

Performance Audit

# Ontario Land Tribunal

// Independent Auditor's Report



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# 1.0 Audit at a Glance

## // Why We Did This Audit

- There have been significant changes to the Ontario Land Tribunal (OLT) and its predecessor tribunals, the Ontario Municipal Board (OMB) and the Local Planning Appeal Tribunal (LPAT), since our last audit in 2016/17. In 2018, OMB's mandate was changed, and that change was reversed in 2019. In June 2021, legislation amalgamated five environmental- and land-related administrative tribunals into OLT, under the Ministry of the Attorney General (MAG).
- Disputes adjudicated by OLT have significant impacts on Ontario communities' housing supply, environment, agriculture, infrastructure and economy, so it is critical that Ontarians have access to OLT's appeal process and that OLT resolves disputes in an independent, timely and cost-effective manner.
- As a result of the Ministry of Municipal Affairs and Housing (MMAH)'s Housing Affordability Task Force's report in 2022, the government approved additional funding for OLT of about \$29 million over four years (2022/23 to 2025/26) to facilitate faster dispute resolution.

## // Our Conclusion

We concluded that OLT consistently resolved disputes in accordance with the applicable legislative framework. We also found it has no additional guidance and other mechanisms to increase transparency of its adjudicative proceedings, so the public continues to have limited information about OLT's decision-making process.

We also found that OLT's internal processes in supporting public appointments could be improved, especially when recommending candidates for adjudicator appointments and reappointments. Although OLT follows the existing adjudicator appointment process where adjudicators are required to self-declare any potential conflicts of interest, OLT could



strengthen the integrity of its process by performing social media scans of appointees to identify potential conflicts of interest and risks to adjudicator impartiality.

Although additional funding was used to increase human and other resources since 2022/23, OLT has not yet reduced its pending caseload as of March 2024. OLT's new case management system requires more reliable data and useful tools for reporting and analysis of its operations. OLT only measures and reports on two efficiency-related performance measures for certain stages of its case-processing life cycle.

Although OLT does use mediation as a faster and less expensive alternative to adjudication,

OLT could increase its use, if OLT can determine a cost-effective way to provide it.

To address the public's perception that OLT may be predisposed to approve development proposals, MAG can take steps to clarify OLT's mandate as it relates to applying the provincial land-use planning framework and the government's priority of increasing housing supply, in both internal and public-facing communications. We also noted that the 2019 mandate change to restore OLT's authority over municipal decisions stemmed from an initiative to increase the housing supply and lacked a thorough analysis.

OLT and MAG have accepted all of our 18 recommendations.

## // What We Found

### **Government Messages Connecting OLT's Work to Increasing Housing Supply Can Create a Risk to OLT's Mandate of Being an Independent Adjudicative Tribunal**

- OLT, MAG and MMAH have identified increasing housing starts as an outcome of OLT's work in both internal and public-facing communications.
- This messaging can create a risk to OLT's independent and impartial decision-making, which must have regard to other important provincial interests, such as developing safe and healthy communities and protecting agricultural resources and natural areas.

#### **» Recommendation 1**

### **Changes to the *Planning Act* and Losing Free Legal Advice or Representation Limit Some Ontarians' Access to Justice at OLT**

- The closure of the Land Planning Appeal Support Centre in June 2019 meant the public could not access free legal advice or representation related to land-use planning appeals at OLT.
- The high costs to participate in the OLT appeal process can be prohibitive for smaller municipalities, individuals and many public groups who cannot afford to hire experts to present qualified evidence at hearings.
- Changes to the *Planning Act* in 2022 and 2024 removed some appeal rights for third parties, such as persons who are not the landowners. To participate in an OLT appeal, community groups and interested individuals are now limited to making submissions to a municipal decision-maker or can seek to be added as a party by OLT.

#### **» Recommendations 2 and 3**

### **Interview Evaluation Records of Adjudicator Candidates Were Often Not Retained to Support Appointment Recommendations**

- Adjudicators appointed since the creation of OLT had varied experiences and qualifications. Although some clearly met OLT's requirement of having experience in interpreting and applying legislation relevant to the subject matter and practice of OLT, we could not determine how others met this requirement because the assessments of their qualifications were not documented.



## // What We Found

- OLT does not have a centralized and consistent evaluation methodology to support the Chair's recommendations for appointment and reappointment. In 30 of 35 recommendation letters to MAG, the Chair asserted that the individual had scored "high" or "very high" in the interviewing process, but no scoring sheets, markings or notes were retained to support these assertions.

### » Recommendations 4 and 6

#### **The Process to Identify Potential Conflicts of Interest and Impacts on Adjudicators' Impartiality Requires Supporting Documentation**

- The existing public appointment process does not require OLT to perform social media scans to identify any undisclosed conflicts of interest or personal and professional histories that may pose risks to adjudicator impartiality.
- OLT leadership indicated that they do perform social media scans on shortlisted candidates; however, the work has not been consistently documented.

### » Recommendations 7

#### **The 2019 Mandate Change to Restore the Tribunal's Authority Over Municipal Decisions Stemmed from an Initiative to Increase the Housing Supply and Lacked a Thorough Analysis**

- OLT has the authority to make final land-use planning approvals over municipal decisions, even though its adjudicative approach is limited compared to a typical municipal planning process. Responding to stakeholders' concerns about the Tribunal's power over municipal decisions, a 2018 change to LPAT's mandate required the Tribunal to have greater regard to municipal decisions. In 2019, a second change reversed the first one, giving back the Tribunal its previous authority.
- The 2019 mandate change was part of an initiative of "how to increase the housing supply, streamline development approvals and reduce regulatory burden," but the analysis did not address stakeholder concerns expressed about the pre-2018 mandate. The themes of concerns included the Tribunal's jurisdiction and powers, meaningful citizen participation and local perspective, and clear/predictable decision-making.

## // What We Found

- Our samples of 20 development-related decisions made between June 2021 and March 2024 found that in 11 of these decisions regarding the appropriate planning for the site, OLT overturned the municipality's decision or went against the municipality's position.

### » **Recommendation 9**

#### **Transparency, Public Awareness and Understanding Are Hindered Without the Use of Written Guidance and Other Mechanisms**

- We found that, generally, OLT adjudication decisions in our sample were consistent and conformed to the applicable legislative framework, and clearly presented the reasons for adjudicators' decisions.
- OLT has not established guidance with key considerations on how adjudicators can determine the appropriateness of the proposed developments, and interpretations of key principles, such as "good planning" and "public interest" used in its decisions.
- Other factors that limit public awareness and understanding of OLT's adjudication process include no recording of OLT hearings and no easy access to evidence submitted and upcoming hearing dates.

### » **Recommendation 10**

#### **OLT Has Not Established a Performance Measure For Its Mediation Services and Did Not Perform Cost-Benefit Analysis to Determine the Most Cost-Effective Way of Providing Such Services**

- Multiple stakeholders found mediations to be a useful tool for resolving appeals faster and more efficiently.
- OLT has not established a performance measure, such as the percentage of cases resolved through mediation.
- OLT did not perform a cost-benefit analysis to determine if using external contracts is the most cost-effective way of providing mediation services. We found that, between 2021/22 and 2023/24, OLT spent approximately \$1.1 million on external mediators.

### » **Recommendation 11**

## // What We Found

### **Despite More Funding and Staff, OLT Has Not Improved Overall Pending Caseload and Decision Issuance Time**

- In 2022 and 2023, based on MMAH's Housing Supply Task Force's recommendation, the government approved an additional \$29 million in funding over four years for OLT to facilitate faster dispute resolution. In 2023/24, OLT spent an additional \$5.65 million, and increased the number of full-time adjudicators and staff by 33% and 49%, respectively, from 2021/22.
- As of March 2024, OLT had approximately 1,490 pending cases, an 8% increase from the year-end caseload at March 2021. The 2021 caseload information was used by the Housing Affordability Task Force to support its recommendation for additional funding.
- Between 2022/23 and 2023/24, OLT reduced the average number of days from case intake to first hearing by 100 days, or 48%, while the average number of days between the final hearing and decision issuance increased from 56 days to 72 days.
- OLT did not meet its performance targets of 70% of decisions issued within 30 days of the final hearing and 90% under 60 days, achieving only 35% and 62%, respectively.

#### » **Recommendation 12**





## 2.0 Background

### 2.1 Overview of OLT

Tribunals are established by legislation to resolve disputes between people or with government. They do this through adjudication, a quasi-judicial process intended to be faster and more accessible than court proceedings, as well as through mediation.

On June 1, 2021, the *Ontario Land Tribunal Act, 2021* (OLTA) amalgamated Ontario's five former environment- and land-related tribunals into OLT. OLT has a mandate to fairly, effectively and efficiently resolve disputes related to land-use planning, environmental and natural features, heritage protection, land valuation, municipal finance, and other matters in which jurisdiction is conferred on it by over 50 statutes. See [Appendix 1](#) for mandates of legacy tribunals amalgamated into OLT. In this report, we use the term “Tribunal” to refer to OLT, OMB or LPAT.

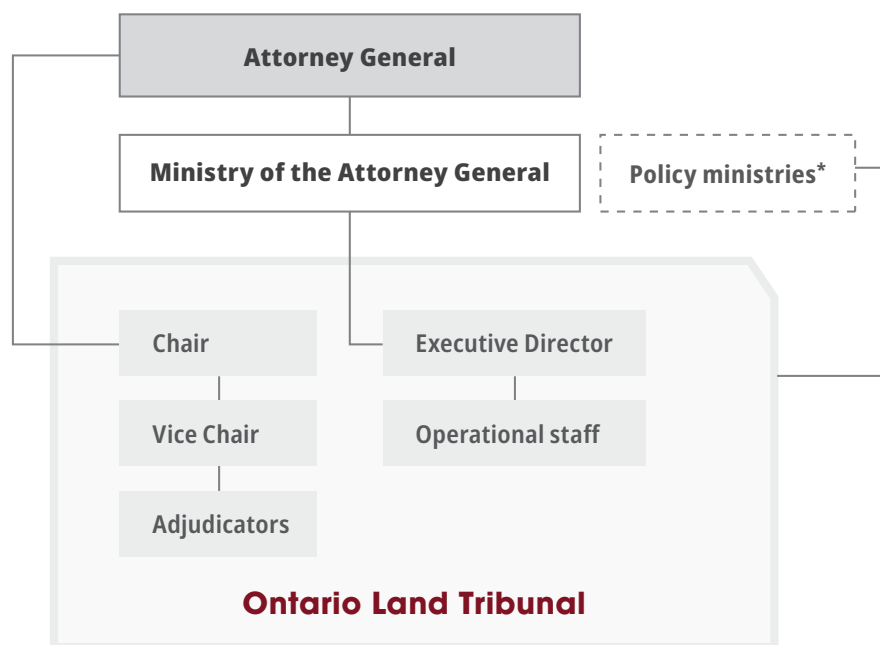
OLT is classified as a non-board-governed adjudicative agency under the Management Board of Cabinet's Agencies and Appointments Directive and is prescribed as an adjudicative tribunal under the *Adjudicative Tribunals Accountability, Governance and Appointments Act, 2009* (ATAGAA). While OLT reports to MAG for administrative purposes, such as use of funds and efficiency of operations, the Tribunal carries out its legislative mandate at arm's length from government.

**Figure 1** shows OLT's reporting structure and its relationship to policy ministries. Policy ministries develop legislative frameworks under which appeals can be filed with OLT, as shown in [Appendix 2](#). For example, MMAH establishes rules for land-use planning through the *Planning Act*, which includes the authority for the Minister to issue policy statements like the Provincial Policy Statement, which was updated in October 2024 and renamed as the Provincial Planning Statement (PPS). Once these policy statements are approved by the Lieutenant Governor in Council (LGIC), OLT uses them as standards to adjudicate land-use planning disputes.

OLT consists of the Chair, Vice Chairs and adjudicators (who are public appointees), and the executive director and operational staff (who are Ontario public servants).

### Figure 1: Reporting Structure of OLT

Prepared by the Office of the Auditor General of Ontario



\* Policy ministries develop legislative framework under which appeals can be filed with OLT (see **Appendix 2**).

- » The Chair is appointed by the LGIC on the recommendation of the Attorney General and is accountable for OLT's performance in fulfilling its mandate.
- » Vice Chairs and adjudicators independently decide appeals. They are appointed by the LGIC based on recommendations by the Attorney General, and with approval the Cabinet. The Chair recommends the appointments to the Attorney General. Under the ATAGAA, candidates must participate in a "competitive, merit-based process" and be assessed on their "experience, knowledge or training in the subject matter and legal issues dealt with by the tribunal," their "aptitude for impartial adjudication," and their "aptitude for applying alternative adjudicative practices and procedures that may be set out in the tribunal's rules." See details in **Section 4.2**.

In February 2022, MMAH's Housing Affordability Task Force indicated that "the Tribunal needs more resources to clear its backlog." The Task Force recommended more "funding to increase staffing (both adjudicators and case managers), provide market-competitive salaries, outsource more matters to mediators and set shorter time targets" (see **Section 4.4.1**).

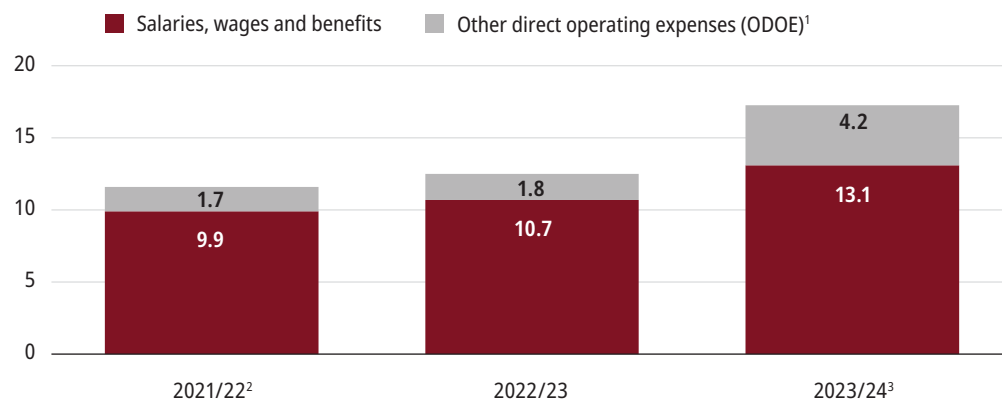
During 2022/23 and 2023/24, the government approved additional funding of about \$29 million over four years (2022/23 to 2025/26) for OLT to facilitate faster dispute resolution. As of September 2024, OLT did not spend \$8.9 million of these operating funds.

