties were located in the Greater Toronto Area, 20% were in southwest Ontario, and the remaining 19% were in the central, eastern and northern regions of the province.

The Review Board cited complexity as the primary reason for the backlog of cases dating back for

many years. As shown in **Figure 4** in **Section 4.1.1**, starting in 2009, the majority of appeals filed were non-residential properties, which are typically more complicated, and therefore, take longer to resolve than appeals on residential properties.

We reviewed a sample of the older outstanding appeals filed in 2012 or earlier and found that the Review Board scheduled a series of hearing events, but no conclusion or settlement was reached on the appeals. The delays affected property owners, residential and non-residential, as well as municipalities.

It is important to both municipalities and property owners that appeals before the Review Board are resolved in a timely manner. Excessive delays negatively impact their ability to effectively manage their financial affairs. For example:

- An appeal on a residential housing complex with an assessed value of \$8.9 million was filed with the Review Board in February 2012 for the 2011 tax year. An initial hearing event for the property was held in July 2012, five months after the appeal was filed. The Review Board granted four adjournments between 2012 and 2016. For example, a full hearing was scheduled for April 2016 but was adjourned with no justification provided. Because the appeal was still outstanding at the time of our audit, the ultimate financial impact on the municipal property tax—whether the owner has to pay less or more—was unknown at the time of our audit.
- An appeal was filed in March 2009 on a yacht club assessed at \$294 million in the 2009 tax year. An initial hearing event for the property was held in December 2010, one year and nine months after the appeal was filed. Since then, there have been 14 hearing events, including several telephone conference calls, between 2011 and 2017. The case also was delayed by the Review Board granting numerous adjournments. The appeal was still outstanding in June 2017, at the end of our audit fieldwork.

The impact of delays on municipalities is discussed further in **Section 4.1.4**.

Appeals Concerning Multiple Properties with Same Owner Take Years to Resolve

We found 1,380 of the 1,810 older appeals were classified by the Review Board as “central issue” appeals. Central issue appeals are multiple appeals from the same owner of properties located throughout the province but are being appealed based on the same issue regarding the assessed value. For example, a large retailer with multiple stores appealed the assessment methodology used for similar properties.

These appeals are grouped together and managed by an individual board member, who brings the two sides together in an attempt to develop a consistent approach to managing the multiple appeals. To avoid any perception of bias, the board member managing the central issue would not be the same board member who hears the appeals related to the central issue.

We reviewed a sample of central issue appeals to understand why they took significant time to resolve. The following case, with sequences of events, provides insight why central issues took years to resolve:

- A large retailer filed an appeal in early 2009 for 167 stores across the province for the 2009–2012 assessment cycle and, when it was not settled, filed another appeal in early 2013 for 212 stores for the 2013–2016 assessment cycles. The retailer argued that the assessment methodology used by MPAC resulted in its properties being assessed at a higher value than they should be.
- In 2013, the parties brought a motion to the Review Board to have all the appeals combined and handled together. After that, serious negotiations began between the retailer and MPAC. The Review Board indicated that since 2013, 24 hearing events, such as teleconferences, were held.

- In 2016, the parties agreed on an assessment methodology for the properties. The combined decrease in assessed value for the stores was approximately \$300 million in the 2009–2012 cycle and \$335 million in the 2013–2016 cycle. We followed up with a sample of municipalities and noted that the amount of property tax refunds that they had to issue to the large retailer as a result of the re-assessments ranged from \$80,000 for one store in one municipality to \$1.7 million for two stores in another municipality.

We noted that several affected municipalities across the province expressed concerns with the adjusted values for the retail properties because they resulted in large property tax refunds to the property owner for both the 2009–2012 and 2013–2016 cycles and also because the appeals took a long period of time to resolve. If the appeals for the 2009–2012 cycle had been settled prior to the property assessment for the 2013–2016 cycle, appeals for the 2013–2016 cycle may not have had to be filed. The difficulty this system has caused municipalities is discussed further in **Section 4.1.4** below.

4.1.4 Delays Have Created Uncertainty for Municipalities

An efficient and timely property assessment appeal process is an important component of procedural fairness and timely access to justice. Because the municipal tax payable by property owners is calculated based on a percentage of their property’s assessed value, it is important to both municipalities and property owners that appeals before the Assessment Review Board (Review Board) are resolved efficiently. Failure to dispose of appeals in a timely manner results in both a backlog of appeals and a period of time in which both the municipality and the property owner are unsure whether property tax has to be paid or refunded.

For a municipality, the excessive delays in resolving high-dollar property assessment appeals negatively impact its ability to effectively manage

its fiscal affairs. To cover the losses in property tax revenue, a municipality might be forced to increase its future property tax rates and/or reduce existing municipal services or seek assistance from the Province.

For example, the Review Board took approximately one-and-a-half years and four years respectively to resolve two cases. The outcome of the Review Board's decisions significantly reduced the assessment value of two properties located in two small communities. The property taxes generated from the two properties cover a significant portion of the communities' tax base. The municipalities were required to refund a total of \$10.7 million in property taxes previously paid by the property owners during the 2009 to 2012 taxation years.

Based on our discussion with municipal stakeholders, we noted that they have had difficulties in establishing adequate reserves for their annual budgets because the appeal system is on a four-year cycle. This is compounded when appeals are not resolved from earlier tax cycles because it is even more difficult for the municipalities to establish an appropriate reserve for multiple tax cycles.

RECOMMENDATION 1

To help ensure timely resolution of appeals, we recommend that the Assessment Review Board:

- enforce its new timelines, policies and procedures to be complied with by all parties involved in an appeal;
- minimize the number of outstanding appeals from the 2017–2020 property assessment cycle; and
- assess the cost-benefit of using new technology, such as online dispute resolution and storing appeal information and evidence electronically, and take steps to use such technology as warranted.

MINISTRY RESPONSE

The Ministry of the Attorney General (Ministry) will monitor and track the Assessment Review

Board (ARB)'s commitment to resolve its backlog by March 31, 2021.

The Ministry will monitor ARB improvements to processes and procedures.

The Ministry will work with Environment and Land Tribunals Ontario to assess its business case for new technology. There is a long-term ministry technology plan in place to help all tribunals modernize their operations.

RESPONSE FROM ENVIRONMENT AND LAND TRIBUNALS ONTARIO

Timeliness and efficiency are core values of the Assessment Review Board (ARB) and Environment and Land Tribunals Ontario (ELTO). Proceedings will be conducted in a just, expeditious and cost-effective manner and will be proportional to the issues that must be determined to resolve the dispute.

The ARB reviewed its processes and procedures that were in place for the 2013 to 2016 assessment cycle. We recognized the opportunity for improvement and held numerous consultations with stakeholders. The ARB intends to resolve 100% of its current and new caseload within the next four-year cycle ending March 31, 2021. The ARB has introduced new processes and Rules of Practice to achieve this goal.

ELTO will be seeking approval and funding from the Ministry of the Attorney General to develop and implement new technology to assist with the timely resolution of appeals and that will provide better data allowing for improved tracking and analysis.

4.2 Annual Caseload Statistics Reported to the Public Overstated for Many Years

The *Assessment Act* (Act) allows a person to file an appeal in any year of the four-year assessment cycle. When an appeal is filed for a taxation year but is not resolved in that taxation year, the Act

stipulates that the appellant (the person who is appealing) is “deemed to have brought the same appeal” for each subsequent year in the taxation cycle, which is called a “deemed appeal.” The Assessment Review Board (Review Board) will automatically create a new appeal for the next tax year and repeat it until the end of the cycle if the appeal is not resolved earlier.

For example, if an appeal was filed in the first taxation year of the assessment cycle but is not resolved until the fourth year of the cycle, the Review Board will count the appeal four times—one for the original appeal and three deemed appeals. The deeming requirement also saves a property owner from having to re-file or pay a fee for an appeal in the subsequent years if it was not resolved in the first year.

Although the deeming rule is defined under the Act, determining caseload numbers and how the numbers should be presented are at the discretion of the Review Board.

In its annual report, the Review Board publicly reports its caseload statistics using both the original and deemed appeals from both residential and non-residential property owners. (It also reports appeals of municipal taxes but the numbers were small.) We found that the numbers shown in the annual report were significantly overstated: as much as 507% in 2015/16 as shown in **Figure 7** and further explained below. The Review Board provided an explanation of the statutory requirement for deemed appeals in its annual report, but the explanation does not quantify or indicate the workload impact of these additional appeals.

In addition, the Review Board does not normally track or monitor the original and deemed appeals separately. At our request, the Review Board generated the numbers of the original appeals for comparison. **Figure 7** compares the two sets of caseload statistics. Column A shows the numbers in the annual report versus Column B, which is the actual caseload. Column A includes the number of original appeals, any subsequent deemed appeals, and municipal tax appeals. Column B includes the

original appeals only. While Column B excludes the number of municipal tax appeals, the numbers were so small that they did not justify the large gaps between the two sets of numbers. Because the Review Board chose to publicly report the number of original appeals and the deemed appeals together, the annual caseloads reported in its annual report were significantly overstated.

Based on our discussions with board members and staff, the deemed appeals create minimal amount of additional work for the board members. During a hearing, the member will render the same decision for the original and deemed appeals. Any additional work is largely administrative.

RECOMMENDATION 2

To ensure the public is well informed of complete and relevant information and the Assessment Review Board (Review Board) has information useful for its own decision making, we recommend that the Review Board explain how the existing statistics are arrived at and report on the numbers that better reflect its caseloads in its annual report.

MINISTRY RESPONSE

The Ministry of the Attorney General will work with Environment and Land Tribunals Ontario to monitor and track reporting on deemed appeals.