**Figure 2** shows OLT expenses from 2021/22 to 2023/24. In 2023/24, OLT expenses totalled approximately \$17.3 million, 75% of which was related to salaries, wages and benefits for its 101 staff and 36 full-time adjudicators. Per diem costs for OLT's 17 part-time adjudicators were charged to other direct operating expenses so they are not included in the 75%.

ATAGAA and the Agencies and Appointments Directive require MAG to conduct a formal review of OLT's mandate every six years. The first mandate review is scheduled for 2026/27.

**Figure 2: OLT Expenses in Millions, 2021/22–2023/24**

Source of data: Ontario Land Tribunal



1. Includes expenses such as repair costs and per diems for part-time adjudicators and contract mediators.

2. For the period from June 1, 2021, to March 31, 2022.

3. Based on the OLT's preliminary annual report.

## 2.2 Land-Use Planning in Ontario

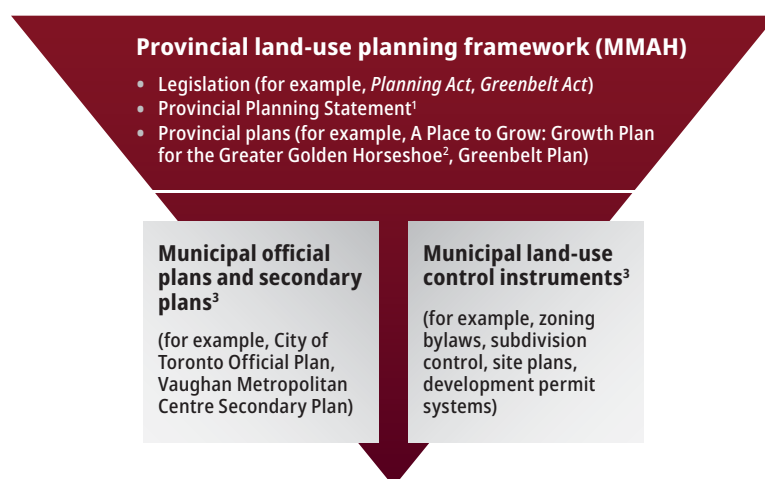
Effective land-use planning can help ensure communities are built in a way that benefits the people who live and work in them, while managing growth sustainably by carefully determining the location, size and type of development.

**Figure 3** shows the legal framework for land-use planning in Ontario. MMAH sets the provincial land-use planning framework (see **Glossary**) through legislation, planning statements and plans like the Lake Simcoe Protection Plan. These tools set the foundation for regulating the development and use of land, and provide direction on provincial interests, based on the *Planning Act*, such as:

- » the adequate provision of a full range of housing, including affordable housing;
- » the orderly development of safe and healthy communities; and
- » the protection of ecological systems and agricultural resources.

### Figure 3: Land-Use Planning in Ontario

Prepared by the Office of the Auditor General of Ontario



1. Effective October 2024, the Provincial Policy Statement, 2020, has been replaced by the Provincial Planning Statement, 2024.

2. Effective October 2024, *A Place to Grow: Growth Plan for the Greater Golden Horseshoe* has been revoked.

3. Can be appealed at OLT.

At the local level, municipalities create official plans and secondary plans to implement the provincial land-use planning framework. Municipalities can also regulate the use of lands for specific purposes or set parameters for the size and scale of development, location and use of buildings (for example, height, size, character and density) through zoning bylaws, and approvals of subdivision and site plans. Additionally, municipalities help ensure infrastructure and other amenities support new development through long-term plans for building and maintaining services like water, sewage, and road or transit networks.

## 2.3 Resolving Land-Use Disputes

In Ontario, if a party has a land-use related dispute (for example, if a landowner disagrees with a municipality's plans for the use of lands), they may be able to resolve it through:

- » most commonly, adjudication through OLT (**Section 2.3.1**);
- » less commonly, mediation/negotiation through OLT or settlement outside of OLT (**Section 2.3.2**); or
- » only under the direction of the Minister of MMAH, negotiation through the Provincial Land and Development Facilitator. The Facilitator helps the provincial and municipal governments, landowners and community groups resolve issues related to growth management, land-use and infrastructure planning, and environmental protection.

**Appendix 3** shows a flow chart of the OLT appeal process.

The majority of OLT's work is related to adjudicating land-use planning appeals, which are typically filed against existing municipal decisions or when a municipal decision has not been made. From June 1, 2021, to March 31, 2024, appeals related to land-use planning made up 66% of cases received by OLT and 86% of its decisions (see **Glossary**). The higher proportion of land-use planning decisions is because other type of cases, such as expropriations, were resolved through negotiations and settlements and are excluded from the total decision count. The second largest category was expropriation, which made up 15% of cases received and 3% of decisions. See **Figure 4** for the percentage of OLT cases received by type.

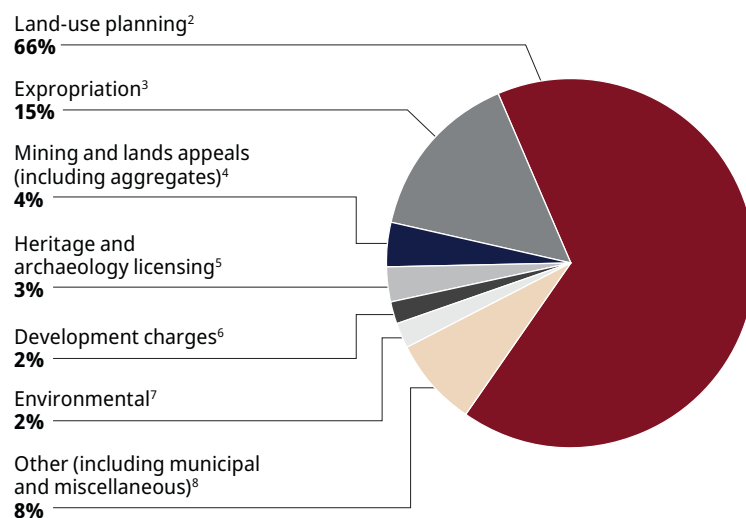
OLT appeals can range from local issues (such as the number of floors in a new condominium tower) to broad ones (such as expansions to a municipality's settlement area boundary). Changes to key legislation under which appeals can be filed with OLT (see **Appendix 2**) can impact the number and type of appeals OLT receives.

Land-use matters requiring minor variances and consents (see **Glossary**) are decided by the Committee of Adjustment in most municipalities. Decisions made by the Committee of Adjustment can be appealed (at least by both the applicant and the municipality) to either OLT or, in Toronto, to the Toronto Local Appeal Body. For appeals related only to zoning bylaws, OLT's decisions must conform to the municipality's official plan, although such appellants may also appeal the municipal official plan. In these cases, the *Planning Act* only requires OLT to "have regard" to municipal planning decisions.

Starting in November 2022, the ability to file a minor variance or consent appeal has been limited to affected property owners and certain public agencies, and is no longer available to neighbours or public interest groups (see **Section 4.1.2**). These limitations have reduced the number of minor variance and consent appeals to OLT, and these appeals will make up a smaller portion of OLT's caseload in the future. As a result, our audit did not focus on these decisions.

**Figure 4: Percentage of OLT Cases Received by Type<sup>1</sup>, June 1, 2021–March 31, 2024**

Prepared by the Office of the Auditor General of Ontario



1. Our Office categorizes these case types based on descriptions set out in notes 2 to 8 below, based on OLT data. We included lead and standalone cases only. Child cases of a lead case were excluded as they were often resolved through decisions of the lead case. OLT categorizes the case types differently for its Annual Report purposes (see [Section 4.4.3](#)).
2. Land-use planning cases consist of those related to zoning bylaws/amendments (23%), minor variances and consents (22%), official plans/amendments (18%), site plans/approvals (2%) and subdivision plans (1%).
3. Cases filed under the *Expropriations Act*. Expropriation refers to government ministries or agencies taking possession of privately owned land to develop public infrastructure, in exchange for money.
4. Cases filed under the *Conservation Authorities Act*, the *Aggregate Resources Act* and the *Niagara Escarpment Planning and Development Act*.
5. Cases filed under the *Ontario Heritage Act*.
6. Cases filed under the *Development Charges Act, 1997* to dispute development charges imposed by municipal councils on development land.
7. Cases filed under the *Niagara Escarpment Planning and Development Act*, *Environmental Protection Act*, *Environmental Bill of Rights, 1993* and the *Ontario Water Resources Act*.
8. Cases related to other matters under the *Municipal Act, 2001*, such as public utility construction, maintenance and operation.

### 2.3.1 Adjudication through OLT

In the OLT adjudication process, parties to a dispute may make submissions and present evidence from subject matter experts, such as urban planners, during hearings. Adjudicators hear the appeals and independently decide whether to partially allow, fully allow or dismiss them based on the arguments and evidence presented.

OLT sets its own rules, practices and procedures for the conduct of hearings, including the presentation of evidence and submissions, case management conferences (CMCs) and adjudicative activities like screenings and consolidation of proceedings.

The adjudicators' assessments of the evidence, and their decisions, must comply with the requirements set out in the applicable legislation and other legal requirements. OLT's land-use planning decisions must comply with the provincial land-use planning framework set out in



**Figure 3.** This means the decision must have regard to provincial interests, be consistent with the PPS issued under the *Planning Act* and conform with provincial plans. We refer to these requirements as a provincial land-use planning framework in this report.

OLT decisions are final and binding, but parties to the appeal can request that the Chair open a review of the decision under Section 23 of the OLT. Such requests may be granted by the Chair if the Chair deems it as a “convincing and compelling case for review.” In a Section 23 review, a different adjudicator is assigned to rehear the appeal. From April 1, 2023, to March 31, 2024, of the 300 OLT decisions issued, there were 40 Section 23 reviews requested and five were granted.

Many OLT decisions can also be appealed to the Divisional Court, most often only on a question of law. Some matters have a statutory right of appeal and others require leave, or permission, of the Court to pursue an appeal. OLT decisions are also subject to judicial oversight through judicial review. From April 1, 2023, to March 31, 2024, of the 300 OLT decisions issued, seven (2%) went to the Divisional Court for appeals or judicial review, similar to the prior fiscal year.

### 2.3.2 Mediation through OLT and Settling Outside of OLT

As an alternative to adjudication, parties to an OLT appeal can agree to a mutually acceptable resolution either through OLT’s mediation services, or by settling their dispute outside of OLT. Mediation and settlement negotiations are optional, but for appeals under the *Planning Act*, OLT must review and approve the final settlement, unless the parties withdraw their appeal altogether.

### 2.3.3 Key Stakeholders of OLT Adjudication Process

The Building Industry and Land Development Association (BILD) is the voice of the home building, residential and non-residential land development, and professional renovation industries in the Greater Toronto Area. Its members typically attend OLT hearings as appellants to appeal municipal land-use planning decisions. BILD is affiliated with the Ontario Home Builders’ Association and the Canadian Home Builders’ Association.

The Regional Planning Commissioners of Ontario (RPCP) and the Association of Municipalities of Ontario (AMO) are stakeholders’ groups representing municipal planning leaders and staff that frequently attend OLT hearings as respondents to appeals to municipal land-use planning decisions.

The Ontario Professional Planners Institute (OPPI) is the professional organization of Registered Professional Planners (RPPs). Its members attend OLT hearings as expert witnesses for landowners, municipalities or third parties to provide expert opinions on the matters in dispute. Similarly, members from Canadian Bar Association (CBA) attend OLT hearings as legal counsels representing various parties of an appeal. Members from the Canadian Environmental Law Association (CELA), a legal aid clinic dedicated to environmental equity, justice and health, provide free legal service, including representation for parties in need.



## 3.0 Audit Objective and Scope

Our audit objective was to assess whether OLT has implemented effective and efficient processes to:

- » ensure adjudicators are qualified and impartial, and that they consistently resolve disputes in accordance with legislation, policies and best practices;
- » manage human resources, information systems and facilities with due regard for economy; and
- » measure and report on the effectiveness of OLT in resolving disputes.

In addition, our audit objective was to assess whether MAG, in collaboration with OLT and other ministries, when appropriate, has effective and efficient processes in place to ensure OLT's legislative mandate is fulfilled and to oversee OLT operations.

The audit scope focused on the systems, processes and performance measures in place at OLT and MAG since OLT was established on June 1, 2021. While we mostly examined data and information gathered after OLT's creation, we also examined some data gathered since 2016/17 from the preceding five tribunals for historical background and trend analysis. We did not focus our examination on minor variance and consent appeals, as these appeals will make up a smaller portion of OLT's caseload in the future. We also assessed the systems and processes in place for the selection, recommendation and evaluation of adjudicators.

For more details, see our [Audit Criteria](#), [Audit Approach](#) and [Audit Opinion](#).



## 4.0 What We Found

### 4.1 Legislative Mandate and Access to Justice

#### 4.1.1 Government Messages Connecting OLT's Work to Increasing Housing Supply Can Create a Risk to OLT's Mandate of Being an Independent Adjudicative Tribunal

As an adjudicative tribunal, OLT must independently and impartially decide the outcomes of appeals. When making land-use planning decisions, the *Planning Act* requires OLT's decisions to be consistent with the provincial land-use planning framework and have regard to a broad range of provincial interests, including the protection of agricultural resources and natural areas, as well as providing a full range of housing. See **Appendix 4** for a list of provincial interests set out in the *Planning Act* and **Section 4.3.1** for our examination of how provincial interests are addressed in OLT adjudications.

We noted that, beyond these legislated requirements, OLT, MAG and MMAH have described increasing housing supply as an outcome of the OLT's work in internal and public documents. These statements can create an impression that the Tribunal may be predisposed to approving housing developments over protecting other provincial interests, which can create a risk to the Tribunal's independence. For example:

- » In 2019, MMAH and MAG proposed changes to the mandate of the Tribunal, which was at that time called the LPAT, to support "increasing housing supply, through the forthcoming Housing Supply Action Plan" in submissions to Cabinet's Economic and Resource Policy Committee. These proposed changes were subsequently accepted (see **Section 4.3.1**).
- » In its 2022 funding requests, MAG asked the Treasury Board for about \$29 million additional funding for OLT "to facilitate faster resolution of disputes leading to increased housing supply."

- » In November 2022, an amendment to the OLTA was made to allow the government to require OLT to prioritize resolving specific cases, which OLT interprets as cases that create the most housing. In an October 2022 parliamentary debate, the Attorney General noted the amendment's purpose to "prioritize what's heard before the Ontario Land Tribunal, to make sure that the things that matter to Ontarians the most—to allow us to achieve our goal of 1.5 million homes in 10 years." As of October 2024, the amendment had not yet been proclaimed by the LGIC.
- » In its 2022/23 annual report, which is the latest available, OLT stated that it "recognizes the critical, independent role it plays in resolving disputes that will result in increasing the housing supply in Ontario."
- » In 2024, the *Planning Act* was amended to remove OLT appeal rights for third parties such as community groups and neighbours (see **Section 4.1.2**). In an April 2024 parliamentary debate, the Minister of Municipal Affairs and Housing stated that the change was because home builders and municipalities said that "delays at the Ontario Land Tribunal were holding back thousands of homes" from being built.

Building 1.5 million homes by 2031 is a key priority for the Province, as outlined in the newly revised PPS. Such outcomes are typically pursued by a policy ministry, such as MMAH.

These messages can create a risk that some people, including the public, parties to appeals and adjudicators at OLT, may interpret them to mean that OLT is predisposed to approving housing development proposals.

OLT, MAG and MMAH, by describing increased housing as an outcome of the OLT's work, risk creating ambiguity around OLT's independence and impartial decision-making and its regard to other important provincial interests.

### Recommendation 1

We recommend that MAG work with OLT and MMAH to clarify and communicate the independence of OLT's adjudicative mandate by removing and avoiding references to specific government priorities, such as increasing the housing supply, in all communications and public representations.

For the auditees' responses, see [\*\*Recommendations and Auditee Responses\*\*](#).

### 4.1.2 Limited Access to Justice at OLT

In interviews with us, many stakeholder groups, including the Regional Planning Commissioners of Ontario, BILD and AMO, voiced concerns about their diminishing access to justice at OLT. They told us that MAG and MMAH did not always reach out to them for their input before announcing legislative changes affecting OLT, and some of them told us that they generally did not feel their input, if given, was being heard.

#### Appeal Process Can Be Prohibitively Expensive

In its 2022/23 annual report, OLT stated that “all who work within it are committed to providing access to justice and to high quality, independent, timely, fair and principled resolutions of the matters brought before them.” We found that the cost of participating in an appeal process at OLT can be prohibitive for some parties, such as individuals or community groups with limited dedicated financial resources, which can discourage some people from filing appeals.

A motion for costs can be submitted by a party to an OLT appeal to recoup some of their expenses if they believe that the other party filed the appeal in bad faith or acted unreasonably during the hearing. We reviewed a sample of 11 recent decisions on motions for costs to better understand the cost of participating in an OLT hearing. We found that the amount requested for preparing written motion materials alone ranged from about \$1,000 to more than \$20,000, and the amount requested for legal fees for a one-day hearing was often more than \$10,000, with some requests for expert and legal fees totalling more than \$100,000. From our sample, the costs requested were primarily for expert witnesses and legal representatives.

Also, in 2022, an amendment to the OLTA was enacted that may, if proclaimed, deter some parties from participating in the appeals process. Over the years, the Tribunal could only award costs against a party if they had engaged in unreasonable, frivolous or vexatious conduct. The amendment to the OLTA will, if proclaimed, clarify OLT’s authority to award costs to the “successful” party against the “unsuccessful” party. In an internal document, MMAH stated that allowing OLT to award costs to the successful party of a dispute “potentially creates an access to justice risk as it would likely deter certain parties from bringing appeals to OLT, even if they are meritorious.” For example, parties with limited financial resources, such as smaller municipalities, may avoid OLT’s adjudicative process due to concerns about potentially paying for the legal costs of the other party that is successful. Following changes to the *Planning Act* in June 2024, environmental and community groups cannot bring appeals to the OLT on most matters (see **Section 4.1.2**)

Under the current rule, costs are rarely awarded in OLT hearings, and those that are awarded are often only on a partial basis. Except for OLT’s rules on awarding costs based on conduct, OLT currently has no policy for when or how much to award, in the event that this amendment is proclaimed.

### **Appellants Who Could Not Afford Expert Testimony Were at a Disadvantage**

OLT is mandated to provide impartial adjudication and to make its decisions in the public interest, among other factors. We found that parties who appeared before it without expert witnesses were at a significant disadvantage.

Adjudicators often rely on expert witnesses, such as urban planners and engineers, to provide their professional opinions on the matters at issue through their reports and expert testimony. Expert witness evidence is considered “opinion evidence,” as opposed to “lay evidence,” which can be given by any person.

To be qualified to give opinion evidence, the person giving the evidence must have expertise and must be objective and non-partisan. It is up to the adjudicator to review the person’s background and expertise, and to accept or reject them as an expert witness on a case-by-case basis.

Any party to a hearing, including neighbours or members of community groups, are not considered to be non-partisan in their hearings, and therefore cannot be qualified as an expert witness, even though they may have expertise. As a result, such parties would need to hire expert witnesses to provide opinion evidence.

Of the 20 cases we sampled (see **Section 4.3.1**), there were three cases in which the appellants did not bring an expert witness. In the decisions for these cases, the adjudicators indicated that these appellants did not provide any evidence because the appellants did not qualify as expert witnesses. Although the decisions did not indicate if cost was the key reason for not bringing expert witnesses, these three appellants lost their cases due to the lack of evidence.

### **Resource Centre Closure Meant Some Members of the Public Could Not Access Legal Advice or Representation**

In Ontario, there is currently no public resource centre that provides free legal advice and representation services to public appellants and participants specific to matters related to OLT.

In April 2018, the Local Planning Appeal Support Centre was created by MAG to provide services to appellants in need, including:

- » information about the land-use planning process, how to appeal to the Tribunal and how to navigate the appeal process; and
- » in some cases, professional services, including planning policy consideration, expert planning evidence and legal representation in adjudication.

During its short tenure, the resource centre provided services to more than 610 parties who required assistance to navigate the *Planning Act* appeal process. The resource centre also formally represented about 10 parties who could not otherwise afford to appeal to the Tribunal.



The resource centre also helped to reduce the Tribunal's caseload. A former planner who worked at the resource centre told us that, frequently, people who sought to bring their grievances to the Tribunal would consult the resource centre, have the relevant regulations and laws explained to them, realize that their complaints lacked merit, and stop pursuing their appeal. Many stakeholder groups we interviewed also recognized the benefit of having the resource centre.

Despite these positive outcomes, the resource centre was disbanded after 14 months, as MAG's internal document noted that it was not an essential service. At the time of our audit, MAG told us that there were no plans to reintroduce this support.

OLT has a citizen liaison and case co-ordinators who can explain OLT's rules, processes and procedures to members of the public, but the role does not provide legal advice or representation services to those in need.

Without this assistance, parties must bring a motion to the Tribunal to seek dismissal of an appeal that does not raise appropriate grounds or that is not likely to succeed. This requires all the parties, and OLT, to spend time and resources to prepare for, hear and determine these motions.

### **New Legislative Amendments Further Deter Certain Parties from Participating**

We noticed that, since the inception of OLT in 2021, the government has removed some third-party appeal rights. Third-party appeals are those brought by persons who are not the applicant or the owner of the land affected, like neighbours and community groups. These limitations have reduced OLT's caseload. For example:

- » In November 2022, changes to the *Planning Act* removed certain third-party (for example, neighbours' and community groups') appeal rights for minor variances and consents (see **Glossary**). Prior to their removal, OLT received an average of about 125 such cases from third parties annually.
- » In June 2024, further changes to the *Planning Act* removed certain third-party rights to appeal municipalities' approvals of official plan and zoning by-law matters. From June 1, 2021, to March 31, 2024, there were more than 350 appeals filed by third parties, including environmental and community groups, representing more than 20% of land-use planning cases received by OLT in that time period.

As a result of these changes, the ability to file a land-use planning appeal is generally limited to affected property owners; utility providers; First Nations; certain private and public bodies like school boards, airports and railways; and nearby industries. Community groups and individuals who wish to seek a review of a decision that may affect them, even though they do not own the disputed land, are limited to making submissions to a municipal decision-maker or, if an appeal is brought to OLT, asking the adjudicator to add them as a party or participant.

**Recommendation 2**

We recommend that OLT clarify its policy for when and how much money to award, should OLT be granted the authority to award costs to the successful party of an appeal.

**Recommendation 3**

We recommend that MAG work with OLT and the other relevant ministries, incorporating input from consultation with the public and stakeholder groups as needed, to:

- re-evaluate the cost and benefit of the former Local Planning Appeal Support Centre; and
- based on this analysis, put in place the suitable structure to provide legal support to the public on OLT matters.

For the auditees' responses, see [\*\*Recommendations and Auditee Responses\*\*](#).

## 4.2 Adjudicator Appointment Process

The ATAGAA requires that tribunal adjudicators be selected for appointment through a competitive and merit-based process that assesses candidates' specialized knowledge, expertise or training regarding the types of matters and legal issues that they would hear at the tribunal. Ontario Regulation 88/11 allows tribunals to waive this competitive, merit-based process if they are reappointing an adjudicator or, since 2019, if the appointment is being made on an urgent basis, but only for a maximum period of six months. Adjudicators must be impartial and follow the tribunal's adjudicative practices and procedures.

PAS oversees all Ontario government appointments to tribunals, agencies, and other boards and organizations to ensure compliance with the ATAGAA and the government's Agencies and Appointments Directive.

**Figure 5** shows the adjudicator appointment process. From April 1, 2023, to March 31, 2024, 14 adjudicators were appointed to OLT. As of March 31, 2024, out of its 53 part-time and full-time adjudicators, including the OLT Chair, 35 (66%) were appointed for the first time after the inception of OLT on June 1, 2021.

### 4.2.1 Past Experiences of Some Adjudicators Do Not Appear to Meet Key Requirements

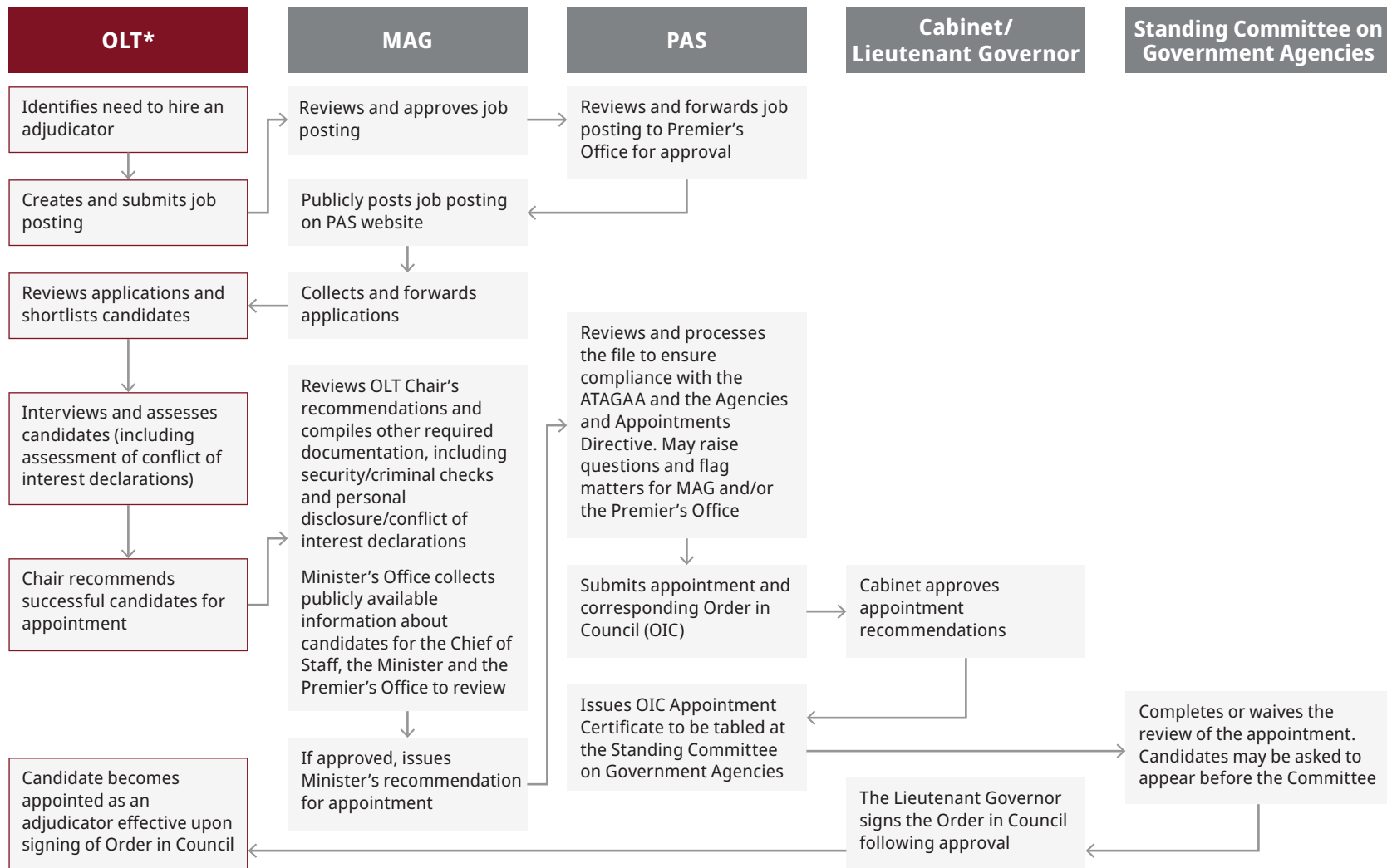
OLT adjudicators deal with unique and complex matters related to municipal land-use planning, environmental protection, conservation, mining and aggregates, and expropriation land compensation, among other topics. The experience, knowledge and skills required to become an OLT adjudicator are set out below.

- » The ATAGAA requires that all Ontario tribunal appointees have "experience, knowledge or training in the subject matter and legal issues dealt with by the tribunal."
- » The OLTA requires appointees to be able to prove they can help OLT fulfill its "authority to hear and determine all questions of law and fact with respect to all matters within its jurisdiction."
- » OLT's adjudicator job description requires "experience in interpreting and applying legislation with specific knowledge of the laws, regulations, policies, procedures and rules that are relevant to the subject matters and practice of OLT" and "demonstrated analytical, conceptual, problem-solving, decision-making and writing skills." For a list of legislation related to OLT, refer to **Appendix 2**.

We found that some newly appointed adjudicators clearly met these requirements, but others did not appear to meet all key requirements.