RESPONSE FROM ENVIRONMENT AND LAND TRIBUNALS ONTARIO

The *Assessment Act* (Act) mandates the deeming of appeals. Under the Act, there are several distinct forms of deeming, including annual (section 40), factual error (section 32), omitted (section 33) and supplementary (section 34). The creation of deemed appeals has been automated within the Assessment Review Board (ARB)'s case management system. However, each deemed appeal must still be scheduled,

Figure 7: Caseload Statistics Comparison, 2013/14–2015/16

Source of data: Assessment Review Board

	# Shown in the Annual Report ¹ (A)	# of Actual Caseload ² (B)	Difference (A) – (B)	Oversated by %
April 1, 2013–March 31, 2014				
Opening Balance	80,000	34,390	45,610	133
Appeals Received	45,000	27,255	17,745	65
Total Appeals for Year	125,000	61,645	63,355	103
Appeals Resolved	63,000	19,803	43,197	218
Balance End Fiscal Year	62,000	41,842	20,158	48
April 1, 2014–March 31, 2015				
Opening Balance	62,000	41,842	20,158	48
Appeals Received	42,000	6,323	35,677	564
Total Appeals for Year	104,000	48,165	55,835	116
Appeals Resolved	38,000	17,336	20,664	119
Balance End Fiscal Year	66,000	30,829	35,171	114
April 1, 2015–March 31, 2016				
Opening Balance	66,000	30,829	35,171	114
Appeals Received	32,000	5,272	26,728	507
Total Appeals for Year	98,000	36,101	61,899	171
Appeals Resolved	37,000	13,244	23,756	179
Balance End Fiscal Year	61,000	22,857	38,143	167

1. Numbers include the original appeals, deemed appeals, and municipal tax appeals. The number of municipal tax appeals filed at the Assessment Review Board was small: 436 in 2013; 378 in 2014; 136 in 2015; and 9 in 2016.

2. Numbers include the original appeals only.

heard and a decision rendered. For deemed appeals, the issues raised may be different from the original appeal and the adjudicator must make a decision for each deemed appeal.

In the interests of greater transparency and clarity, the ARB will undertake in future reports to separate out the figures for original and the categories of deemed appeals (annual, factual error, omitted and supplementary).

4.3 Evaluation of Review Board's Overall Performance Needs Improvement

The Assessment Review Board (Review Board) can measure its performance in a number of areas and

use this information. However, the Review Board reports publicly on only two performance measures: timeliness in resolving residential appeals only—non-residential appeals are excluded; and timeliness in issuing a decision.

The Review Board has a target of resolving 90% of residential appeals within 365 days of receipt. The Review Board reported that it had achieved beyond its target with an actual performance of 100% in 2013/14, 2014/15 and 2015/16, and 98% in 2016/17. In comparison, another report we received from the Review Board indicated that, as of March 31, 2017, 1,358 residential appeals that were filed for the 2013 to 2016 taxation years had been outstanding for over 365 days. We found that the 1,358 figure was significantly higher than an estimated 380 residential appeals expected to

be outstanding if the Review Board had achieved beyond its targets in all four fiscal years up to 2016/17. After we brought up the discrepancy to the Review Board, it confirmed that the actual performances published between 2013/14 and 2016/17 were incorrect due to an error later identified in the logic in programming to arrive at the figures. The Review Board informed us that it will fix this error in its future performance reports. In addition, we also question whether the 365 days is reasonable and acceptable to residential property owners.

The Review Board has a target of issuing 90% of decisions within 60 days after the hearing ends. The Review Board achieved beyond its target at 97% in both 2015/16 and 2016/17.

Some additional performance measures that the Review Board can include, however, are the following:

- timeliness in resolving non-residential appeals. They represented almost 70%, or about 39,560 of 58,290 appeals, of its total caseload during the 2013–2016 cycle;
- users' satisfaction. For example, determine whether home owners are satisfied with the existing targeted 365-day turnaround time for residential appeals; and
- cost per appeal.

We suggested the first performance measure—the timeliness in resolving non-residential appeals—because the Review Board does not measure this for non-residential appeals.

The last two performance measures were suggested by the Ministry of the Attorney General in 2015 to all tribunals to better evaluate their performances. However, the Review Board was not reporting them at the time of our audit. It indicated that it was working on these additional performance measures. It noted that progress was dependent on the resources available at the Government Justice Technology Services, which provides information technology support services to the Review Board. Additional staff time from the Government Justice Technology Services will be needed to

extract the required data from the Review Board's information system to track and monitor the additional performance measures.

Cost Per Appeal Cannot Be Calculated

With respect to the calculation of the actual cost per appeal, the Review Board does not have the data to determine the ratio. This is because of the following:

- the expenditures for all five boards/tribunal are combined and reported under Environment and Land Tribunals Ontario (Tribunals). The expenditures are not broken down by individual boards/tribunal;
- the Tribunals has two Registrars who are responsible for the operations of all five boards/tribunal. The time spent by the two Registrars by individual boards/tribunal is not recorded;
- similar allocation is lacking for other back-office costs, such as payroll, finance, training, supplies, overhead and other administration costs; and
- the lack of information on how board members spend their work hours, which is discussed in **Section 4.4**.

Review Board Does Not Analyze Results of Members' Decisions

The Review Board does not monitor results of members' decisions to identify whether systemic problems exist with current assessment values and property classifications. By identifying whether any issues exist, corrective action could be taken to improve the consistency of the property assessment and appeal process. Based on discussions with board members, they indicated that such reviews of decisions might be beneficial, but it is not within the Review Board's jurisdiction to conduct the reviews. Any changes to the jurisdiction of the Review Board are required to be legislated by the Ministry of Finance. The Review Board further indicated that each appeal is different and unique

and that it is difficult to ascertain whether systemic problems exist.

During our audit, we requested information on members' decisions made on property assessment values and classifications. For the five years between 2012 and 2016, we noted the following (see **Figure 8**):

Residential Appeals:

- on average, for 5% of the residential appeals, members assessed the properties higher than the amount assessed by the Municipal Property Assessment Corporation (MPAC);
- 21% of the appeals resulted in no change in value;
- 74% of the appeals resulted in lower property values; and
- the total re-assessed value was reduced by 8.4%.

Non-Residential Appeals:

- on average, for 4% of the non-residential appeals, members assessed the properties higher than the amount assessed by MPAC;
- 24% of the appeals resulted in no change in value;
- 72% of the appeals resulted in lower property value; and
- the total re-assessed value was reduced by 9.3%.

For property classification, in 83% of appeals, the members agreed with the property clas-

sification determined by MPAC and in 17% the members disagreed.

These results show that in the majority of the property assessment appeals that make it to a formal hearing on the merits and are not otherwise settled or withdrawn, the Review Board disagreed with the initial property values assessed by MPAC.

We noted that other administrative tribunals, such as the Human Rights Tribunal of Ontario, the Social Benefits Tribunal, and the Social Security Tribunal of Canada, report on the outcomes of their decisions:

- Both the Human Rights Tribunal of Ontario and the Social Benefits Tribunal report on the number and percentage of appeals granted versus denied.
- The Social Security Tribunal of Canada reports on the number and percentage of the applicants who were successful or denied in appealing decisions on Employment Insurance, Old Age Security and the Canada Pension Plan.

The Review Board could also consider publicly reporting on an outcome measure, such as the number of decisions issued by the Review Board, and overall percentage change in assessed value by property type, residential and non-residential. This data would not be used to evaluate the performance of the Review Board; rather, the data could provide transparency to the public on the outcomes of the Review Board's decisions as a whole.

Figure 8: Summarized Result of Decisions Made by the Assessment Review Board, Five Years Aggregate, 2012–2016

Source of data: Assessment Review Board

	% of Appeals			Decision Value Compared to the Initial Value Assessed by MPAC* (%)	
	Assessed Higher than the Value Assessed by MPAC*	Assessed Lower than the Value Assessed by MPAC*			
		No Change	Assessed Lower than the Value Assessed by MPAC*		
Residential	5	21	74	Reduced by 8.4	
Non-Residential	4	24	72	Reduced by 9.3	

* The Municipal Property Assessment Corporation (MPAC) is responsible for the classification and establishment of the assessed values for all properties across the province.

RECOMMENDATION 3

To better evaluate and report on its key activities and increase its transparency to the public, we recommend that the Assessment Review Board:

- establish a reasonable target to resolve non-residential appeals and measure it against its actual performance;
- report on other performance measures, which can be separately measured on residential and non-residential appeals, such as user satisfaction, average cost per appeal and average turnaround time in handling appeals, as suggested by the Ministry of the Attorney General; and
- report on its overall outcome of decisions by types of appeals.

MINISTRY RESPONSE

The Ministry of the Attorney General (Ministry) will monitor and track the Assessment Review Board (ARB)'s commitment to resolve its backlog by March 31, 2021.

The Ministry will continue to work with Environment and Land Tribunals Ontario (ELTO) to further develop and implement performance measures.

The Ministry will monitor results of the customer service survey in ELTO's annual report.

RESPONSE FROM ENVIRONMENT AND LAND TRIBUNALS ONTARIO

As noted in the response to **Recommendation 1**, the Assessment Review Board (ARB) intends to resolve 100% of its current and new caseload within the next four-year cycle ending March 31, 2021. The ARB has introduced new processes and Rules of Practice to achieve this goal.

The Ministry of the Attorney General (Ministry) has established a cross-cluster working group to develop and implement new performance measures. It has proposed that a

consistent methodology for determining average cost per case be developed. As the working group, under the Ministry's leadership, develops new performance measures, Environment and Land Tribunals Ontario (ELTO) will endeavour to implement them in a timely manner and report on them in our Annual Report and Business Plans.

ELTO has begun a pilot project on client satisfaction surveys. ELTO intends to review the results of the pilot early in 2018 and make adjustments to the questions and approach as necessary with the intention of launching the survey on a wider scale in the new fiscal year. Survey results will be reported in ELTO's annual report.

For the 2018/19 Annual Report, the ARB will report on the number of appeals where the assessment was revised or the appeal was dismissed.

4.4 Actual Time Spent Reported by Board Members Neither Consistent Nor Analyzed

As of March 2017, the Review Board had a total of 21 members, including 12 full-time and nine part-time members, all of whom are independent adjudicators appointed by the Provincial Cabinet through an Order in Council. Full-time members are paid an annual salary, while part-time members are paid on a per diem basis. Monitoring the use of full-time board members is important given that full-time members are paid regardless of actual time spent in hearings.