**Figure 5: OLT Adjudicator Appointment Process**

Prepared by the Office of the Auditor General of Ontario



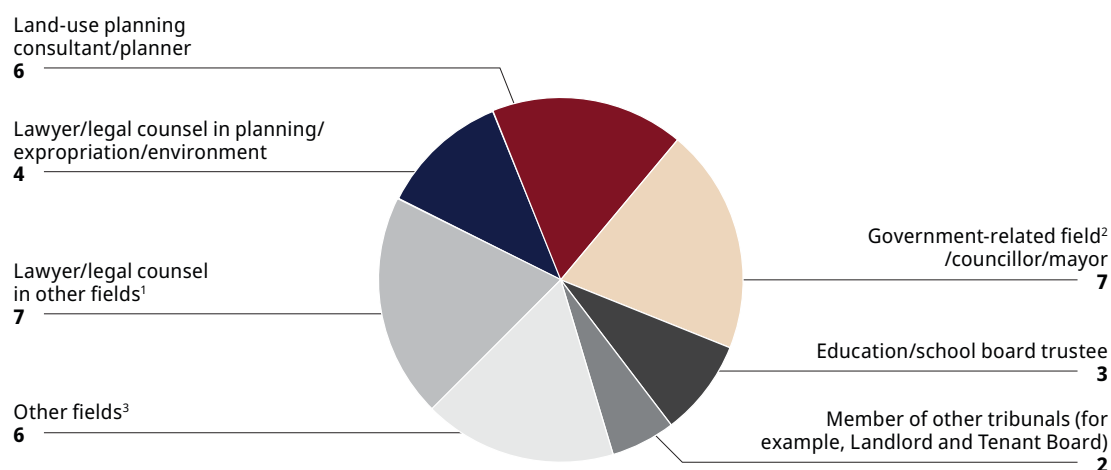
\* The red highlighted boxes are OLT activities and are within the scope of this audit.

Between June 1, 2021, and March 31, 2024, 35 appointments were made to OLT for the first time. We sampled all 35 of those appointments and, as of April 1, 2024, 27 adjudicators were still in their first term, seven had been reappointed and one had not been reappointed. We reviewed the resumés of all 35 adjudicators within their PAS profiles and found that their experiences and qualifications varied significantly (see **Figure 6**). For instance:

- » 18 adjudicators came from a wide range of backgrounds, such as government-related fields (seven), education (three), other tribunals (two) and other fields (six), including financial advisory, sales and marketing, municipal civil service, and journalism. According to the Chair's recommendation letters, some of these appointees were recommended for their experience in working with multiple stakeholders. When reviewing these candidates' PAS profiles, it was not clear to us how they met OLT's qualification requirements as the resumé screening process was not documented (see **Section 4.2.2**).
- » 11 adjudicators had legal backgrounds. Four of them practised in fields related to the OLT subject matter; one of the four had 20 years of legal experience. Seven adjudicators practised in fields such as personal injury litigation, insurance, family law, tax and real estate; one of the seven had only one year of legal experience. OLT does not have more specific requirements for experience, such as number of years worked and specific fields of law practised. Without specific requirements, it is difficult to determine how candidates with disparate experiences qualified for the same adjudicator position.
- » six adjudicators worked in the field of land-use planning in various capacities, including as a consultant, for municipalities and in the development industry.

**Figure 6: Experience and Qualification of New OLT Adjudicators Appointed Between June 1, 2021, and March 31, 2024**

Prepared by the Office of the Auditor General of Ontario



1. Other legal fields include personal injury litigation, insurance, family law, tax and real estate.

2. Government-related positions include city solicitor, citizen representative appointee, municipal chief administrative officer, assistant deputy minister of the Government of Canada, executive assistant to councillors/mayors, court transcriptionist and provincial prosecutor (MAG).

3. Other past experience includes positions such as technical officer, committee member of a technology firm, sales and marketing, financial planner/representative and business advisor.

OLT leadership told us that candidates are not required to have technical knowledge of OLT subject matter beyond what is outlined in the ATAGAA, nor are they required to demonstrate the level of analysis and decision-writing that is required of a sitting adjudicator because these topics would be covered in OLT's training program. OLT leadership also indicated that the starting pay for new adjudicator appointees is low compared to industry standards, which limits OLT's ability to attract candidates with specific qualifications, such as land-use planning professionals or land-use planning law experts.

The Nova Scotia Utility and Review Board is an independent body adjudicating appeals including municipal land-use planning, property assessment, utility complaints, fire safety, expropriated land and other matters under various statutes. It has a guideline that sets out what constitutes a "fair hiring" process to ensure appointments are based on merit. When evaluating its applicants, clear criteria are applied, such as requiring professional experience of at least five years in a relevant profession, and good standing in a designated professional organization. The starting salary of full-time adjudicators at this board is approximately 30% higher than the starting salary of OLT's full-time adjudicators.

Similar to OLT, Alberta's Land and Property Rights Tribunal is a quasi-judicial tribunal that makes decisions about land-use planning, development, right of entry, compensation and assessment matters. It also considers a wide range of professions to be relevant, including lawyers, accountants, planners, engineers, farmers/ranchers and municipal councillors. This tribunal has a competency matrix, which defines each competency and identifies specialized contextual knowledge and personal competencies, to guide its selection of adjudicators.

The ATAGAA requires adjudicators to have experience related to OLT's subject matter. This requirement helps instill confidence in the appellants, the participating parties and the public that the adjudicators are qualified to review and analyze the evidence before them. OLT could enhance the rigour of, and ensure the merit-based nature of, its appointment process by having clear recruitment standards for skill sets and qualifications.

#### **Recommendation 4**

We recommend that OLT, in consultation with MAG:

- review the composition of OLT's appeal cases to determine what fields of practice and length of experience a candidate should have to qualify as an OLT adjudicator;
- develop a competency matrix to define OLT's requirements of experience and to guide the selection of adjudicators; and
- recommend only those candidates that meet its requirements based on the competency matrix.



### Recommendation 5

We recommend that MAG work with OLT to:

- perform a market assessment and prepare a business case to identify the potential need for adjusting competitive salary arrangements toward recruiting qualified adjudicator candidates; and
- if the business case is justified, submit it to the Treasury Board/Management Board of Cabinet.

For the auditees' responses, see **Recommendations and Auditee Responses**.

#### 4.2.2 Lack of Centralized and Consistent Evaluation to Support Chair's Recommendations for Appointment and Reappointment

The ATAGAA states that "no person shall be appointed or reappointed to an adjudicative tribunal unless the Chair of the tribunal, after being consulted as to his or her assessment of the person's qualifications...and, in the case of a reappointment, of the member's performance of his or her duties on the tribunal, recommends the person be appointed or reappointed."

OLT is responsible for all activities related to the merit-based, competitive recruitment of adjudicators, including screening applications received from MAG and shortlisting candidates for written case study evaluations and panel interviews with the Chair and Vice Chair(s), if available.

We reviewed available documents for all adjudicator recruitment competitions related to the 35 new appointments discussed in **Section 4.2.1** and found the following:

- » OLT provided us with documents such as candidates' applications, resumés, some decision writing exercises (28 out of 35) and reference checks; however, it had no system in place to centrally record, rank, track and retain the evaluation results of candidates for recruitment competitions. OLT leadership told us that OLT's general practice is to shred the interview panel's scores and notes related to a competition after the selected candidates are approved by Cabinet and provided an Order in Council appointment letter.
- » In 30 of the 35 recommendation letters to MAG, the Chair asserted that the individual had scored "high" or "very high" in the interview process. No scoring sheets, markings or notes from the Chair were provided to MAG, PAS or us to support these assertions. For five appointees, the Chair did not indicate the scoring results of the candidates when justifying the recommendations, noting only that the candidates were "successful" in the interview process.

- » OLT did not document or summarize individual panel members' evaluation results of candidates' written case studies and interview performance. OLT staff provided us with the personal notes of a Vice Chair who was one of the interview panel members for some of these competitions. The notes provide assessments of a few appointees from the Vice Chair only, and did not show the decisions of other panel members, or the ranking of the selected appointees among all candidates.
- » For the seven reappointments we examined, we found no record of the Chair's documented assessment of any of these adjudicators' performance prior to their reappointments.

OLT does not have a record-retention policy specifying what information related to recruitment competitions and performance evaluations should be maintained, and for how long. OLT leadership told us this is because the ATAGAA and MAG do not set out any requirements to retain this information or guidelines to explain how this information is used to support the Chair's appointment and reappointment recommendations.

In contrast, Tribunals Ontario, a group of 13 adjudicative tribunals, has a retention schedule for selecting and hiring its adjudicators, as well as performance management processes that require documents related to these processes be kept for at least two years, after which these documents can be destroyed.

In April 2024, after our audit began, OLT ran a new recruitment competition for adjudicators. In July 2024, during our audit field work, the recommended candidates had not yet received their Order in Council appointment letters, as such the related documentation had not yet been shredded. The documentation package included six candidates' written case studies and the Chair's scores and assessments on each interview question. The two candidates with the Chair's highest scores were recommended to MAG for appointment.

It is important to systematically document and maintain assessment records for an appropriate period of time. They are the output of a process that is designed to effectively recommend the best candidate for appointment or reappointment. Although a centralized documentation system is not required by the ATAGAA, it could help OLT further strengthen its internal process and support the principle of an open, competitive and merit-based appointment process.

## Recommendation 6

We recommend that OLT:

- develop a centralized system to record and consolidate the evaluation results of all panel members for each candidate participating in adjudicator recruitment competitions;
- create a record-retention policy to maintain all documentation related to each competition, including assessment results and ranking of each candidate selected for interview; and

- ensure all recommendations for reappointment are supported by documented evidence of adjudicator competency and merits.

For the auditees' responses, see **Recommendations and Auditee Responses**.

### 4.2.3 The Process to Identify Potential Conflicts of Interest and Impacts on Adjudicators' Impartiality Requires Supporting Documentation

The Agencies and Appointments Directive and Ontario Regulation 91/11 require government appointees, including appointed OLT adjudicators, to disclose conflicts of interest and to fulfill their professional duties impartially, ethically and competently to avoid any real or potential conflicts of interest. Potential conflicts of interest include instances where the appointment could be seen as a result of preferential treatment, or where the adjudicator or a related entity could benefit from the adjudicator's decisions.

As shown in **Figure 5**, the Chair performs the assessments and screening prior to recommending adjudicator candidates to MAG. PAS reviews candidates' information after the OLT Chair recommends them, but does not assess the qualifications of adjudicators, nor does it perform additional reviews, such as conducting media scans, to ensure prospective adjudicators are likely free from conflicts of interest and risks to their impartiality.

The MAG Minister's Office searches for and compiles publicly available information on the candidates, such as news articles and social media histories, and then provides the information package for the Minister's consideration. The staff at the MAG Minister's Office do not make any documented assessment or recommendation about the suitability of the candidates based on the information compiled. The information package is not shared with OLT.

OLT follows PAS's requirement and relies on candidates self-declaring what may be potential or actual conflicts of interest and suggesting how to resolve them. There is a risk that not all conflicts of interest have been disclosed completely and accurately, even if the appointee self-declares them in good faith. The existing public appointment process does not require OLT to perform social media scans to identify current or prior business or personal connections of adjudicator candidates. These steps could reveal potential conflicts of interest or risks to adjudicator impartiality, such as having undisclosed family ties or recent experiences working with developers, that may be relevant to the subject matter dealt with by OLT. OLT leadership indicated that they do perform social media scans on shortlisted candidates; however, the work has not been consistently documented.

We reviewed the conflict-of-interest records for the 35 new appointments mentioned in **Section 4.2.1**. Of these, 21 self-declared conflicts of interest to the Chair. The remaining 14 declared no conflicts of interest. The Chair reviewed the self-disclosures and agreed with the candidates in all 35 cases, providing additional mitigation strategies for 18 of 21. The most common mitigation strategy was to avoid assigning the prospective adjudicator to cases within the region they had worked in, or involving companies they had worked for. To do so, OLT relies on adjudicators to identify such

conflicts when they receive their assignments from the Chair. There is no specific control to ensure an adjudicator identifies a case-specific conflict unless a party raises it with OLT.

OLT leadership told us that the Chair has received emails from adjudicators self-declaring conflicts of interest relating to individual cases, but the emails are not centrally tracked and OLT could not tell us how many such emails were received. OLT leadership also indicated that training is provided to adjudicators to ensure they have reviewed OLT's ethics plan, conflict of interest rules and code of conduct on an annual basis.

We also reviewed 10 of the 35 new adjudicators' media scans completed by MAG Minister's Office staff and found that there was a considerable amount of research done. Within the information packages, we noted a few instances where the adjudicators' impartiality may be called into question:

- » an adjudicator had family ties with a building company that they disclosed as their previous workplace; and
- » another adjudicator was previously a local councillor and had supported developments of projects on agricultural and rural land that raised some concern from the local community, such as lack of proper consultation.

In November 2024, we were informed that the Minister's Office has implemented a system to flag any potential conflict of interest issues for follow-up. Although this process has not been documented formally, it has been incorporated into the Minister's Office's regular appointment processes.

Under the current appointment process, the Chair can access the Office of the Integrity Commissioner of Ontario (OICO) to seek advice when assessing adjudicators' backgrounds, although there have been no instances since June 2021 where the Chair required the assistance of OICO. A key part of the Integrity Commissioner's work is to reconcile Ontario's elected officials' private interests with the duties of public service. The Commissioner could provide advice based on fact-specific situations to assist the Chair in making informed decisions. The OLT does not have a process in place to seek advice from OICO when assessing adjudicators' backgrounds, if needed.

We noted that the Nova Scotia Utility and Review Board adopted the "Ethical Principles for Judges" guidance issued by the Canadian Judicial Council. This publication states that "impartiality requires not only the absence of bias and prejudgment, but also the absence of any appearance of partiality...The test is whether a reasonable and informed person with knowledge of all relevant circumstances, viewing the matter realistically and practically, would apprehend a lack of impartiality in the judge."

Having best practices in place, such as proactive background screenings and requesting advice from the Integrity Commissioner, could mitigate the risk of OLT adjudicators having, or appearing to have, potential conflicts of interest.

## Recommendation 7

We recommend that OLT work with MAG to:

- implement a process to proactively screen professional and personal backgrounds of adjudicator candidates, so that recommended candidates' potential conflicts of interest or risks to their impartiality can be identified and further assessed by decision-makers throughout the appointment process;
- establish criteria for when potential conflicts of interest or risks to impartiality in adjudicator candidates may constitute a risk to OLT, and request such cases to be referred to the Office of the Integrity Commissioner of Ontario for independent assessment prior to appointment; and
- develop a formal process to confirm conflict of interest does not exist before the adjudicator is assigned to each case.

For the auditees' responses, see [Recommendations and Auditee Responses](#).

### 4.2.4 Consolidated Performance Assessment and Management Processes to Further Support Adjudicator Development

OLT has formal and informal processes in place to support adjudicators' performance. These include onboarding and continuous training, Vice Chair and Legal Counsel review of decisions and advice, as well as annual performance reviews conducted by the Chair.

OLT requires every adjudicator's draft decisions to be reviewed by a Vice Chair. In addition, throughout the hearing and decision-writing processes, adjudicators have the option to reach out to OLT's Legal Counsel and Vice Chair(s) for advice.

When conducting performance evaluations of adjudicators, the OLT Chair reviews various reports, such as the number of hearings and decisions issued by the adjudicator in the year of the evaluation, as well as any complaints received, the adjudicator's self-evaluation and their choice of some examples of their decisions. OLT leadership indicated that, if needed, the Chair, with the assistance of Vice Chairs, provides additional support and monitors adjudicators' progress in addressing deficient areas.

We found that the results of these processes were not always formally documented and reviewed collectively to inform future adjudicator training and professional development needs. The following information outlines our findings.

- » Although OLT has a decision-formatting template, it does not have a quality standard for decision-writing or guideline for reviewing the reasons supporting adjudicators' decisions. Feedback given from these review processes was not formally consolidated into the adjudicator performance review process. OLT hearings are not recorded for quality review and training purposes (see [Section 4.3.2](#)).

- » Although OLT has set procedures to deliver written performance reviews to its adjudicators, we found no records to demonstrate that this requirement was being followed. Instead, the Chair’s assessment of each adjudicator was conducted verbally.

Regular, formal and documented performance evaluation based on reviewers’ feedback would also help OLT leadership to identify adjudicators’ future training needs, and to create learning plans to increase their competence.

We noted the following best practices to help support adjudicators’ performance, especially for adjudicators who are new.

- » Tribunals Ontario has formally issued “guidelines for reasons review and decision quality standards,” which aim to respect adjudicators’ independence while helping to ensure decisions are well-reasoned and legally sound. The guidelines outline how adjudicators can ensure that their written decisions are high-quality, consistent and coherent, including by clearly explaining relevant evidence presented by the parties, why the facts were found as they were and why the adjudicator reached the decision they did.
- » The Ontario Consent and Capacity Board (CCB), a quasi-judicial administrative tribunal that operates at arm’s length from the Ministry of Health under the authority of the *Health Care Consent Act, 1996*, has a Peer Performance Evaluation Program published on its website along with evaluation criteria.
- » The CCB’s performance evaluation of adjudicators involves using an assigned evaluator to conduct confidential consultations about individual adjudicators with their peer adjudicators, legal counsel and lead administrative staff, as well as reviewing the adjudicator’s written decisions and observing them in hearings. Feedback from the evaluator relates to the CCB Member Performance Standards and is required to be as specific as possible.

## Recommendation 8

We recommend that OLT:

- review best practices related to adjudicator performance assessment and professional development;
- develop a formal hearings and decisions quality review process based on best practices;
- collect reviewer feedback for adjudicators as one of its performance review procedures and use it to inform training and professional development needs; and
- document and deliver written feedback to adjudicators as part of OLT’s annual performance review process for adjudicators.

For the auditees’ responses, see [Recommendations and Auditee Responses](#).



## 4.3 Adjudication and Mediation

### 4.3.1 2019 Change to the Tribunal's Authority Over Municipal Decisions Lacked Thorough Analysis

When the government makes changes to legislation, these changes can affect the scope of OLT's work, including the types of appeals the Tribunal hears (see **Section 4.1.2**) and the basis on which it makes decisions. Two significant changes have altered OLT's and predecessor tribunals' land-use planning mandate. The first change required the Tribunal to have greater regard to municipal decisions, while the second change reversed the first one, giving the Tribunal the authority to make final approvals over municipal decisions. The changes are outlined below.

In 2016 and 2017, MMAH and MAG conducted extensive public consultation with stakeholders from the development sector, municipalities, community groups and the environmental sector specifically on the Tribunal's mandate. Themes of concern from the consultation included the Tribunal's jurisdiction and powers, meaningful citizen participation and local perspective, and clear/predicable decision-making.

Following this consultation, in April 2018, legislative changes amended the mandate of the Tribunal, which was then called OMB. This change ended the practice of *de novo* hearings, where the Tribunal heard appeals of official plans and zoning bylaws by examining any related evidence submitted by parties, and increased the Tribunal's regard to municipal decisions for these matters. After the 2018 change, the Tribunal, which was then renamed LPAT, could only examine the evidence the municipality had originally reviewed.

Under this 2018 regime, if the municipality had followed the provincial land-use planning framework and its own official plan policies, LPAT could not overturn the municipal decision and replace it with its own, but could only return the decision to the municipality for a revision. LPAT could make a final decision only in cases where the municipality did not make a revised decision, or if the revised decision did not follow provincial or municipal plans for a second time.

In September 2019, the Tribunal's mandate and authority were returned to the pre-April 2018 mandate of OMB. Under this mandate, the Tribunal reassesses the same issues regarding proposed developments that were before the municipality and, through adversarial, court-like oral hearings of expert witnesses, the Tribunal's decision replaces the municipality's decision.

The September 2019 return to the OMB mandate was proposed as only one of many initiatives to "increase the housing supply, streamline development approvals and reduce regulatory burden." The change sought to amend the Tribunal's powers and resources so developments could be approved within a one-year time frame. Although the analysis supported the reversion of the Tribunal's mandate to assist with the implementation of the government's Housing Supply Action Plan, it did not focus on addressing the potential drawbacks or risks identified with the proposed mandate change, nor did it analyze why the OMB mandate was changed in the first place.

In fact, MMAH internal documents noted concerns that reverting to the pre-2018 OMB mandate may be viewed as “returning to a flawed process.” The internal documents noted additional risks of the pre-2018 mandate, including:

- » potential strong opposition from municipalities, some environmental groups and the public; and
- » “longer, more complicated and more adversarial hearings and appeals, and creat[ing] further backlogs” as restrictions on oral testimony by expert witnesses would be removed.

It is unclear how the 2019 analysis addressed the risks associated with returning to the pre-2018 OMB mandate, except by seeking additional funding to address the potential increase of the number of appeals and the length of hearings.

As noted in **Section 2.1**, MAG is scheduled to perform a review of OLT’s mandate in 2026/27. The requirements of the review are comprehensive and cover eight specific aspects of the Tribunal’s functions, such as its overall mandate and whether it continues to be relevant, OLT’s effectiveness and functions (including whether they would be best performed by another entity), governance and management structures, financial and human resources and systems, business planning performance and reporting, and regulatory compliance. Other aspects of the Tribunal can also be required to be reviewed. This review would be welcome after such large changes have been made to the Tribunal’s mandate.

The frameworks under which land-use planning decisions are made, and appealed, vary significantly across provinces. Different approaches taken by other provinces are outlined below.

- » In Nova Scotia, adjudicators determine whether land-use planning decisions of municipal councils are consistent with their own municipalities’ published planning strategies.
- » In Alberta, subdivision and development appeals are brought to the appeal boards of municipalities, and the provincial tribunal only hears appeals if the land is affected by a provincial interest (for example, land adjacent to a water body, cultural site or highway) or requires approval from another provincial regulator.
- » British Columbia’s framework is significantly different from Ontario’s. Local governments, including municipalities, have a high level of autonomy over land-use planning, and there is no tribunal where landowners could appeal municipal official plans or zoning bylaws. Instead, landowners can apply to municipalities to rezone/re-designate specific sites. If the municipality does not approve such a request, the landowner can generally challenge this decision only in the courts, and only due to alleged irregularities during the municipality’s decision-making process. In British Columbia, a tribunal, however, oversees changes to this province’s agricultural land reserve with the intent to protect agriculturally productive lands from non-agricultural development.

These different models and practices toward land-use planning dispute resolutions across provinces are alternatives for Ontario to consider when reviewing OLT's mandate.

### **OLT Adjudication Process Is Limited in Scope Compared to a Systematic and Comprehensive Municipal Planning Process**

OLT adjudicators base their decisions on arguments presented to them in adversarial hearings. Since parties choose what arguments, evidence and witnesses to present to OLT, this adjudicative approach can be more limited in the scope of information assessed than the systematic and comprehensive land-use planning process typically undertaken by municipalities.

When developing official plans and zoning bylaws, municipal land-use planning staff establish what the municipality considers to be good planning by specifying density and other parameters, such as building heights and setbacks. A municipal official plan is supported by technical studies and consultations with the public and stakeholders, and typically requires the approval of the Minister of Municipal Affairs and Housing or upper-tier municipalities, such as Regional Municipalities.

For a site-specific development proposal, detailed studies on traffic or shadow impacts prepared by a municipality or the development's proponent may reveal adverse impacts of the development proposal. In contrast, if the municipality's decision is appealed to OLT, OLT is not required to focus on such traffic or shadow studies in its decision unless impacts are specifically identified as a key issue for the appeal.

The adjudicative process, where OLT is presented with arguments and information by the parties to the appeal, allows OLT to prefer the planning evidence of other parties, such as landowners' planners, and to ultimately replace the municipality's decision of what represents good planning with its own.

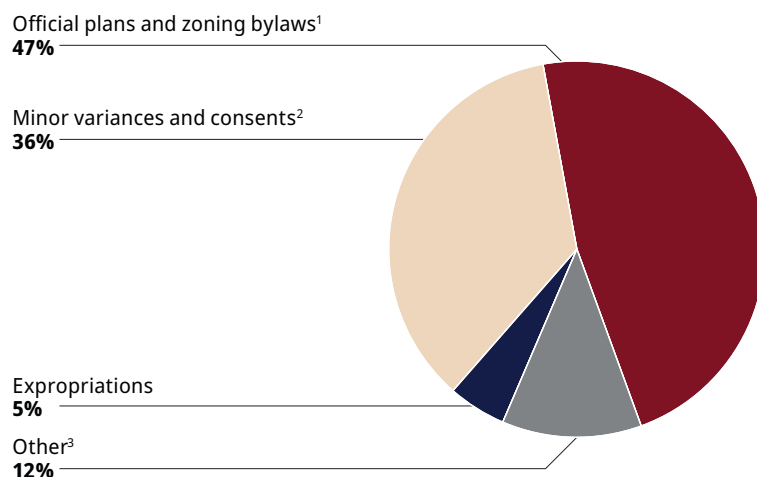
We reviewed 20 development-related decisions made between June 2021 and March 2024, as discussed in the following section. We found that, in 11 of these decisions, OLT overturned the municipality's decision or went against the municipality's position on the appropriate planning for the site.

### **High Rate of OLT Development Approvals Under the Provincial Land-Use Planning Framework**

In fiscal 2023/24, OLT issued 300 decisions. **Figure 7** shows a breakdown of these decisions by type. Our audit focused on land-use planning decisions, such as official plans and zoning bylaws, which made up 47% (or 142) of the decisions. Specifically, because a significant majority of land-use planning decisions were related to proposed development (116 of the 142 decisions), we examined these 116 decisions. We found that, in 2023/24, OLT allowed about 90% of the 116 proposed developments appealed to it, such as condominium complexes and townhouses, to proceed on the basis that these developments were consistent with the provincial land-use planning framework.

### Figure 7: OLT Land-Use Planning Decisions by Type, 2023/24

Prepared by the Office of the Auditor General of Ontario



1. Also includes subdivision and site plans. The significant majority (82%) of decisions in this category relate to proposed developments, such as condominium complexes and townhouses. Non-development related cases include appellants seeking permission to, for example, store and sell trailers on their land, operate a canteen from a home, permit a boathouse or rezone a property for short-term rentals.
2. Includes permits to construct or renovate a building in a way that does not meet municipal zoning bylaws, or to split a land plot into smaller lots.
3. Includes development charges, environmental, heritage, Niagara Escarpment, and municipal and miscellaneous appeals.

These proposed developments were brought to OLT for various reasons, such as:

- » the municipality did not approve the development within the required time frame;
- » the development did not align with municipal plans;
- » there was a need for additional technical studies; and/or
- » the development proposal was challenged by the local community.

In about half of the 116 cases, parties had largely agreed on a settlement before OLT adjudication hearings. For such cases, OLT holds settlement hearings to independently determine whether the settlement represented good planning.

Although the principles of “good planning” are not defined within the provincial land-use planning framework, the *Planning Act* requires OLT to have regard to provincial interests in its adjudications, such as the provision of a full range of housing, including affordable housing; the development of safe and healthy communities; and the protection of agricultural resources and ecological systems. (See **Appendix 4** for all 20 provincial interests.)

Due to their broad and varied nature, provincial interests may inherently compete with one another. For example, by rezoning farmland for residential development, housing is increased while agricultural areas are diminished. It is up to each adjudicator to determine how to uphold provincial interests in their decisions, within the provincial land-use planning framework, on a case-by-case basis.

We reviewed a sample of 20 development-related decisions OLT issued between June 2021 and March 2024 that were not settled by parties. In 18 of our 20 samples, adjudicators upheld the provincial interest of the provision of housing, by allowing building in new settlement areas and increasing the density of existing settlements.

Other provincial interests—such as protection of agricultural resources and the development of safe and healthy communities—also appeared as key interests in the appeals we sampled. Examples 1 and 2 in **Figure 8** show a summary of decisions OLT made where these provincial interests were considered.

### Figure 8: Summaries of Examples of OLT Land-Use Planning Decisions

Prepared by the Office of the Auditor General of Ontario



#### Example 1

» **(Case # OLT-22-002000):** In July 2023, after the municipality did not make a decision within the required timeline, OLT approved the City of Markham's secondary plan for about 6,000 residences on a land block of over 1,000 acres including farmland and natural areas. The planning process began about 10 years prior to this appeal, and included settlements between all but one of the affected landowners, the municipality, region, school board, and conservation authority. A key issue appealed by the one farm owner was whether the road network to be constructed through the land conforms with the Greenbelt Plan. OLT relied on the earlier environmental assessment to assess the conformity of the proposed road network with the Greenbelt Plan. In its review of the environmental assessment, OLT "saw no evidence of any fundamental errors or lack of attention to the requirements of the Greenbelt Plan and does not accept any evidence to the contrary." Ultimately, OLT approved the secondary plan, concluded that it conformed with the Greenbelt Plan and dismissed the one farm owner's appeal to exclude their land from the plan.

Note: OLT's decision did not alter the boundaries of the Greenbelt and conformed with the Greenbelt Plan, 2017.





## Example 2

» (Case # OLT-21-001442): In July 2023, after the municipality did not make a decision within the required timeline, OLT approved a 26-storey condo tower to be built amongst other condo towers ranging from 18 to 31 storeys in downtown Burlington. The municipality argued that the proposal would exceed the limit of 17 storeys in its official plan, and represented excessive intensification that had “adverse impacts on adjacent properties arising from the height, massing, setbacks and step-backs of the proposal.” In its decision, OLT agreed with the developer’s expert witness, who argued that the proposed tower was in a downtown intensification area designated for growth. OLT ultimately allowed the proposed development on the grounds that the development was consistent with the provincial land-use planning framework and was compatible with the neighbourhood, and that “a reduction in height to 17 storeys will reduce the provision of housing by a loss of 82 residential units, which is contrary to provincial directives.”