The Review Board does not have a formal policy requiring its full-time members to record how they spent their work hours by individual appeals. However, board members do have a practice of completing timesheets, but do so inconsistently. For example, some members recorded the actual number of hours worked, while others recorded the number of hours scheduled. As a result, the Associate Chair cannot confirm how members spent their

work hours. In addition, the prepared timesheets do not require any oversight by the Associate Chair and no analysis is done to assess the effective use of members' time.

The Review Board maintains a schedule of upcoming planned hearing events that are allocated to board members based on their availability and experience. Other than conduct hearings, board members also prepare for hearings, travel for business, attend committee meetings, write decisions, attend training, and fulfil other administrative duties. However, the Review Board does not track the actual time spent by members on the hearing events or any of these other activities.

As is the Review Board's policy, hearings are conducted in the municipality where the appeal originated. The Review Board is unable to verify actual time spent at hearings held in various municipalities. Instead, it relies on the professionalism and honesty of its members.

In the absence of a formal policy and an effective time-reporting system, the Review Board cannot do the following:

- allocate members' time more effectively to address existing backlogs and new caseloads;
- assess whether members are spending their time efficiently and cost-effectively. For example, how full-time members spend their time when hearings are rescheduled or cancelled at the last minute was not monitored;

- evaluate whether their resources are allocated equitably and effectively. For example, assess whether some members have a much heavier or lighter workload than others;
- review and assess how efficiently part-time board members are being used compared with full-time members;
- determine the proper mix of full-time and part-time members to meet the yearly anticipated appeal caseload; and
- calculate the cost per hearing or appeal.

Figure 9 shows that, from 2013 to 2016, a total of approximately 2,750 hearings were cancelled, resulting in the cancellation of close to 3,130 planned hearing days. The possible reasons for these cancellations were adjournments, appeals were settled by the parties, and/or appeals were withdrawn by a party prior to a hearing; however, the Review Board did not record the reason for each cancellation.

For hearings that were cancelled one to two weeks prior to the hearing date, the Associate Chair of the Review Board would attempt to designate the previously assigned board member to another hearing event or a new hearing on another appeal so that the member's time was better utilized. However, if a hearing was cancelled three or fewer days prior to the hearing date, it was very difficult to reassign the full-time member to another hearing. Due to the short notice, another hearing

Figure 9: Selected Statistics on Cancelled Hearings, 2013–2016

Source of data: Assessment Review Board

Calendar Year	Total # of Hearings Cancelled (# of Hearing Days)	Total # of Hearings Cancelled 3 or Fewer Days Before Hearing*	% of the # of Hearings Cancelled 3 or Fewer Days Before Hearing
2013	601 (698 days)	330	55
2014	838 (988 days)	468	56
2015	575 (619 days)	326	57
2016	737 (822 days)	415	56
Total	2,751 (3,127 days)	1,539	56

* The equivalent number of hearing days that were cancelled three or fewer days before a hearing was not provided by the Review Board because of the significant amount of time that it would take to access this information.

could not be scheduled and all other hearings in that short time period would already be assigned. Consequently, the member would perform other duties, such as decision writing and research, and/or would be assigned to special projects by the Associate Chair.

Since there was no real time reporting, neither we nor the Review Board were able to confirm how members spent their time when hearings were cancelled a few days before hearings. We noted that, between 2013 and 2016, about 1,540 hearings, or 56% of the approximately 2,750 hearings cancelled, were cancelled three or fewer days before the hearing date (as discussed earlier, see **Figure 9**).

RECOMMENDATION 4

To help monitor and manage board members' time resources effectively, we recommend that the Assessment Review Board review and analyze actual time spent by individual board members on each appeal by key activities, such as hearing events, decision writing and mediations.

MINISTRY RESPONSE

The Ministry of the Attorney General will work with Environment and Land Tribunals Ontario to assess systems currently in place for governing member schedules and activities.

RESPONSE FROM ENVIRONMENT AND LAND TRIBUNALS ONTARIO

Environment and Land Tribunals Ontario and the Assessment Review Board recognize the importance of efficiency and making the best use of limited resources.

In the next fiscal year, we will implement processes and measures to better review and analyze actual time spent by all individual board members on key activities including hearing events, decision writing and mediation.

4.5 Review Board Does Not Conduct Quality Reviews of Members' Oral Decisions and Performance

4.5.1 Majority of Members' Decisions Receive No Peer Review

At the conclusion of an Assessment Review Board (Review Board) hearing, board members use their professional judgment, based on evidence heard, to render either an oral decision or issue a written decision at a later date. An oral decision is a verbal explanation of how the member came to the decision. A written decision also explains how a decision was made and provides support. Of all the board members' decisions from 2012 to 2016, approximately 80% were oral and about 20% were written. Unlike written decisions, oral decisions are not subject to peer quality assurance reviews.

As a best practice, an effective quality assurance review would check that the required legislation is followed and that the integrity, appropriateness, and consistency of decision-making are maintained. During the 2013–2016 cycle, either an experienced board member or Vice Chair reviewed each written decision to ensure it provided a full and complete explanation of the rationale for the decision. The reviewers checked that the evidence and submissions were fully considered by the board member and that the decision was supported by the relevant statutory provisions and applicable case law.

When an oral decision is made by a board member, a request for a written decision can be made either at the end of the hearing or up to 14 days after the hearing ends. We noted that the Review Board received very few requests, ranging from 17 to 40 each year between 2012 and 2016, for the members to provide written reasons to support their oral decisions rendered. **Figure 10** shows the number of oral and written decisions issued over the past five years.

If a party to an appeal disagrees with a Review Board decision, the party can request a review of the decision by the Review Board itself. If an error

Figure 10: Number of Oral and Written Decisions Issued, 2012–2016

Source of data: Assessment Review Board

Calendar Year	2012	2013	2014	2015	2016
# of oral decisions issued ¹	5,269	5,837	3,748	1,906	1,511
# of written decisions issued	1,239	974	642	751	334
Total²	6,508	6,811	4,390	2,657	1,845

1. Any parties involved in a hearing may request a written reason for an oral decision either at the time when an oral decision was rendered or within 14 days following the oral decision. The total number of requests for the members to write reasons to support their oral decisions was low: 23 in 2012; 40 in 2013; 39 in 2014; 32 in 2015; and 17 in 2016.
2. The decreasing trend was due to fewer formal hearings being conducted from 2012 to 2016.

in law is made, the party can appeal to the Courts for a judicial review of the decision. We noted that both the requests for reviews and the number of appeals submitted to the Courts of decisions were relatively small compared with the number of decisions issued by the Review Board. While the low number could mean that the parties are satisfied with the Review Board's decision, it could also mean that the parties may decide not to appeal further due to additional time and money that might require.

Members' Decisions Need to Be More Transparent

We found that the decision-making process by board members could be more transparent. Decisions are discretionary: members exercise their judgement based on the evidence submitted, and the majority of residential and non-residential appeals are decided by a single board member. As discussed above, approximately 80% of decisions were oral and therefore not subject to quality assurance review. As well, although any party to an appeal is entitled to have a court reporter transcribe a hearing, it had almost never happened in the period between 2012 and 2016. The party would have to pay for the transcription.

The Review Board also does not make an audio recording of the hearings. It cited that technical difficulties—for example, the difficulty of recording properly when many parties are involved—were the main concern. However, we noted that the Landlord and Tenant Review Board has provided audio

recording since its inception in 1997. Any parties who are involved in an appeal with that board can request copies of a recorded hearing for a minimal fee. Effective August 1, 2017, the Criminal Injuries Compensation Board also records its oral hearings and pre-hearings using a digital recorder.

The benefits of audio recordings include preserving the hearing for internal reviews, following up on complaints, protecting members from allegations of misconduct, serving as a memory aid for members when writing their decisions, and aiding evaluations of members' performance.

We also noted that other jurisdictions, such as in Alberta, the legislation requires all Assessment Review Boards to keep a record of each hearing. The cities of Calgary and Edmonton, for example, meet this legislative requirement by audio recording all their hearings and offer to provide parties with an audio recording of their hearing for a minimal fee upon request.

RECOMMENDATION 5

To increase the transparency of the decision-making process and to help ensure that member decisions are supportable, impartial and are made in accordance with applicable legislation and regulations, we recommend that the Assessment Review Board conduct a cost/benefit analysis of providing audio-recording services to enable it to perform quality reviews on a random sample of oral decisions and to make audio-recording services available to the parties who are involved in an appeal.

MINISTRY RESPONSE

The Ministry of the Attorney General will review the cost-benefit analysis of providing audio recordings to all parties involved in an appeal.

RESPONSE FROM ENVIRONMENT AND LAND TRIBUNALS ONTARIO

Within the next fiscal year, Environment and Land Tribunals Ontario will undertake to complete a cost/benefit analysis of making audio recordings available for parties and for quality review.

4.6 Insufficient Documentation to Justify the Hiring of Board Members

The *Adjudicative Tribunals Accountability, Governance and Appointments Act, 2009* requires that the selection process for the appointment of members to an adjudicative tribunal be competitive and merit-based. The criteria to be applied in assessing candidates should include the following:

- experience, knowledge and training in the subject matter and legal issues dealt with by the tribunal;
- aptitude for impartial adjudication; and
- aptitude for applying alternative adjudicative practices and procedures as set out in the tribunal's rules.

Based on a sample of appointment files we reviewed, it was not always clear how the candidates for a particular appointment were evaluated and whether the candidates who performed the best in the recruitment competition were the candidates recommended for appointment.

For example, in 2013, the Review Board ran a recruitment competition and recommended six candidates for part-time Review Board members out of 21 candidates interviewed. Of the six candidates recommended, four were appointed. The Review Board did not have further information on why two of the candidates recommended were

not appointed, and indicated to us that it was the Attorney General's decision as to whether or not to accept the recommendations from the Review Board. In 2014, because there were still vacant part-time positions, the Review Board re-interviewed three of the 17 unsuccessful candidates from the 2013 competition using a different panel. No documentation could be located to indicate why these candidates were selected for an interview as opposed to other unsuccessful candidates from the 2013 competition.

For the three candidates selected to be re-interviewed, the Review Board's correspondence to the Ministry of the Attorney General indicated that the candidates had placed highly in the 2013 competition. However, the scoring documents completed by the interview panel members in 2013 indicated that two of the three selected candidates did not receive high scores in the 2013 competition. In addition, there was no documentation on file to show any comments or scoring from either of the interview panel members when the three candidates were re-interviewed in 2014. All three candidates were subsequently appointed to the Review Board.

We found similar issues when reviewing files on member selection and appointments at the Ontario Municipal Board, which is discussed in **Section 5.7**.

RECOMMENDATION 6

To ensure the appointment process of board members under the *Adjudicative Tribunals Accountability, Governance and Appointment Act, 2009* is adhered to, we recommend that the Assessment Review Board, together with Environment and Land Tribunals Ontario, thoroughly document its justification of recommended and selected candidates.

MINISTRY RESPONSE

The Ministry of the Attorney General will monitor and track improvements to processes for documenting the selection of member candidates for recommendation.

RESPONSE FROM ENVIRONMENT AND LAND TRIBUNALS ONTARIO

Environment and Land Tribunals Ontario (ELTO) and the Assessment Review Board are committed to a merit-based approach to the selection of members recommended for appointment by the Executive Chair.

Within the next six months, ELTO will review its processes for documenting the selection of member candidates for recommendation and implement improvements to ensure complete written documents are created and stored.

5.0 Detailed Audit Observations—Ontario Municipal Board

The key mandate of the Ontario Municipal Board (Municipal Board) is to effectively and efficiently resolve disputes related to land-use planning.

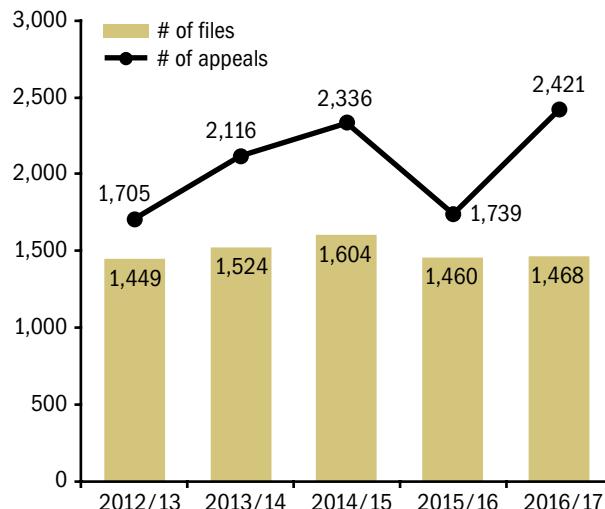
Between 2012/13 and 2016/17, the Municipal Board received approximately 1,500 files each year—with a range between about 1,700 and 2,400 appeals (See **Figure 11**). The Municipal Board held, on average, about 1,700 hearings and issued approximately 1,100 decisions each year.

If a party to an appeal disagrees with a Municipal Board decision, it can request a review of the decision by the Municipal Board itself. If an error in law is made, the party can appeal to the Courts for a judicial review of the decision. We noted that both the requests for reviews (a total of 166 requests between 2013 and 2016) and the number of appeals of decisions submitted to the Courts (a total of 25 appeals between 2013 and 2016) were relatively small compared with the number of decisions issued by the Municipal Board.

Our audit identified several operational issues that the Municipal Board should address before transitioning to the new Local Planning Appeal Tri-

Figure 11: Number of Files Opened and Appeals* Received by Ontario Municipal Board (Municipal Board), 2012/13–2016/17

Source of data: Ontario Municipal Board



* One file may contain multiple appeals. For example, a proposed development for a property may include a municipal Official Plan amendment, a zoning bylaw amendment and a draft subdivision plan—each of these is called a “planning instrument.” In this case, each of these planning instruments can be separately appealed by multiple parties, but they are combined and treated as one file by the Municipal Board because all these appeals are related to the one property. Municipal Board hearings and other hearing events (such as mediation) are scheduled based on an individual property or individual “file.”

bunal (discussed in **Section 2.4.4**) to help ensure it will function efficiently and cost-effectively in resolving land-use related disputes.

5.1 Municipal Board Operations Need Improvement Before Transforming to New Tribunal

Our review of the operations of the Municipal Board identified areas that needed to be improved, in particular:

- The Municipal Board informed us that cases were assigned to board members based on factors such as members’ background, their experience and workloads. However, the Municipal Board had no formal policy in place and, in the majority of cases, only one member was assigned to hearings. One-member decisions could be subjective. The Municipal

Board informed us that it was unable to assign a multi-member panel for most cases due to lack of member resources. Having multiple-member panels will minimize the risk of bias from a one-member panel.

- Similar to the Review Board, the Municipal Board does not provide audio-recording services at the hearings for subsequent internal and/or external review, when needed. **Section 4.5** discussed the benefits in providing audio recordings. Technical difficulties were also cited by the Municipal Board to explain why it did not provide such services to participants involved in an appeal.
- The Municipal Board does not conduct formal client satisfaction surveys of hearing participants. We noted that, for example, the Municipal Government Board in Alberta conducts formal client satisfaction surveys of hearing participants annually. It asked participants to rate areas, such as whether the hearing process was easy to understand, whether the appeal process was fair, unbiased and impartial, whether they were satisfied that the written decisions were issued in a timely manner, and their overall satisfaction.
- The proposed legislation (as mentioned in **Section 2.4.4**) is intended to improve efficiency and accessibility to Ontarians by making the hearing process faster, fairer and less adversarial. Our follow-up on complaints from the public indicated that the proposed legislation would help address some concerns of complainants. However, improvements are required in hiring (discussed in **Section 5.7**) and training of board members. Our follow-up review indicated that complaints came mainly from municipalities and citizen groups expressing concerns that the Municipal Board's decisions lacked objective and clear rationale. In addition, citizen groups complained about a perceived lack of a level playing field in their disputes with developers.

Concerns Expressed by Municipalities

One major concern expressed by municipalities was that the Municipal Board at times stepped outside of its jurisdiction to arbitrarily overturn sections of their Official Plans without proper interpretations of the *Planning Act*.

While we acknowledge the concerns expressed by municipalities, our audit was not to question the merits of the decisions made by individual board members. Our audit's intent was to identify areas in which the Municipal Board could improve how it operates to help it transition to the new Appeal Tribunal as discussed below.

Case 1: Town of Richmond Hill

The Town of Richmond Hill (Richmond Hill) in the development of its Official Plan policies related to parkland dedication utilized the precise wording of Section 42 of the *Planning Act*, which permitted one hectare of parkland per 300 units of development, or the cash equivalent.

In 2012, a group of developers appealed Richmond Hill's Official Plan policy of the "one hectare per 300 units" requirement to the Municipal Board. One board member, after conducting formal hearings from November 2013 to May 2014, issued a decision in January 2015 against Richmond Hill by imposing a 25% cap on the application of what is explicitly permitted by the *Planning Act*. According to Richmond Hill, a cap of 25% of the parkland permitted under the *Planning Act* also meant that Richmond Hill would receive an estimated \$60 million less from the developers at the time, which would severely constrain it from acquiring additional green space in the town to serve its growing community. Following the ruling, Richmond Hill requested the Municipal Board to reconsider its decision, which it did but then re-affirmed its decision without granting a new hearing. Richmond Hill, joined by four other municipalities (City of Markham, Town of Oakville, City of Vaughan and City of Mississauga), then appealed the Municipal Board decision to the Divisional Court. The

Divisional Court ruled in 2016 that the Municipal Board erred in law and did not have jurisdiction to modify Richmond Hill's Official Plan policy that was based upon the *Planning Act*. The developers appealed the Divisional Court's decision and were granted leave to be heard in the Court of Appeal. The appeal was under consideration by the Court at the completion of our audit.

Based on Case 1, we observed that:

- The Divisional Court ruling that the Municipal Board had erred in law indicated that training for the Municipal Board's members might require strengthening to ensure board members do not render a decision that is outside the authority of the Municipal Board.
- The proposed legislation change to the Municipal Board would not address the municipal concern. Specifically, appeals similar to the Richmond Hill case can still be heard and decided by the new Local Planning Appeal Tribunal (Appeal Tribunal) because Richmond Hill is designated as a lower-tier municipality of the Regional Municipality of York.

Case 2: Region of Waterloo

The Region of Waterloo (Waterloo), after five years of extensive public consultation, approved an Official Plan (Plan) in 2009. The Plan was established based on the Provincial Growth Plan to constrain sprawl and encourage transit use. The Plan, with a 2031 planning horizon, allowed 85 hectares of farmland on the edge of Waterloo for development expansion. The then Ministry of Municipal Affairs and Housing approved Waterloo's Official Plan in 2010.

More than 20 developers filed appeals in 2010 against Waterloo's Official Plan. The majority of them challenged the amount of land for development. Instead of 85 hectares of farmland, the appellants argued that 1,053 hectares, based on an older provincial guideline, should be available for development. In its decision rendered in January 2013, a two-member panel of the Municipal

Board supported the appellants' position and declared 1,053 hectares of farmland could be used for development. Following the ruling, Waterloo requested the Municipal Board to reconsider its decision, which it did but then re-affirmed its decision without granting a new hearing.

In 2013 and 2014, Waterloo undertook two proceedings in Divisional Court. In the first court proceeding, Waterloo asserted the Municipal Board erred in its interpretation of the Provincial Growth Plan for the Golden Horseshoe region in southern Ontario. In the second court proceeding, Waterloo asserted that there was a reasonable apprehension of bias in the hearing that resulted in the January 2013 ruling by the Municipal Board. Apprehension of bias is a legal standard for disqualifying tribunal decision-makers where there is bias or the appearance or perception of bias. The two Municipal Board members assigned to conduct the hearings also attended a training session provided by a consultant who also was an expert witness representing some of the appellants at the same time that the appeal was pending before the Municipal Board.