## Example 3

» (Case # OLT-21-001360): In a July 2023 decision, OLT allowed the appeal filed by a developer and rejected the Town of Collingwood’s zoning bylaw to provide affordable housing when the municipality initially approved a new 655-home subdivision to be built on open fields of farmland. OLT did not accept the municipality’s position that the zoning bylaw could require that 10% of the homes be affordable. OLT was not persuaded that the affordable housing policies in the provincial land-use planning framework required that specific developments provide affordable housing, only that affordable housing is provided somewhere within a municipality.



#### Example 4

- » (Case # OLT-23-001045): In March 2024, OLT approved an affordable housing development, noting that the neighbour opposing the development “lacked a compelling argument and provided little illustration to show that the proposed development would not be compatible with the established community and/or have any adverse impact on area residents other than his own property.” OLT found the proposal to be sufficiently compatible with the surrounding neighbourhood and conformed with the provincial interest of providing affordable housing.

Although affordable housing is listed as a provincial interest under “the provision of a full range of housing,” the *Planning Act* and the provincial land-use planning framework do not allow municipalities to require affordable housing units to be included in individual developments, unless municipalities have implemented an inclusionary zoning framework, which, in most municipalities, may only be used in projected major transit station areas. As such, OLT did not uphold the municipality’s plan for affordable housing within a development, as shown in Example 3 in **Figure 8**. We noted that affordable housing was upheld in Example 4 in **Figure 8**, a case with different characteristics, where the entire development was intended as affordable housing.

In addition, we reviewed 10 cases brought to OLT under legislation other than the *Planning Act*—including environmental matters, extraction of aggregates and expropriations — and found that they involved fewer competing interests under the applicable legislation. Examples include:

- » In an environment-related decision, OLT upheld orders of the Ministry of the Environment, Conservation and Parks to stop the burning of wood waste at a farm.
- » In an aggregates-related decision, OLT allowed an aggregates quarry to extract stone from below the water table in an existing pit, so long as proper permits were granted by the local conservation authority.
- » In a decision related to expropriation, OLT awarded compensation to a business affected by construction of highway improvements.

We did not focus our review on minor variance and consent decisions (which made up 36% of cases, as shown in **Figure 7**) because, starting in late 2022, changes to the *Planning Act* have limited these types of appeals and so these appeals will make up a smaller portion of OLT’s caseload in the future (see **Section 2.3**).



## Recommendation 9

We recommend that MAG, working with MMAH, immediately begin the evaluations necessary to complete OLT's mandate review by 2026/27, including:

- conducting a thorough study of alternative dispute resolution practices from other jurisdictions, such as Nova Scotia and Alberta;
- evaluating the benefits and drawbacks of different potential models for the provincial land-use dispute resolution function (adversarial court-like adjudication versus review of municipal decisions), including steps to address the risks identified by MMAH as part of the 2019 mandate change;
- assessing opportunities to give higher regard to the land-use planning work done by municipalities; and
- proposing timely legislative changes necessary to implement reforms identified through the mandate review.

For the auditees' responses, see [Recommendations and Auditee Responses](#).

### 4.3.2 Transparency, Public Awareness and Understanding Are Hindered Without the Use of Written Guidance and Other Mechanisms

As discussed in **Section 4.3.1**, the *Planning Act* requires OLT to only "have regard" to provincial interests, and the OLT's adjudication process is more limited in the scope of information assessed than the municipal land-use planning process. Through issuing written guidance, OLT can identify key factors and considerations that adjudicators may apply when interpreting terms and principles in the provincial land-use planning framework, and when having regard to matters of provincial interest.

#### **OLT Has No Written Guidance for Undefined Terms and Key Principles toward Upholding Provincial Interests**

While a directive or a similar mandatory requirement may unduly interfere with the independence of OLT adjudicators, non-binding guidance can help inform adjudicators' analysis of facts and offer a more transparent interpretation of how parties to an appeal, and the public, can expect the provincial land-use planning framework will likely be applied to individual cases.

Formal written guidance can supplement the consistent interpretation of the provincial land-use planning framework and help toward the consistency of decisions, as OLT decisions are not bound by precedent, and adjudicators can independently reach decisions with different outcomes from previous decisions involving similar facts and issues.

Some terms, such as “strategic growth area” and “intensification,” are defined within the PPS, and the application of such terms is frequently qualified by undefined terms such as “where appropriate” or “where applicable.” These terms allow planning authorities to make localized decisions.

For example, the PPS states that planning authorities “should identify the appropriate type and scale of development in strategic growth areas.” The OLT has not identified its key considerations when determining the appropriateness of the type and scale of proposed developments. The OLT has not established formal written guidance for how to interpret key principles used in its decisions, such as “good planning” and “public interest,” which are not defined in the provincial land-use planning framework.

Other tribunals have issued guidance documents. For example, Tribunals Ontario uses interpretation guidelines to help parties understand the Landlord and Tenant Board’s usual interpretation of the law, to provide guidance to its adjudicators, and to promote consistency in decision-making. The guidelines address common issues seen in landlord and tenant proceedings, such as tenant rights, maintenance issues or eviction applications for personal use. These interpretation guidelines do not fetter adjudicators’ independence. Adjudicators are not required to follow the guidelines and may make a different decision depending on the facts of the case, unless there is a binding court decision to the contrary.

Similarly, the Immigration and Refugee Board of Canada’s guidelines support consistency in cases that share essential similarities. This tribunal’s adjudicators are expected to follow the guidelines unless compelling reasons exist to depart from them, which adjudicators must explain in their decisions.

It is OLT’s policy to consult with those who may be affected by its services when creating rules, practice directions and policies. Through such consultation, OLT receives feedback, and may organize focus groups to discuss the proposed changes to its rules and policies. Using a similar consultative process will help ensure input from key stakeholders is incorporated when developing guidance.

### **Providing More Information about the Adjudication Process Increases Public Understanding and Transparency**

We found that, generally, OLT adjudication decisions in our sample were consistent and conformed with the applicable legislative framework, and clearly presented the reasons for adjudicators’ decisions. Only one of the decisions stated that OLT was “satisfied by the more compelling evidence” presented by the development proponent, without outlining the evidence.

We noted that OLT’s decisions are posted on its public-facing website. Other parts of OLT’s dispute-resolution and decision-making processes are not easily accessible. Examples include:

- » The full adjudicative record is only available upon request, so members of the public do not have ready access to the evidence submitted by parties, key issues disputed in hearings, and how OLT accepts and weighs evidence when deciding disputes.

- » OLT's hearings guide outlines the procedural aspects of a hearing, but it does not describe OLT's decision-making criteria or legal tests it is required to apply.
- » OLT directly notifies parties to a hearing of their hearing date, but does not publicly post notices of hearings that may be of public interest, nor does its website have a calendar showing what hearings are scheduled for which days.
- » Members of the public can observe OLT's video hearings if they make a request with OLT to obtain the video conference link. As hearings are now held virtually unless requested by parties, OLT adjudicators generally do not travel into the communities where the proposed developments are located, and community members also have far fewer opportunities to attend hearings physically.

OLT's rules and the *Statutory Powers Procedure Act* forbid parties from recording hearings, unless specifically authorized by the presiding adjudicator. Parties to a hearing may hire court transcribers to create a record of the proceedings, at their own cost.

In contrast, Tribunals Ontario records the audio for its hearings, using the recording function of the video conferencing software. A party to a landlord and tenant hearing can request a copy of the recording. Also, the Nova Scotia Utility and Review Board publishes the recordings of its hearings, the evidence it received and a schedule of upcoming hearings through an electronic portal.

Enhancing transparency can increase the public's awareness of the kinds of disputes OLT hears and how it makes its decisions, and ultimately foster public understanding of how OLT adjudicates land-use planning and other disputes. OLT can also use recordings of hearings for internal training and quality review purposes, and when assessing external requests for review of its decisions, if needed.

## Recommendation 10

We recommend that OLT:

- consult with its adjudicators, MAG, MMAH, and other stakeholders, to evaluate and determine where formal written guidance can be developed to enhance the general consistency and transparency of OLT's decision-making process; and
- review and adopt best practices from other tribunals to enhance the transparency of the OLT hearings process, such as making evidence OLT examines easily accessible through its website, publishing notices of upcoming hearings and recording hearings.

For the auditees' responses, see [\*\*Recommendations and Auditee Responses\*\*](#).

### 4.3.3 Mediation Saves Parties Time and Money, but Could Be Provided in a More Cost-Effective Manner

Adjudication at OLT can be a lengthy process, with hearings potentially spanning months. Mediation is an alternative to adjudication whereby parties choose to negotiate their positions and, if successful, agree on a resolution.

Multiple municipalities we spoke to (such as York Region, Peel Region and City of Vaughan, as well as representatives from the Regional Planning Commissioners of Ontario) said that they found mediation, whether facilitated by OLT or externally by private mediators, to be a useful tool for resolving appeals efficiently.

OLT staff tracks mediation statistics on an Excel spreadsheet, and told us that, between 2021/22 and 2023/24, OLT sent about 10% of cases received, other than those related to expropriations, to Tribunal-led mediation. We could not verify the accuracy of this estimate, because mediation referrals were not systematically tracked in OLT's case management system. OLT has not established a performance measure for mediating cases. In comparison, Tribunals Ontario tracks the percentage of cases that are resolved, in whole or in part, through alternative dispute resolution.

Mediation may reduce some of the significant legal fees involved in hiring lawyers and experts (see **Section 4.1.2**), and could provide access to justice for more people, in addition to reducing OLT adjudication caseloads.

#### **OLT Paid Contract Mediators \$300 an Hour**

OLT leadership explained that to foster public trust and confidence, and to avoid conflict of interest, there needs to be a clear boundary between adjudication and mediation. For this reason, OLT chose to procure and contract with external mediators for land-use planning related disputes.

OLT contracted between six and eight mediators to provide mediation services relating to land-use planning appeals, from April 2023 to March 2024. The contract mediators were paid \$300 (plus HST) per hour, well above the \$65 to \$80 per hour OLT pays to its adjudicators for simplified expropriation appeals. Between 2021/22 and 2023/24, OLT has spent approximately \$1.1 million on external mediators.

We found that some other tribunals have successfully used in-house adjudicators to fill both mediation and adjudication roles. For example, the Human Rights Tribunal of Ontario specifically uses adjudicators as mediators to help parties reach an agreement or settlement that resolves the issues in the application. Also, OMB generally used internal adjudicators for both roles.

**Recommendation 11**

We recommend that OLT:

- develop a process to increase the number of cases referred to mediation;
- create performance measures to monitor and report on the effectiveness of using mediation, such as the percentage of cases referred to mediation and the percentage of cases resolved by mediation; and
- complete a cost/benefit analysis and monitor workloads to determine if hiring external mediators is the most cost-effective way of providing mediation.

For the auditees' responses, see **Recommendations and Auditee Responses**.

## 4.4 OLT Operations

### 4.4.1 Despite More Funding and Staff, OLT Has Not Yet Improved Some Key Metrics

In its February 2022 report, MMAH's Housing Affordability Task Force stated that "the most recently published [OLT annual] report showed 1,300 unresolved cases." This unresolved caseload prompted the Task Force to recommend more funding to OLT to "clear the backlog" (see **Section 2.1**). Neither OLT nor MAG analyzed the caseload data to determine whether the 1,300 "unresolved cases" represented an unusually high backlog and to understand the root causes of any delays, before preparing the funding requests.

In 2022 and 2023, the government approved additional funding of about \$29 million over four years for OLT to increase the number of adjudicators, staff and mediators to facilitate faster dispute resolution and accelerate decisions.

On March 31, 2022, before the additional funding was received, OLT had 27 full-time adjudicators, 10 part-time adjudicators and 68 staff members. OLT spent an additional \$0.86 million in 2022/23, and \$5.65 million in 2023/24 compared to 2021/22, respectively. As of March 31, 2024, it had 36 full-time adjudicators (a 33% increase from 2021/22), 17 part-time adjudicators (a 70% increase) and 101 staff members (a 49% increase). Between 2021/22 and 2023/24, the number of decisions OLT issued increased by 22%, and the average number of decisions per adjudicator decreased by 40% (see **Figure 9**). OLT leadership indicated that, with the 14 adjudicators newly appointed in 2023/24, it takes three months of training, on average, before new adjudicators can be assigned to files and adjudicate cases on their own.

**Figure 9: Number of Decisions Issued per OLT Adjudicator, 2021/22–2023/24**

Source of data: Ontario Land Tribunal

	2021/22 <sup>1</sup>	2022/23	2023/24	2021/22–2023/24 (% Change)
# of adjudicators <sup>2</sup>	25	36	50	100
# of cases received	735	925	934	14
# of decisions issued <sup>3</sup>	245	309	300	22
Average # of decisions issued per adjudicator	10	9	6	(40)

1. For the period from June 1, 2021, to March 31, 2022.

2. Calculated based on the average at the beginning, middle and end of the fiscal year. Includes all full-time and part-time adjudicators, whose capacity can be different than full-time adjudicators.