In order to avoid additional costs for court proceedings and reduce the uncertainty of the already prolonged case, Waterloo entered settlement discussions with the appellants and reached a settlement agreement in July 2015, six years after Waterloo's Official Plan was approved by the region's council. The settlement decision was that 255 hectares of land could be used for development as of 2015 and possibly another 198 hectares of land may be added for a total of 453 hectares, which was less than half the area (1,053 hectares) requested by the appellants. Waterloo withdrew its court proceedings without any of the allegations being adjudicated in court.

The Region of Waterloo spent a total of \$1.7 million on legal fees and expert witnesses for the appeal. This cost would have been avoidable if appeals to municipal Official Plans, which were approved by the provincial government, were not appealable.

We also noted that the Region of Halton raised a similar concern that it spent a considerable amount of time and money to defend its Official Plan that was already approved by its elected regional councils and the then Ministry of Municipal Affairs and Housing. It informed us that it spent \$3.5 million on external legal fees and expert witnesses to defend its Official Plan throughout the appeal process between 2011 and 2016 for over 40 appeal cases.

Similarly, the Region of York also informed us that it spent approximately \$4 million on external legal fees and expert witnesses to defend its Official Plan through the appeals process between 2010 and 2014 for over 62 appeals.

Based on Case 2, we observed that:

- Under the proposed legislation change to the Municipal Board, appeals similar to the Waterloo case would not be appealable at the new Appeal Tribunal because, unlike the Town of Richmond Hill, the Region of Waterloo is designated as an upper-tier municipality. This also would apply to the Region of Halton and the Region of York.
- While the case was settled between the parties due to concerns of costs and uncertainty, it highlights the risk of apprehension or perception of bias by board members that could undermine the credibility of the Municipal Board.

Concerns Expressed by Citizens

In the City of Toronto, the Municipal Board approved a 10-storey building in early 2014. The hearing lasted three days and was heard by one Municipal Board member. The developer had filed an appeal after the city council did not make a decision on a proposed amendment to rezone the land within the statutory timeline.

For the hearing, the developer hired an expert planning witness to provide evidence that the development complied with the *Planning Act* and associated planning principles. The neighbouring residents did not have an expert witness to present

their case and evidence on their behalf. The residents provided their own statements and evidence.

The board member approved the 10-storey project (the original project was 11 storeys) against the concerns of the neighbouring residents. The member's decision stated that "the concerns of the neighbours were heartfelt and sincere," adding that the project would have an effect on their properties in terms of increased traffic and shadows due to the height of the new development. However, the member stated that the site plan represented an attractive addition to the area and should be approved.

A common complaint against the Municipal Board is that developers have an unfair advantage by having expert witnesses to ensure their side is more convincingly presented than the opposing side.

Based on this case, we observed that:

- Because the proposed legislation would provide free legal and other support to citizens in appeals before the new Appeal Tribunal, the legal support would be giving the citizens a level playing field against developers or municipalities in appeals before the Municipal Board.

RECOMMENDATION 7

To help strengthen its operations and increase the transparency of the decision-making process, we recommend that the Ontario Municipal Board:

- establish a formal policy to guide the assignment of board members to conduct formal hearings based on factors such as members' background, their experience and workload;
- conduct cost/benefit analysis of providing audio-recording services to the parties who are involved in an appeal;
- conduct formal participant satisfaction surveys in a timely manner to assess areas, such as: whether the hearing process was easy to understand; whether the appeal process was fair, unbiased and impartial;

- whether the written decisions were issued in a timely manner; and participants' overall satisfaction; and
- provide additional training to assist board members in making decisions that are within their authority and to avoid apprehension or perception of bias in all cases.

MINISTRY RESPONSE

The Ministry of the Attorney General (Ministry) will monitor and track any new policies to guide the assignment of members to hearings.

The Ministry will review the cost-benefit analysis of providing audio recordings to all parties involved in an appeal.

The Ministry will work with Environment and Land Tribunals Ontario (ELTO) to assess its business case for new technology. There is a long-term Ministry technology plan in place to assist all tribunals in modernizing their operations.

The Ministry will monitor the results of the client satisfaction survey in ELTO's annual report.

RESPONSE FROM ENVIRONMENT AND LAND TRIBUNALS ONTARIO

Within the next six months, Environment and Land Tribunals Ontario (ELTO) and the Ontario Municipal Board (OMB) will establish a formal policy to guide the assignment of members to hearings.

Within the next fiscal year, ELTO will undertake to complete a cost/benefit analysis of audio recordings for parties.

In June 2017, ELTO and the OMB undertook a pilot project to begin a client satisfaction survey on decisions issued by the OMB. The results of this pilot were reviewed, and a revised survey with questions encompassing all ELTO boards and services was prepared and is currently being tested. ELTO intends to review the results of this pilot early in 2018 and make adjustments

to the questions and approach as necessary with the intention of launching the survey on a wider scale in the new fiscal year. Survey results will be reported in ELTO's annual report.

The OMB has concerns with the reference in the audit report to three arbitrarily selected cases, one of which is still before the courts for consideration. We are concerned that this creates the impression that the conduct and the substantive outcomes in these cases were faulty. The review of substantive outcomes and hearing procedures of adjudicative tribunals rests with the courts, where proper legal tests can be applied or where the consideration of evidence can be reviewed.

The OMB regularly provides professional development to adjudicators that addresses all of these areas. The OMB is in compliance with all ethics training responsibilities under the *Adjudicative Tribunals Accountability, Governance and Appointments Act, 2009*. The Auditor, having touched upon some unsubstantiated allegations of a perception of bias in a single case, has not identified any tangible basis for concern in this area.

With respect to whether decisions are made within its authority, the Board considers that the court is the appropriate body to identify errors, rather than a value-for-money audit.

The OMB will continue to provide board member training in areas including ethics and the Board's mandate, consistent with its core values and legal requirements.

5.2 Scheduling Target for Minor Variance Appeals Not Met

Minor variance appeals challenge decisions made by a municipal Committee of Adjustment, which deals with homeowners' requests for approval on variances against the municipal property zoning bylaws. Compared with other types of land-use appeals, they are simpler and a case hearing usually takes no longer than a day.

In 2016/17, the Ontario Municipal Board (Municipal Board) scheduled 1,349 new land-use cases for hearings, of which 421 or 30% were minor variances. The other 928 or 70% of the cases were more complicated land-use appeal cases and they are discussed in **Section 5.3**.

The Municipal Board has established two performance measures, which are reported publicly in its annual report:

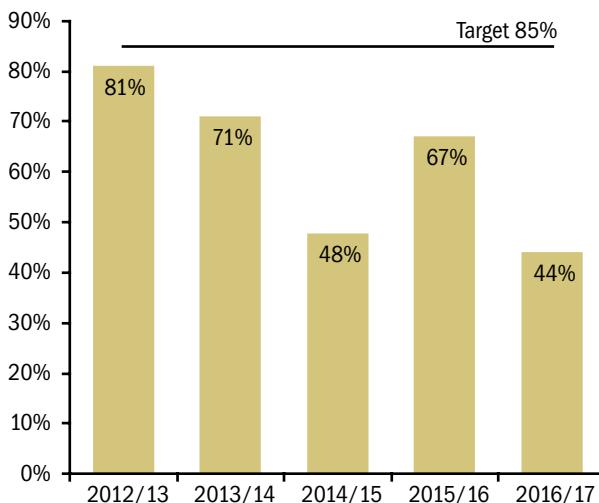
- It has set a target of issuing 85% of decisions within 60 days after the end of a hearing. This performance measure is used to measure against all types of appeals—both minor variance and complex cases. This performance measure is discussed in **Section 5.4**.
- It has set a target to schedule 85% of minor variance cases for a first hearing within 120 days of receiving a complete appeals package. We noted that the Municipal Board has been struggling to meet this performance measure as the trend shown in **Figure 12** shows. In its fiscal year 2016/17 ending March 31, only 44%, or 186 of 421 minor variance cases scheduled, met the established timeline. This was a decrease from 81%, or 281 of 346 cases, in 2012/13.

During our audit, we asked the Municipal Board to provide a list of the 235 cases from 2016/17—the 421 scheduled cases minus the 186 cases that were scheduled within 120 days—that were not scheduled within 120 days to allow us to investigate the reason for the delay. However, the Municipal Board could not provide such a list, stating that its information system does not have the capability to produce the report without using excessive staff resources. Without the list, we were unable to determine how long the 235 cases have been outstanding and the details of these cases.

We also questioned how the Municipal Board was able to monitor and manage these outstanding appeals without generating such a list. Based on our discussions with board members and administrative staff who schedule hearings, the main reason provided for the backlog was lack of board

Figure 12: Percentage of Minor Variance Appeals Scheduled for a First Hearing Within 120 Days, 2012/13–2016/17

Source of data: Ontario Municipal Board



members' time to conduct the hearings. The Municipal Board also stated that vacancies of significant board members were a contributing factor in not meeting its performance target. During the 2016/17 fiscal year, the appointment term ended for a few experienced full-time members, Vice Chairs and the Associate Chair. The Municipal Board explained that these positions have been filled, but it takes time to train new board members before they can take on more cases.

An internal report prepared by the Municipal Board shows the turnaround time—from case received to decision issued or case closed—for minor variance cases, but this information was not used to assess its performance or for public reporting. In 2016/17, according to the internal report, the average number of days of turnaround time for minor variances was, on average, 227 days. In the same year, of the 259 minor variance cases closed,

- 114 of them were resolved within 180 days or less; and
- 145 of cases took longer than 180 days to resolve.

The 180-day benchmark was based on the two performance targets set by the Municipal Board—

120 days for a hearing to be scheduled and another 60 days for the decision to be rendered upon completion of a hearing. In 2016/17, the average number of days of turnaround time was 227 days, or 47 days above the 180-day benchmark.

As a result of long turnaround times, homeowners were not receiving a decision in a timely manner and their projects may be delayed. For example, without the minor variance approval by the municipality, homeowners are not able to obtain a building permit from the municipality to proceed with their renovation projects.

Toronto First Municipality to Create Local Appeal Board

Since legislation passed in 2006 amending the *Planning Act*, the City of Toronto has become the first municipality in Ontario to create an independent Local Appeal Board.

Starting in May 2017, property owners who want to appeal the city's Committee of Adjustment decisions about minor variance and consent-to-sever land applications, now go to this board instead of the Municipal Board. That means the volume of minor variance cases to be heard by the Municipal Board could start to decline and that could help alleviate the existing backlogs. However, at the time of our audit, the Municipal Board was uncertain on the extent that this legislation change will reduce its caseload of minor variance cases or whether it will help reduce any backlogs in the near future.

RECOMMENDATION 8

To have more timely resolution of minor variance appeals, we recommend that the Ontario Municipal Board:

- reduce the delay in hearings of these appeals; and
- track, monitor and analyze the reason for the long turnaround time in resolving minor variance appeals.

MINISTRY RESPONSE

Bill 139 and related regulations, if passed, will set out specific timelines for the resolution of the matters brought before the new Local Planning Appeal Tribunal replacing the Ontario Municipal Board.

The Ministry of the Attorney General will work with Environment and Land Tribunals Ontario to assess its business case for new technology. There is a long-term ministry technology plan in place to assist all tribunals in modernizing their operations.

RESPONSE FROM ENVIRONMENT AND LAND TRIBUNALS ONTARIO

Bill 139 and related regulations are expected to set out specific timelines for the resolution of the matters brought before the new Local Planning Appeal Tribunal (replacing the Ontario Municipal Board). We will endeavour to measure and report on compliance with the legislated timelines in our Annual Report and Business Plans.

Environment and Land Tribunals Ontario (ELTO) and the new Appeal Tribunal will be implementing new processes and Rules of Practice to support the timely resolution of appeals.

ELTO will be seeking approval and funding from the Ministry of the Attorney General to develop and implement new technology to assist with the timely resolution of appeals and that will provide better data allowing for improved tracking and analysis.

5.3 Municipal Board Not Tracking Why Some Complex Appeals Scheduled Late, Took Years to Resolve

The majority of complex appeals include appeals of a municipality's Official Plans, Official Plan amendments, zoning bylaws and zoning bylaws

amendments passed by municipalities. Complex appeals represented approximately 70% of the Ontario Municipal Board's (Municipal Board) total caseload in 2016/17.

For these complex appeals, the Municipal Board has set a published performance target that 85% of cases are to be scheduled for a first hearing within 180 days of the receipt of a complete appeal package. We noted that:

- in 2016/17, the Municipal Board scheduled 74%, or 686 of 928 cases, within 180 days; and
- in 2012/13, the Municipal Board scheduled 83%, or 720 of 869 cases, within the target.

See **Figure 13** for the trend.

Similar to our review of the minor variance cases, the Municipal Board could not generate a list of the 242 cases in 2016/17 (out of 928 cases received) that were not scheduled for a hearing within the 180-day target. This would have enabled us to investigate the reasons for the delays. As discussed in **Section 5.2** regarding minor variances, the Municipal Board explained that its information system does not have the capability to produce such a report without requiring excessive staff resources to prepare.

In addition, we noted that the number of days taken from case received to case closed—that is, both the decisions and orders are issued—ranged, on average, between ten months to almost seven years for cases that were closed in 2015/16.

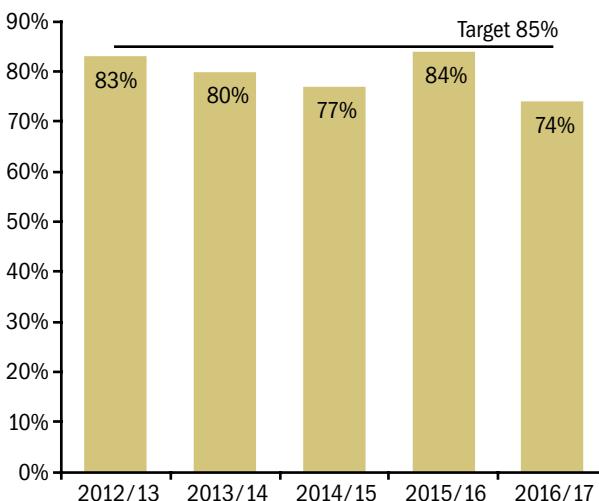
Figure 14 shows a breakdown of the cases. We requested a list of complex appeals that took longer than two years to close but, again, the Municipal Board was unable to provide it.

We noted the following reasons could have contributed to the long duration; however, the Municipal Board could not provide details to confirm the extent of each cause:

- lack of board members' time available to conduct hearings; the vacancies of significant members in recent years; and the training of new members as discussed in **Section 5.2**;

Figure 13: Percentage of Cases (Other than Minor Variances) Scheduled for a First Hearing Within 180 Days, 2012/13–2016/17

Source of data: Ontario Municipal Board



- complex cases often have multiple hearing events. Each of the hearing events typically ranged, on average, four to six months apart. In 2016/17, about 30% of the hearing events were pre-hearings, meaning that at least 30% of the appeals have subsequent hearings after the first pre-hearing. Other types of hearings are motion hearings and full hearings. Because the Municipal Board does not monitor the average number of hearing events per appeal on a regular basis, it could not show us the number of hearing events per case each year; and
- appellants might take from several months to several years to fulfil the conditions imposed by board members as part of their decisions.

The Municipal Board determines a case is “closed” when it has issued both a decision and an order, or just an order. In some cases, a board member will issue a decision and order at the same time. However, in many other cases, a member’s decision will place certain conditions on the appellant who is required to fulfil them before the board member will issue an order, thereby closing the appeal case. Examples of such conditions include completing

Figure 14: Average Number of Days Taken to Close Files Other than Minor Variances, 2015/16

Source of data: Ontario Municipal Board

Appeal Type	# of Files Closed	Average # of Days Taken (Range)
Official Plan Amendments	116	570–1,304
Zoning Bylaws	256	406–860
Subdivision – Section 51	49	308–2,519
Consents to Sever Land	217	347–493
Site Decision Plan – Section 41 (12)	18	692
Total	656	From 10 months to almost 7 years

specific site work or updating certain types of documents. However, the Municipal Board could not distinguish the length of time the appellants took to fulfil the condition because the time taken is not within the control of the Municipal Board.

Without a detailed reporting on the timeliness on case resolutions, the Municipal Board would not have sufficient information to help it to expedite case hearings and reduce its backlogs. The Municipal Board could, for example, track the duration from when an appeal is received to when a decision is rendered, factors that the Municipal Board can control and report on. This average duration for a case could also be tracked by appeal type, such as Official Plan amendments or zoning bylaws, to provide information to the Municipal Board and/or the public on how long these cases take to be resolved by the Municipal Board.

Based on our discussions with a developer group, delays in managing appeal cases by the Municipal Board prolonged the time of their developments and increased the costs of their operations. In some cases, additional costs incurred by developers could be passed on to buyers of houses or condominiums.

In May 2017, the government introduced Bill 139, as discussed in **Section 2.4.4**. If passed, the bill would limit the scope of certain appeals that are currently heard by the Municipal Board under the *Planning Act* and will repeal the *Ontario Municipal Board Act*. The Municipal Board would become known as the Local Planning Appeal Tribunal.

However, until the pending legislation goes into effect, the Municipal Board does not know how the

bill might impact the number of appeals to be filed at the Municipal Board. Anticipating future demand is important to plan for sufficient resources to handle the workload. Both the number and complexity of cases will impact the future workload.

RECOMMENDATION 9

To better ensure timely resolution of complex appeals, we recommend that the Ontario Municipal Board:

- track, monitor, and analyze the reason for any undue delays in resolving complex appeals and distinguish the duration of case resolutions that is within or without its control;
- anticipate future demand to determine future resource requirements; and
- streamline the process to reduce the number of outstanding complex appeals.

MINISTRY RESPONSE

Bill 139 and related regulations, if passed, will set out specific timelines for the resolution of the matters brought before the new Local Planning Appeal Tribunal replacing the Ontario Municipal Board.

The Ministry of the Attorney General will work with Environment and Land Tribunals Ontario to assess its business case for new technology. There is a long-term ministry technology plan in place to assist all tribunals in modernizing their operations.

RESPONSE FROM ENVIRONMENT AND LAND TRIBUNALS ONTARIO

Bill 139 and related regulations are expected to set out specific timelines for the resolution of the matters brought before the new Local Planning Appeal Tribunal (replacing the Ontario Municipal Board). We will endeavour to measure and report on compliance with the legislated timelines in our Annual Report and Business Plans.

Environment and Land Tribunals Ontario (ELTO) and the new Appeal Tribunal will be implementing new processes and Rules of Practice to support the timely resolution of appeals. We will be analyzing the expected future demand to model anticipated resources required to ensure the resolution of appeals within the legislated timelines.

ELTO will be seeking approval and funding from the Ministry of the Attorney General to develop and implement new technology to assist with the timely resolution of appeals and that will provide better data allowing for improved tracking and analysis.

5.4 Despite 80% of Decisions Issued Within 60 Days, Others Took Almost a Year

The Ontario Municipal Board (Municipal Board) publicly reports on the timeliness in issuing a decision. The performance target is 85% of decisions will be issued within 60 days after the end of a hearing for all types of appeals.

We noted that the Municipal Board was close in meeting its target, but its actual performance has slightly decreased from 82% in 2012/13 to 80% in 2016/17. See **Figure 15** for the trend.

We also noted that, in 2016/17, of the 1,087 decisions issued, 218 of them took more than 60 days. The breakdown of the 218 cases is as follows:

- 135 of them took between 61 days and 120 days;

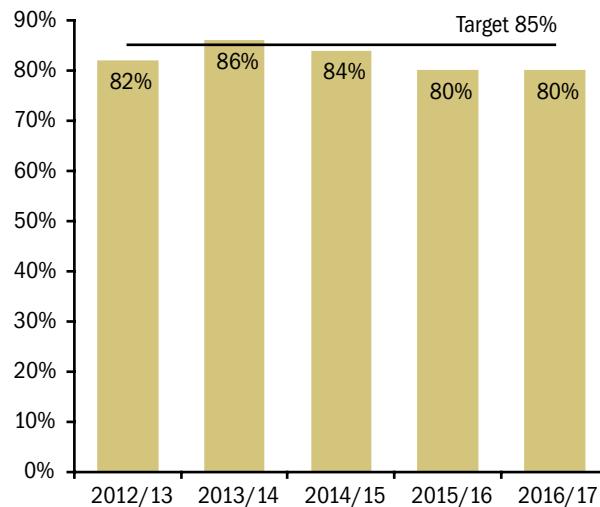
- 45 took between 121 days and 180 days; and
- 38 took between 181 days and 365 days.