3. Calculated based on final decisions (see **Glossary**) issued.

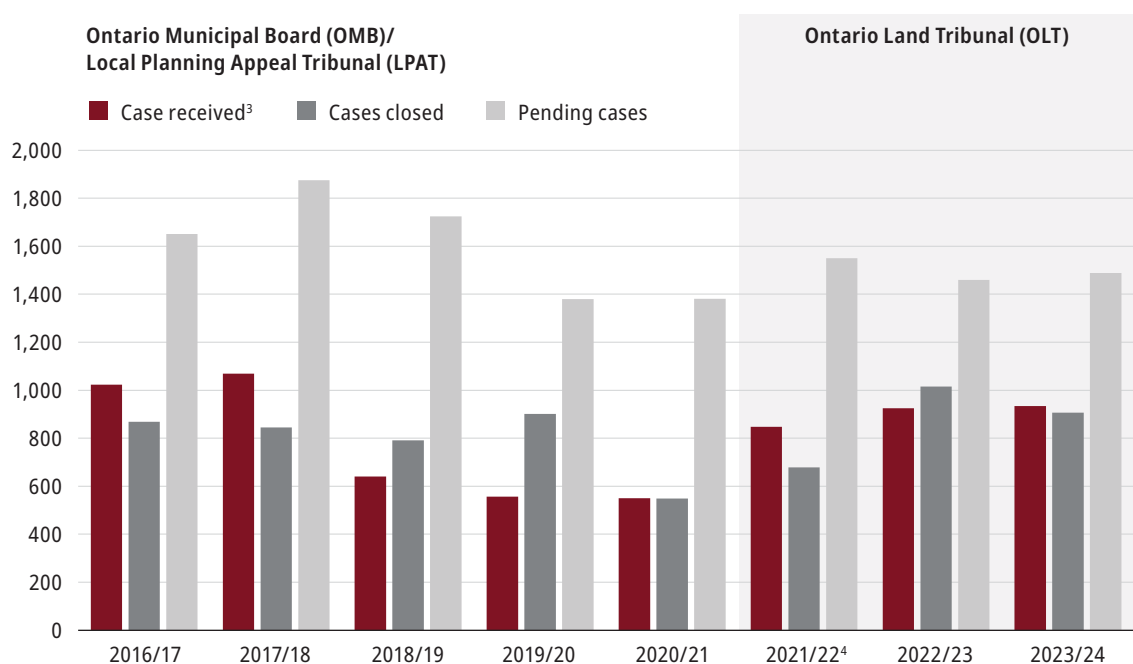
Between 2022/23 and 2023/24, the number of Cases received remained stable at around 930, but the number of cases closed decreased from 1,015 to 906, or by 11% (see **Figure 10**). As of March 2024, OLT had approximately 1,490 pending cases, an 8% increase from approximately 1,380 pending cases in March 2021. The 2021 caseload information was used by the Housing Affordability Task Force to support their recommendation for additional funding.

OLT told us that, historically, each case co-ordinator typically handled approximately 150 cases per year, which OLT described as an excessively high caseload and the result of a longstanding staff shortage.

As a result of recruitment efforts, staffing levels increased over the past two years. OLT expects its case co-ordinators to manage between 75 and 100 cases annually. Our analysis of caseload data for the fiscal year 2023/24 showed that each case co-ordinator handled an average of 47 cases. OLT leadership told us that the new staff carried a much smaller caseload when they first joined because they needed time for onboarding and training.

**Figure 10: Appeal Cases Received, Closed and Pending Cases<sup>1</sup> at Year-end, 2016/17–2023/24<sup>2</sup>**

Prepared by the Office of the Auditor General of Ontario



1. Number of cases includes lead and standalone cases only. Child cases of a lead case were excluded as they are resolved through the decision of the lead case; see **Section 4.4.3** for details. Cases received include cases that received an "intake" timestamp within the fiscal year; cases closed include cases that received a "closed" or "disposed" timestamp within the fiscal year; and pending cases refers to the number of cases with no "closed" or "disposed" timestamp at each fiscal year-end.
2. Includes cases received and closed by OMB from April 2016 to April 2018, LPAT from April 2018 to May 2021, and OLT from June 2021 to March 2024.
3. Cases received decreased from 2016/17 to 2020/21 due to the mandate change from OMB to LPAT (see **Section 4.3.1**), as well as the impact of the COVID-19 pandemic.
4. The LPAT and other land- and environment-related tribunals were amalgamated into OLT, which started to operate on June 1, 2021.



## Time Between Case Intake and First Hearing Has Shortened, but Overall Case Resolution Time and Decision Issuance Time Have Not Improved

In **Figure 11**, we counted the number of days it takes OLT to resolve a case over the three most recent fiscal years, based on the following stages of its case-processing life cycle:

- » case intake;
- » first hearing;
- » final hearing;
- » decision issuance; and
- » case disposition (closure).

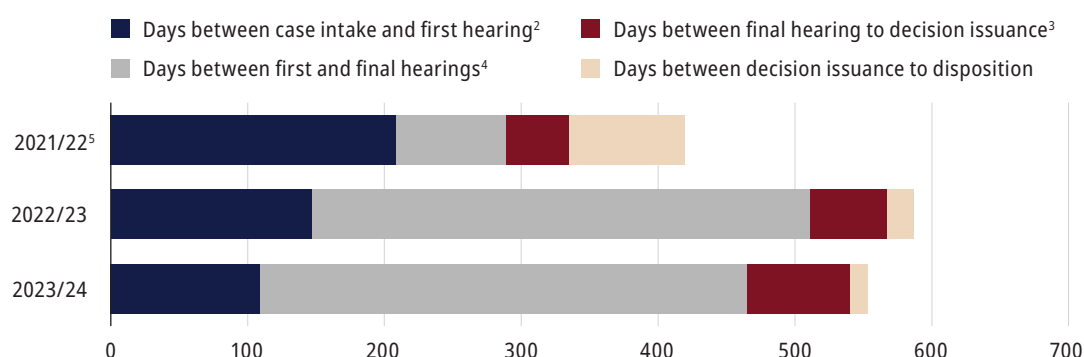
OLT controls the scheduling from the case intake to the first hearing, as well as the time spent between the final hearing and the issuance of the decision. Between hearings, it is common for parties to request additional time to conduct studies or to introduce expert witnesses, and OLT leadership indicated that they do not have complete control over the timing of the subsequent and final hearings.

For fiscal 2023/24, OLT set the following targets for the stages that they have more control over:

- » Case intake to first hearing: 75% of cases are to take less than 120 days to move from case intake to first hearing. OLT came very close to its target (72%).
- » Decisions issued after final hearing: 70% of decisions are to be issued within 30 days of the final hearing, and 90% within 60 days. In fiscal 2023/24, OLT did not meet these targets, with 35% of decisions issued within 30 days of the final hearing and 62% under 60 days.

**Figure 11: OLT Average Case Processing Time by Stage, 2021/22–2023/24<sup>1</sup>**

Prepared by the Office of the Auditor General of Ontario



1. The fiscal year of decision issuance was based on the date of decision issuance, regardless of the fiscal year of timestamps of previous activities.

2. All cases with a first hearing date recorded were included regardless of whether they were closed or open.

3. We included only cases with decisions. Cases withdrawn were excluded.

4. Days were calculated by subtracting the number of days between case intake and first hearing, and between final hearing and decision issuance, from the total time. Not all cases have multiple hearings; some were decided after a single hearing, in which case the number of days was zero.

5. For the period from June 1, 2021, to March 31, 2022. During this time, many cases were not entered into OLTIS (the OLT's case management system) or had incorrect disposition data. As a result, the data may not be complete. See **Section 4.4.3**.

For its Annual Reports, the OLT calculates its performance data differently, by including decisions (see **Glossary**) related to motions and case management conferences.

The Nova Scotia Utility and Review Board has a legislated timeline of 45 days from filing (intake) of a municipal planning case to first hearing. Municipalities have an additional 14 days to file the appeal record prior to intake. In addition, decision-writing time targets for the Board range from one to 90 days, depending on the type of case, with specific timelines legislated for some case types. It aims for at least 95% but has achieved a 100% success rate in its decision-writing time for the past two years.

As shown in **Figure 11**, OLT reduced the average number of days from case intake to first hearing by 100 days (from 209 days in 2021/22 to 147 days in 2022/23, and 109 days in 2023/24). However, the average number of days between the final hearing and decision issuance has increased each year (from 46 days in 2021/22 to 56 days in 2022/23, and 72 days in 2023/24).

OLT does not measure the number of days between the issuance of the decision and the case disposition, or the overall case-processing time from case intake to disposition. Our analysis shows that, in 2023/24, on average, OLT disposed cases 13 days after the issuance of the decision. The overall case-processing time from case intake to disposition has increased by 133 days from 2021/22, while the new targets have resulted in a slight reduction in the 2023/24 average from the prior year by 34 days. The average was 420 days in 2021/22, up to 587 days in 2022/23, and down to 553 days in 2023/24.

Adding these additional measures could help OLT leadership, MAG and the public better understand OLT's process and timeline.

## Recommendation 12

We recommend that OLT:

- set performance measures for caseload data that align with best practices for similar tribunals;
- set performance measures for case disposition and overall case-processing time;
- regularly analyze its caseload data to understand its workload, inform its resource needs and support its future budget and funding requests;
- analyze and monitor the average duration of each stage of its case-processing life cycle compared to the performance measurement target to identify and understand potential bottlenecks; and
- address root causes of caseload backlogs through identifying best practices and implementing operational improvements.

For the auditees' responses, see **Recommendations and Auditee Responses**.

## Adjudicators' Time for Decision Writing and Other Administrative Duties Was Not Scheduled or Recorded

OLT's scheduling system records dates when adjudicators are scheduled to conduct hearings, attend training or take vacation, but all other dates are unscheduled and potentially available for writing decisions or preparing for hearings. We found that in 2023/24, on average, about 57% of full-time adjudicators' workdays were not scheduled.

To understand how days scheduled for hearings were actually used, we attended 30 random hearings between May and July 2024. Of these:

- » 11 were merit hearings, where parties can present their case with their evidence to convince the adjudicator and then cross-examine witnesses and evidence. The adjudicator then issues a final decision.
- » 17 were case management conferences (CMCs), held prior to hearings on the merits of the cases, where OLT can identify parties and participants, identify or narrow the issues, identify facts that may be agreed upon, provide directions for disclosure and exchange of information, and set the date for the hearing, if needed.
- » Two were settlement hearings, where the adjudicator hears evidence and terms jointly agreed to by the parties to reach a resolution.

We found that while most merit hearings took the full allocated time, most CMCs took far less time to complete than scheduled. Of the 17 CMCs, one was cancelled and 12 of the remaining 16 (75%) finished within the first hour, even though they were scheduled to last between three and seven hours (half-days or full-days). We attended one CMC that was scheduled for a full day but ended in less than an hour.

From April 1, 2023, to March 31, 2024, there were 659 cancelled hearings, some of which were scheduled for multiple days. If hearings are cancelled a few weeks in advance, the scheduling co-ordinator would try to reschedule the assigned adjudicator to a different hearing so their time is utilized. It is difficult to reassign the adjudicator to another hearing if hearings are cancelled only a few days in advance, due to OLT's rules for giving parties advance notice. OLT leadership told us that, in situations where it is impossible to reassign, the adjudicators are expected to write decisions for other appeals or prepare for future hearings. OLT did not have a system to reassign workload or to track how the adjudicators' time was spent.

Unlike part-time adjudicators, who are required to submit timesheets to account for the hours billed, full-time adjudicators are not required to record how they use both their scheduled and unscheduled time. As a result, OLT cannot monitor and compare their workloads or identify instances where it may be necessary to reallocate resources based on workload. OLT leadership also told us that the Vice Chairs, who work full-time, typically perform additional administrative duties, such as reviews (see **Section 4.2.4**), training and other organizational activities. These tasks are also not captured by the current scheduling system.

### Recommendation 13

We recommend that OLT:

- develop and implement a system to properly account for job activities that are not currently captured, such as decision-writing, hearing preparation and other administrative duties;
- regularly review and analyze the time adjudicators spend on various activities to determine optimal utilization levels and opportunities to rebalance workload; and
- establish a protocol for scheduling and rescheduling hearing dates to reduce time lost due to cancellations and/or hearings that finish earlier than scheduled.

For the auditees' responses, see [Recommendations and Auditee Responses](#).

### OLT Was Allocated Significantly More Meeting Room Space than It Uses

MAG manages and approves OLT's office space needs, including meeting rooms. Out of \$29 million in additional funding, MAG allocated \$3.6 million over four years (2022/23 to 2025/26) for leasing additional OLT office space.

As a result of the COVID-19 pandemic, OLT transitioned all hearings to virtual video conferences unless parties specifically requested a hybrid or in-person hearing, which accounted for less than 5% of all hearings. Stakeholders we spoke to found that virtual hearings were convenient, saved travel time and were overall a positive experience.

Even though most hearings are taking place virtually, in 2023, OLT was granted an additional floor in its downtown Toronto office with six new meeting rooms, at an annual cost of \$825,000. Neither MAG nor OLT prepared a business case for adding six meeting rooms to the three that it already had, but OLT leadership told us that it is possible that more hearings may be held in person in the future, as the organization is transitioning to more on-site hearings.

Our analysis found that the nine meeting rooms available for hearings or mediations were booked close to 10% of available days from September 11, 2023, to April 30, 2024.

### Recommendation 14

We recommend that MAG work with OLT to monitor the use of the new floor, including meeting rooms, and evaluate if the additional space is needed and whether there are any opportunities to reduce costs.

For the auditees' responses, see [Recommendations and Auditee Responses](#).

#### 4.4.2 OLT Needs Additional Performance Measures to Set Appropriate Targets Based on Case Type and Complexity

As mentioned in **Section 4.4.1**, OLT only measures and reports on two efficiency-related performance measures for certain stages of its case-processing life cycle, and the same targets are applied to all types of cases the Tribunal receives.

Like many other tribunals in Canada, OLT adjudicates a wide range of matters appealed under various legislation (see **Figure 4** and **Appendix 2**). For example, expropriation cases are filed by landowners seeking compensation for land and property taken by government ministries or agencies to develop public infrastructure under the *Expropriations Act*. The landowners file their cases with OLT at the beginning of development, but these cases are typically resolved through mediation and settlement after the development is completed. This means these cases often take years to resolve. In contrast, a minor variance or consent case filed under the *Planning Act* could be resolved within a few months. Minor variance and consent cases relate either to permission to construct or renovate a building in a way that does not fully meet municipal zoning bylaws, or to permission to split a land plot into smaller lots. It is difficult for OLT to measure its case-processing efficiency when it applies the same performance measure to all cases.

To better understand the issue, we conducted our own analysis of the full life cycle of OLT cases, from intake to disposition, and found that between June 1, 2021, and March 31, 2024:

- » expropriation cases took an average of more than 1,000 days;
- » complex land-use planning related cases took an average of about 780 days;
- » cases with less complexity, such as minor variances and consent cases, took an average of about 250 days; and
- » the remaining types of cases (encompassing environment, heritage and archaeological licensing, the *Niagara Escarpment Planning and Development Act*, aggregates, the *Environmental Bill of Rights, 1993*, mining and land, development charges, and municipal miscellaneous), took an average of about 430 days.

The Nova Scotia Utility and Review Board developed separate performance standards for decision-writing time based on the complexity and type of cases it receives, ranging from one day to 90 days.

Historically, the LPAT, which was amalgamated into OLT in June 2021, separately reported minor variances from the rest of its caseload as these cases could be resolved more quickly.

### Recommendation 15

We recommend that OLT:

- develop and report on performance measures that cover the entire case-processing life cycle as well as all of its stages;
- categorize the various types of cases it receives to develop different performance measurement targets for specific case types; and
- monitor situations when the targets are not being met.

For the auditees' responses, see [Recommendations and Auditee Responses](#).