The Municipal Board prepares reports every two months on all decisions that were issued 60 days or longer after completion of a hearing. Based on the annual summary of the bi-monthly reports for each of the fiscal years between 2012/13 and 2016/17, we noted that six of the 27 board members accounted for about 40% of the decisions that took longer than 60 days to be issued. The Municipal Board indicated that the main reason for the delays was that some members did not have sufficient dedicated writing time after hearings. However, we also noted that three of these six members were granted significant dedicated writing time: 95 days, 91 days and 76 days respectively from 2012/13 to 2016/17. By comparison, the majority of the other 21 members were granted on average dedicated writing time of 50 or fewer days over the same time period. Therefore, it appeared that the lack of dedicated writing time was not the major reason for the three board members who were not able to issue decisions within the established target.

Without timely written decisions issued by the Municipal Board, the appellants, such as home owners or developers, would be delayed in applying for building permits to proceed with their projects.

Figure 15: Percentage of Decisions Issued Within 60 Days of the End of a Hearing, 2012/13–2016/17

Source of data: Ontario Municipal Board



RECOMMENDATION 10

To better ensure written decisions are issued to relevant parties in a timely manner, we recommend that the Ontario Municipal Board investigate cases when members consistently took longer than the target times to issue a decision and take necessary actions to reduce delays.

MINISTRY RESPONSE

Bill 139 and related regulations, if passed, will set out specific timelines for the resolution of the matters brought before the new Local Planning Appeal Tribunal replacing the Ontario Municipal Board.

The Ministry of the Attorney General will monitor and track Environment and Land Tribunal Ontario's implementation of any new regulations under Bill 139.

RESPONSE FROM ENVIRONMENT AND LAND TRIBUNALS ONTARIO

Environment and Land Tribunals Ontario and the Ontario Municipal Board (OMB) presented to the Auditors its plan for improving the member performance review process. ELTO and the OMB have developed and implemented reports to track outstanding decisions and performance times for drafting and issuing decisions. Analysis and discussion of these reports will be part of the enhanced performance reviews.

The improved process will be implemented with the transition to the Bill 139 provisions for decision-making timelines.

5.5 Target Setting and Evaluation of Mediation Efforts Needed

The Ontario Municipal Board's (Municipal Board) 2015/16 annual report stated that the Municipal Board was continuing to develop its capacity for mediation of appeals where alternative dispute resolution can be effective. The intent of the

Municipal Board's mediation program is to provide timely and cost-effective resolutions of complex land-use planning disputes and to avoid the need for lengthy hearings.

While the intent of the mediation program was a good start, the Municipal Board had not yet set a target, nor did it measure the success or outcomes of the program. The Municipal Board also stated that it had been encouraging mediation of appeals by the parties but was unable to demonstrate the success of its efforts. For the complex appeals where a hearing can last several days, the use of mediation to settle the disputes is even more critical.

Between 2012/13 and 2016/17, the Municipal Board held between 69 and 92 mediation events each year, as shown in **Figure 16**. But the number of mediation events held as a percentage of appeal files opened was low and remained relatively stable at 5% and 6% each year—despite the Municipal Board's intention to increase the use of mediation.

We noted that the Human Rights Tribunal of Ontario reports annually on the number of mediations held and the percentage of cases settled at mediation, but these measures were not used by the Municipal Board to determine the performance of its mediation program.

RECOMMENDATION 11

To minimize the number of formal hearings required to settle appeals, we recommend that the Ontario Municipal Board:

- set a target percentage of the number of mediations to be held for complex cases each year; and
- report annually on the number of mediation events held and the percentage of cases settled as a result of mediation.

MINISTRY RESPONSE

The Ministry of the Attorney General will support Environment and Land Tribunals Ontario in implementing performance measures related to mediation.

Figure 16: Number of Mediations as a Percentage of the Number of Appeal Files Opened, Ontario Municipal Board, 2012/13–2016/17

Source of data: Ontario Municipal Board

Fiscal Year	# of Mediation Events*	# of Appeal Files Opened	# of Mediation as a % of Appeal Files Opened
2012/13	86	1,524	6
2013/14	69	1,449	5
2014/15	92	1,604	6
2015/16	69	1,460	5
2016/17	89	1,468	6

* A mediation event may have a duration of more than one day and may include multiple files.

RESPONSE FROM ENVIRONMENT AND LAND TRIBUNALS ONTARIO

Through mediation, the Ontario Municipal Board (OMB) has achieved considerable success in settling complex matters and removing the need for contested hearing time. The OMB has also created a culture wherein key stakeholders—municipal councils, development interests, and community groups—accept and request mediation because they see its tangible benefits. From the OMB's perspective, it is doubtful without that success, that mediation would have been promoted to the degree it was and is in the recently completed Provincial Review of the OMB or the recently launched Toronto Local Appeal Body.

In our experience, for complex-matter mediations, approximately five hearing days are typically removed from the calendar for each day invested in successful mediation. The OMB understands the importance of quantitative data to support analysis, and to that end it is already refining the measures it uses to numerically track and demonstrate use of mediation and results achieved. These measures, combined with the continued use of its mediation assessment tool—a practice of identifying suitable cases for full or partial mediation—respond positively to the recom-

mendation. A step to establish an annual target percentage for mediating complex cases must appropriately take account of both the complexity of those cases and the fact that mediation is a voluntary process.

5.6 Actual Time Spent Reported by Board Members Not Complete or Analyzed

Board members are a key resource to the Ontario Municipal Board (Municipal Board) because they conduct hearings and render decisions on appeals. However, the Municipal Board's Associate Chair does not know how its 20 full-time members spent their work hours and whether they were managing their caseloads cost-effectively and efficiently. Also, the Municipal Board has not done any analysis to determine whether the number of board members was sufficient to eliminate the existing backlog and handle future demand.

The existing backlog were those cases not meeting the Municipal Board's performance targets. As discussed in **Section 5.2** and **Section 5.3**, during 2016/17, only 44% of the minor variance cases were scheduled for a hearing within 120 days and 74% of complex cases were scheduled for a first hearing within 180 days of the receipt of a complete appeal package. In both cases, the target is 85%. The Municipal Board indicated that the

main reasons for the backlogs were lack of board member time to conduct hearings, along with several vacancies of experienced board members at the time. However, without an effective time recording system, it will be difficult for the Municipal Board to manage members' time to handle its caseload and forecast the additional time requirements.

No Formal Policy Requires Members to Account for Time

The Municipal Board has neither a formal policy nor a practice requiring members to record how they spent their time, by individual appeals, on a daily basis, such as whether the members were preparing or conducting hearing events, writing decisions, overseeing telephone conference calls, travelling for business purposes, attending training, and performing other administrative duties. The Municipal Board relies on members' professionalism and honesty to best use their time. In 2012, the Executive Chair at Environment and Land Tribunals Ontario implemented a time reporting system at the Municipal Board. However, it was abandoned in 2014 when the Executive Chair left the organization.

In the absence of a mandatory time reporting system to record members' time on a daily basis, the Municipal Board did record, on a monthly basis, the number of planned hearing days by member based on the hearing events scheduled. Members were also required to report monthly planned vacation time, approved dedicated decision-writing time, planned absences and planned time for training. However, members are not required to report the actual time spent at a hearing event, although we noted that some members did report their actual number of hearing days when the hearing took less time than the number of days scheduled.

The Municipal Board also records the number of scheduled hearings and scheduled hearing days by member prior to the start of each hearing event. Unlike the monthly scheduling report mentioned above, the members are required to report whether

the hearing event occurred and record actual hearing length upon the completion of the hearing events. However, we found that while some members recorded the actual number of hearing days spent on a hearing event, others did not. We noted that in 2016/17 seven of the 20 full-time members did not record the actual hearing time as required.

For the members who reported actual hearing time over the five fiscal years between 2012/13 and 2016/17, the actual number of hearing days was about 9,290 days, compared with scheduled hearing days of about 10,650. Therefore, nearly 15% fewer days were worked by members at hearings than scheduled. Without a time reporting system, we were unable to determine how the members spent their time when not conducting hearings.

Based on our review of board member activity reports between fiscal year 2012/13 and 2015/16, we noted the actual number of hearings days reported by full-time members varied significantly. The actual number of hearing days per member was, on average, 81 days a year. We noted one member (Member A) worked as few as 43 days to 50 days at hearings per year, compared with another member (Member B) who worked as many as 105 to 140 hearing days in a year. **Figure 17** shows that Member B worked about double the number of hearing days conducted by Member A between 2012/13 and 2015/16.

The Review Board explained that the large differences of the number of hearing days conducted by members could be due to various factors, such as the timing of board members' appointments, location of hearings as some might require more travel time than others, health issues of board members and some members might be assigned to other duties. We were also told that members would spend time on writing decisions if the hearings lasted fewer days than the days scheduled. However, with the absence of a time tracking system, the Municipal Board cannot demonstrate how the members are actually spending their time on a daily or per appeal basis.

Figure 17: Comparison of the High and Low of the Actual Number of Hearing Days per Member, Ontario Municipal Board, 2012/13–2015/16

Source of data: Ontario Municipal Board

Fiscal Year	# of Actual Hearing Days Reported by Member A	# of Actual Hearing Days Reported by Member B	% Difference
2012/13	43	142	230
2013/14	58	119	105
2014/15	50	114	128
2015/16	47	105	123

RECOMMENDATION 12

To help ensure members' time resources are better utilized, we recommend that the Ontario Municipal Board review and analyze actual time spent by individual board members on each appeal by key activities, such as hearing events, decision writing and mediations.

MINISTRY RESPONSE

The Ministry of the Attorney General will support Environment and Land Tribunals Ontario, as needed, in reviewing and analyzing the actual time spent by individual board members on hearing events, decision writing and mediations.

RESPONSE FROM ENVIRONMENT AND LAND TRIBUNALS ONTARIO

Environment and Land Tribunals Ontario and the Ontario Municipal Board recognize the importance of efficiency and making the best use of limited resources.

In the next fiscal year, we will implement processes and measures to better review and analyze actual time spent by all individual board members on key activities including hearing events, decision-writing and mediation.

5.7 Insufficient Documentation to Justify Hiring of Board Members

As discussed in more detail in **Section 4.6** concerning the Assessment Review Board, the appointment of members to an adjudicative tribunal or board is required to be competitive and merit-based.

Based on a sample of files we reviewed on the selection of Ontario Municipal Board (Municipal Board) members, it was not always clear how the candidates for an appointment were evaluated and selected. In 2016, five candidates were interviewed by a two-member panel for two full-time member positions. We found one of the members from the panel did not score any of the five candidates interviewed, and the other member of the panel did not provide a complete scoring for two of the five candidates. As a result, documentation was incomplete to demonstrate how the two successful candidates were selected.

Based on the review of recruitment files, we also noted the following:

- One successful candidate had previously applied for a Municipal Board position in 2013 but the scoring documents completed by the interview panel members in 2013 indicated that the candidate did not satisfy the Municipal Board's requirements at that time. At the time of the 2016 competition, the candidate's work and education qualifications had not significantly changed.

- A second candidate received no scoring from the recruitment panel in 2016 on both their written assignment and from their interview responses, despite being a professional planner and a qualified lawyer. This candidate was not selected for appointment.
- A third candidate only received a score based on their responses to the interview questions from the recruitment panel but did not receive a score by the panel for their written assignment from the 2016 recruitment competition. This candidate was not selected for appointment.

RECOMMENDATION 13

To ensure the appointment process of board members adheres to the *Adjudicative Tribunals Accountability, Governance and Appointment Act, 2009*, we recommend that the Ontario Municipal Board, together with Environment and Land Tribunals Ontario, thoroughly document its justification of recommended and selected candidates.

MINISTRY RESPONSE

The Ministry of the Attorney General will monitor and track the proposed improvements related to the interview process.

RESPONSE FROM ENVIRONMENT AND LAND TRIBUNALS ONTARIO

Environment and Land Tribunals Ontario (ELTO) and the Ontario Municipal Board are committed to a merit-based approach to the selection of members recommended for appointment by the Executive Chair.

Within the next six months, ELTO will review its processes for documenting the selection of member candidates for recommendation and implement improvements to ensure complete written records are created and stored.

Appendix 1: Board Members' Appointment Process

Prepared by the Office of the Auditor General of Ontario

Step	Details
Step 1: Vacant positions are identified and advertised by Environment and Land Tribunals Ontario (Tribunals) and the Public Appointments Secretariat.	The Executive Chair, with the approval from the Ministry of the Attorney General (Ministry), identifies a member vacancy. The Executive Office prepares a job advertisement and the information is forwarded to the Ministry for approval. Upon ministry approval, it is forwarded to the Public Appointments Secretariat. The vacant position is advertised on the Secretariat's website and advertised by Environment and Land Tribunals Ontario (Tribunals) in industry-related sites, such as Ontario Reports.
Step 2: Interested individuals apply for appointments online or by mail.	<p>Any member of the public can apply for an appointment online through the Secretariat's website. All applications received by the Secretariat for the advertised position(s) are forwarded to the Tribunals.</p> <p>The Executive Chair and the Associate Chair from the applicable tribunal or board vet the resumes for suitability of the interested candidates.</p> <p>An interview panel composed of the Executive Chair, Associate Chair and possibly a third individual (such as the Vice Chair from the Environment and Land Tribunals of Ontario), interview the screened and identified candidates. Based on the outcomes of the interviews and assessment of qualifications, the Executive Chair will recommend candidates to the Attorney General for the advertised position.</p>
Step 3: Candidates are identified, vetted, short-listed and interviewed by the Tribunals. Recommendations are made by the Executive Chair to the Attorney General.	The Executive Chair's recommendations for all board appointments are vetted and approved by the Attorney General. The Ministry conducts a conflict-of-interest check for each proposed member before forwarding the names to Cabinet for approval. With all member appointments being greater than one year, these appointments are subject to review by the Standing Committee on Government Agencies. The Committee has 14 days to decide whether or not to review a candidate. Candidates who are requested to appear before the Committee will be questioned on their qualifications and their appointment process. The Committee does not have veto power to block any member appointment.
Step 4: Applications of candidates who are approved by the Attorney General are forwarded to the Public Appointment Secretariat for Cabinet consideration.	Once the review has been completed or waived, the Lieutenant Governor signs the Order-in-Council. All approved board members are listed on the Public Appointments Secretariat website.

Appendix 2: Property Appeal Processes in British Columbia, Alberta, Saskatchewan, Manitoba and Nova Scotia

Prepared by the Office of the Auditor General of Ontario

British Columbia

Property owners who want to appeal their assessments need to appear first before a Property Assessment Review Panel (Panel). Panel members are appointed by the Minister responsible for the Assessment Act (Province of British Columbia). There are approximately 75 Panels across British Columbia. If after a Panel hearing a person is dissatisfied with the decision, they can appeal the decision to the next level, the Property Assessment Appeal Board (Board) whose members are appointed by the Cabinet of the provincial government. The annual remuneration to both the Panel and Board members is posted on their respective websites.

Alberta

Property owners who want to appeal their municipal assessments file an appeal with their municipality's Assessment Review Board. Each municipality in Alberta has an Assessment Review Board and all board members are appointed by the municipality for appeals concerning farmland and residential properties with up to three dwelling units. For all other municipally assessed properties, such as larger residential and non-residential properties, a member of the Municipal Government Board—a provincial board that makes decisions about land planning and certain assessment matters—joins two municipally appointed members of the Municipal Assessment Review Board to hear the appeal. The Municipal Government Board charges municipalities after a ninth hearing is held in that municipality. Remuneration to Municipal Government Board members is disclosed publicly.

Saskatchewan

Property owners who want to appeal their assessment need to file an appeal with their municipal Board of Revision. Each municipality is required to have a Board of Revision. Its members are appointed by the Municipal Council. If property owners want to appeal the decision of the Board of Revision, they can file an appeal with the Assessment Appeals Committee (Committee) of the Saskatchewan Municipal Board, a provincial entity that is arm's length from the government. Full-time board members are appointed by an Order in Council and part-time board members are appointed by a Minister's order. Minimum qualifications for board members are outlined in regulations. Usually, appeals are first heard by the local Board of Revision. However there are certain situations where appeals come directly to the Committee, such as a refusal to hear by the Board of Revision or when an appeal includes commercial or industrial property with an assessed value in excess of \$1 million.

Manitoba

Property owners who want to appeal their assessments need to file an appeal with their Local Board of Revision. Each municipality has a Board of Revision. Its members are appointed by the Municipal Council. If the property owner wants to appeal the decision of the Board of Revision, they can file an assessment appeal with the Manitoba Municipal Board, a provincial entity. Board members are appointed by an Order in Council and generally have experience in property assessment and assessment appeals.

Nova Scotia

Property owners who want to appeal their property assessments are required first to file an appeal with the Property Valuation Services Corporation (the Corporation). The Corporation is a municipally funded not-for-profit corporation and is responsible for assessing all properties in Nova Scotia. If property owners are not satisfied with the appeal results based on the Corporation's review, they can appeal to the Nova Scotia Assessment Appeal Tribunal (Tribunal), an independent third-party tribunal whose members are appointed and trained by the Province. Decisions of the Tribunal can be appealed to the Nova Scotia Utility and Review Board, a provincial independent quasi-judicial body with broad adjudicative and regulatory powers. The board members are appointed in a manner similar to Provincial Court Judges in Nova Scotia.

Appendix 3: Key Legislation and Authorities of Land-Use Planning in Ontario

Prepared by the Office of the Auditor General of Ontario

Legislative Authority	Legislation and Policy	Description
Ministry of Municipal Affairs	Planning Act	The <i>Planning Act</i> sets out the rules for land-use planning in Ontario and describes how land uses may be controlled and who may control them.
	Provincial Policy Statement	The Provincial Policy Statement, issued under the <i>Planning Act</i> , provides policy direction on matters of provincial interest related to land-use planning and development and is applied province-wide. It includes key policy issues that affect communities, such as: <ul style="list-style-type: none"> • efficient use and management of land use and infrastructure; • protection of environment and resources; and • appropriate opportunities for employment and residential development.
	Provincial Plans	The Ministry issues provincial plans such as the Greenbelt Plan and the Growth Plan for the Greater Golden Horseshoe.
Municipalities	Official Plans and Zoning Bylaws	Under the <i>Planning Act</i> , municipalities adopt an Official Plan, which sets out the municipality's general planning goals and policies that will guide future land use. Zoning bylaws implement the Official Plan's policies by setting out the rules and regulations that control development in the municipality.

Appendix 4: Audit Criteria

Prepared by the Office of the Auditor General of Ontario

1. Roles and responsibilities are clearly defined and accountability requirements are established to support the operations of the Assessment Review Board and Ontario Municipal Board (Boards).
2. Effective management information systems provide timely, accurate and complete information for decision-making on member and staff requirements, case-tracking and scheduling, caseload management, and Boards' operating costs and other expenses.
3. Proactive measures are in place to prevent undue delays during the dispute resolution process. Reasons for any backlogs are identified, analyzed and addressed in a timely and appropriate manner.
4. Effective processes are in place to ensure that board members are making impartial and supportable decisions, and receive appropriate training. Performance evaluations of board members and quality review of their decisions are conducted on a timely basis, and appropriate actions are taken to address any issues identified.
5. The Boards, together with Environment and Land Tribunals Ontario and the Ministry of the Attorney General, have effective processes in place to ensure their operations are cost-effective, including the use of alternative dispute resolutions and new technologies.
6. Adequate performance measures are in place to monitor and report publicly on the effectiveness of the Boards. In addition, reasonable targets are established to allow periodic reporting and evaluation of performance relative to these targets.