#### 4.4.3 OLT's Case Management System Was Not Used Effectively to Provide Meaningful Information for Management Decision-Making

In October 2020, the Tribunal began customizing the Ontario Land Tribunal Information System (OLTIS), a new case management system. OLTIS was based on a system previously developed by Tribunals Ontario for its Landlord and Tenant Board. OLT estimates that it was able to build the first version of OLTIS for less than \$450,000, potentially saving more than \$750,000 compared to building an entirely new system. Many issues occurred while implementing the system, including errors introduced by staff during the data migration process and 160 support tickets issued for software bugs in the first six months.

As part of our audit procedures, we attempted to analyze data from OLTIS. We found that instead we had to work extensively with OLT case management and IT staff to obtain a reliable dataset for our work as the system was not capable of providing this data in a useable form for analysis. Through this process, we found the following issues:

- » OLT staff told us that the reliability of data entered between June and December 2021 was low, as staff were learning how to use the new system during this transition period. The new system was not officially active until October 2021.
- » About 30 cases during the 2021/22 fiscal year were missing important entries, such as the dates of the first and final hearings, the final decision issuance date and the decision type.
- » 74 decisions had been issued but were not marked as "Resolved" because a decision issuance date was not entered.
- » OLT management confirmed that the 1,712 closing balance cases shown in its 2022/23 annual report did not agree with the OLTIS data set due to errors in migration of legacy cases and programming logic errors.

- » Some cases from the LPAT legacy system were re-opened as new cases in OLTIS, inflating the number of cases received and resolved.
- » OLT staff informed us that there were 70 decisions that were inputted incorrectly into OLTIS. Staff had to manually enter these back into the data we used to conduct our analysis in this audit.

OLT has 13 pre-set business intelligence reports, such as extended adjudicator availability and decision dashboards. These reports provided some key operational insights, including scheduling of adjudicators, cases not migrated to OLTIS and outstanding decisions. The reports could not extract complete, accurate and up-to-date information on caseload levels per adjudicator or case manager; a complete listing of decisions; or a comprehensive time frame for resolving different types of cases.

Without reliable and useful data, and critical tools for reporting and analysis, OLT leadership cannot perform meaningful analysis on the data to inform decision-making to improve effectiveness and efficiency of its operations.

### Recommendation 16

We recommend that OLT:

- conduct a formal review of the integrity, accuracy and completeness of case data entered into its case management system;
- based on the results of this review, implement updates to the case management system, create definitions and protocols for data entry and management, and provide additional training for staff; and
- enhance and develop the routine data analysis process by identifying and creating meaningful reports to inform management decisions, such as balancing workloads, and to support performance monitoring of OLT operations.

For the auditees' responses, see [Recommendations and Auditee Responses](#).

### Many Cases with No Activity for Over One Year Remained "Open," Making It Difficult to Accurately Understand OLT's Workload

**Figure 10** shows that OLT had 1,490 cases pending as of March 31, 2024, but our analysis shows that the pending caseload may not accurately reflect OLT's workload.

Due to limitations of OLT's case management system, as mentioned in **Section 4.4.3**, OLT staff were unable to provide a report of case statuses as of March 31, 2024, as OLTIS can only pull reports on live case statuses. (They were able to provide live case statuses as of July 26, 2024, the date that we requested them.) We analyzed this information for the approximately 1,300 cases that remained open at that time. Of these:



- » 1,067 (82%) were “new” cases received after June 1, 2021, the creation of OLT; and
- » 227 (18%) were “legacy” cases that were received by predecessor tribunals prior to June 1, 2021. OLT reports on the status of legacy cases separately in its annual report.

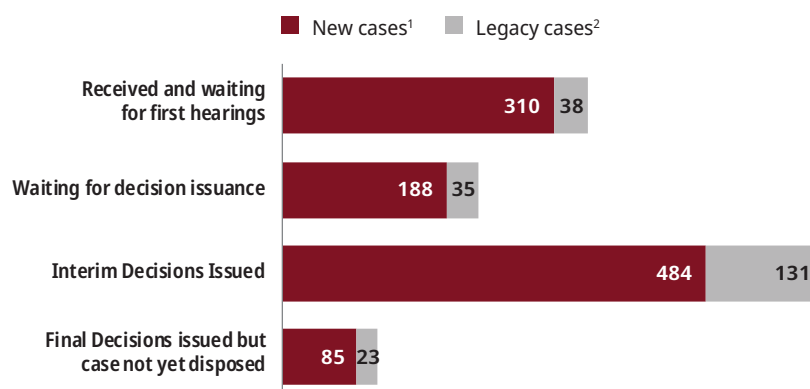
We examined the status of these approximately 1,300 pending cases, and found that these cases were in different stages of the case management life cycle (see **Figure 12a**), and 28% or 367 cases at June 24, 2024, had no activity for over one year:

- » 8% or 110 new cases were received between one and three years ago as of June 24, 2024; three additional new cases and 38 legacy cases were received over three years ago (see **Figure 12b**).

OLT aims to schedule hearings within 120 days of case intake, according to its publicly reported performance measures (see **Section 4.4.1**). OLT leadership explained that, if the parties are not ready for hearings, OLT cannot move ahead with these cases.

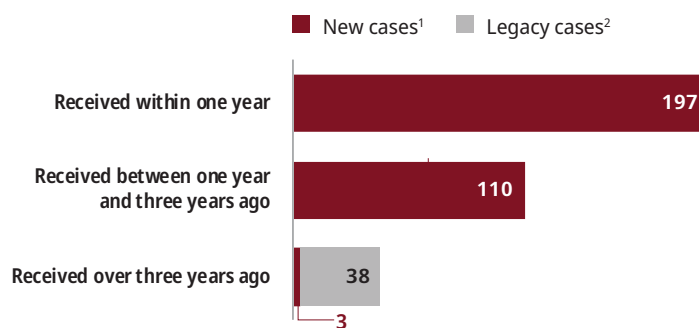
**Figure 12a: Status of Cases Pending, as of June 24, 2024**

Prepared by the Office of the Auditor General of Ontario



**Figure 12b: Cases Received and Waiting for First Hearings, as of June 24, 2024**

Prepared by the Office of the Auditor General of Ontario



1. Number of cases includes lead and standalone cases received from June 1, 2021 to March 31, 2024. Child cases of a lead case were excluded as they are resolved through the decision of the lead case; see **Section 4.4.3** for details.

2. Number of cases includes lead and standalone cases received prior to June 1, 2021 by OLT and its predecessor tribunals/boards.

- » 17% or 223 cases had completed their final hearing and were waiting for decision issuance. **Figure 12c** shows that 18 new cases and seven legacy cases have been waiting for decision issuance between one and three years, and an additional eight legacy cases have been waiting for decision issuance for over three years.

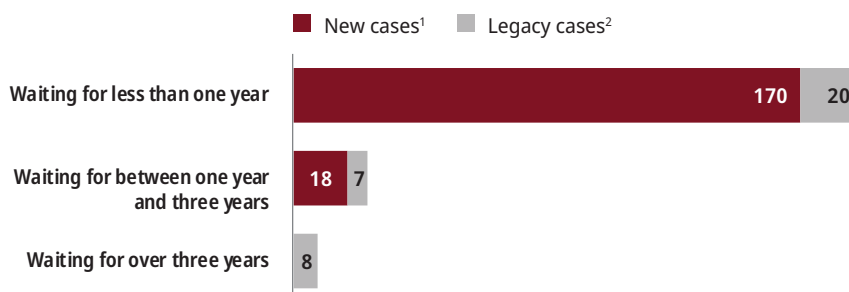
OLT aims to issue decisions within 60 days after final hearing. OLT leadership explained that the time needed for decision issuance is affected by the presiding adjudicator's style, writing skills and experience. The OLT case management system produces weekly reports of outstanding decisions for the Chair to review.

- » About half, or 615 cases (484 new cases and 131 legacy cases) had interim decisions issued but were not yet disposed (see **Figure 12a**). Interim decisions include decisions from case management hearings or interim merit hearings. **Figure 12d** shows that 117 cases (66 new cases and 51 legacy cases) had interim decisions issued between one and three years ago and 25 legacy cases had interim decisions issued over three years ago.

OLT leadership explained that cases typically remain in the interim decision stage while parties work toward fulfilling adjudicators' directions, meeting conditions of approval or resolving remaining issues.

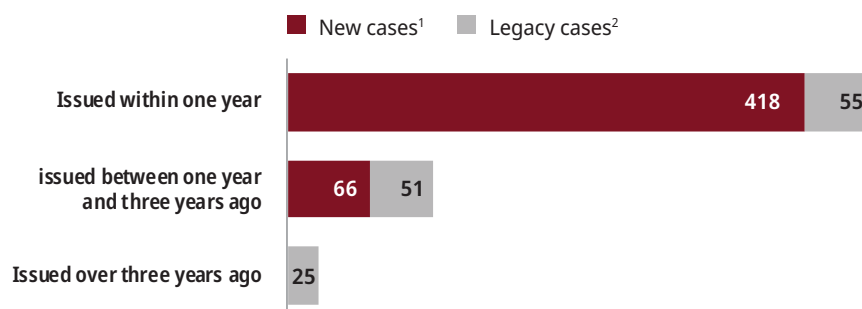
**Figure 12c: Cases Waiting for Decision Issuance, as of June 24, 2024**

Prepared by the Office of the Auditor General of Ontario



**Figure 12d: Cases with Interim Decisions, as of June 24, 2024**

Prepared by the Office of the Auditor General of Ontario

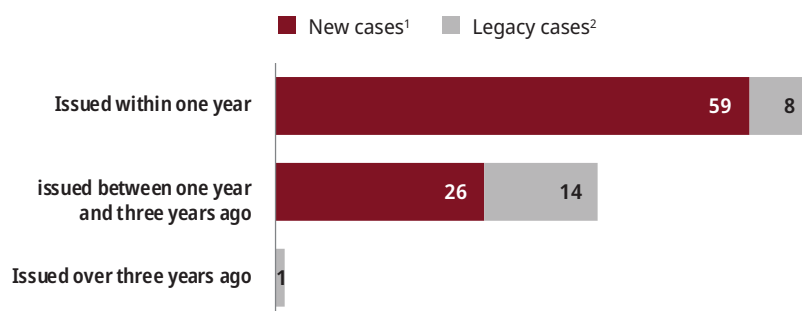


1. Number of cases includes lead and standalone cases received from June 1, 2021 to March 31, 2024. Child cases of a lead case were excluded as they are resolved through the decision of the lead case; see **Section 4.4.3** for details.

2. Number of cases includes lead and standalone cases received prior to June 1, 2021 by OLT and its predecessor tribunals/boards.

### Figure 12e: Cases with Decisions Issued but Not Yet Disposed, as of June 24, 2024

Prepared by the Office of the Auditor General of Ontario



1. Number of cases includes lead and standalone cases received from June 1, 2021 to March 31, 2024. Child cases of a lead case were excluded as they are resolved through the decision of the lead case; see **Section 4.4.3** for details.

2. Number of cases includes lead and standalone cases received prior to June 1, 2021 by OLT and its predecessor tribunals/boards.

» **Figure 12e** shows that 40 cases (26 new cases and 14 legacy cases) remained “open” between one and three years after final decisions and one legacy case remained “open” for over three years after final decision.

Leadership explained that, typically, disposition days should occur soon after decision days. In these cases, leadership told us that the case co-ordinator may have forgotten the administrative step of disposing the case in the case management system.

Not all cases can be disposed or closed by OLT without the consent of external parties, but effectively monitoring the open caseload can assist with closing cases under OLT’s control and help OLT better understand why cases remain open when not under its control.

Segmenting OLT’s caseload into active cases and inactive cases showing no activity for more than one year, and regularly monitoring these case segments against performance measures, could enable OLT to better understand and manage its true workload, and provide more detailed, transparent reporting to its leadership, stakeholders and the general public.

### OLT’s Method of Reporting Cases Does Not Accurately Reflect Its Workload

OLT cases may contain one or more appeals, where all appeals relate to the same piece of land. A “lead” case refers to an appeal case that has “child” cases attached to it. A “standalone” case refers to an appeal case that has no child cases attached to it.

Child cases are processed with their lead case, and standalone cases are processed individually. For example, in one of our sample cases, an appellant wanted to create six lots from four existing ones. Each of the four existing lots had a consent case, and each of the six new lots had a minor variance case (see **Glossary**). The appeal was resolved in a single decision, but OLT reported that 10 cases were resolved. Typically, cases with multiple child cases are more complex and require more time to resolve than standalone cases.

When reconciling our case count with OLT's annual reports, we found that OLT counts lead, standalone and child cases in its caseload for cases received by OLT but only lead and standalone cases for cases received by legacy tribunals. Child cases are groupings of multiple cases that are resolved through one lead adjudication.

Presenting only child cases in its case count, without lead cases, can make it difficult to accurately show OLT's workload or to meaningfully compare changes in case counts from year to year.

In contrast, leadership at the Nova Scotia Utility and Review Board told us that, for reporting purposes, the Board groups and counts multiple related cases as a single decision if cases are heard together with the same evidence presented before it.

We calculated OLT's caseload without child cases and found that its annual report showed significantly higher numbers, ranging from 9% to 40% (see **Figure 13**). The 2022/23 annual report presented key statistics such as opening caseload balance (1,678), cases received (1,012) and year-end caseload (1,712).

**Figure 13: Comparison of OLT Caseload Statistics, 2021/22–2022/23**

Prepared by the Office of the Auditor General of Ontario

	Caseload Shown in OLT Annual Report (A)	Caseload Calculated by OAGO <sup>1</sup> (B)	Difference (A–B=C)	Difference (%) (C÷A)
<b>2021/22<sup>2</sup></b>				
Opening balance	1,678	1,408	270	16
Cases received <sup>1</sup>	1,012	735	277	27
Total caseload for the year	2,690	2,143	547	20
Cases resolved <sup>1,3</sup>	(978)	(591)	(387)	40
<b>Closing balance</b>	<b>1,712</b>	<b>1,552</b>	<b>160</b>	<b>9</b>
<b>2022/23</b>				
Opening balance	1,728 <sup>4</sup>	1,552	178	10
Cases received <sup>1</sup>	1,438	925	513	36
Total caseload for the year	3,166	2,477	691	22
Cases resolved <sup>1,3</sup>	(825)	(1,015)	190	23
<b>Closing balance</b>	<b>2,341</b>	<b>1,462</b>	<b>623</b>	<b>38</b>

1. Includes lead and standalone cases only. Child cases were excluded as they were often resolved through the decision of the lead case. Cases received include all cases that were marked for "intake" within the fiscal year.

2. For the period from June 1, 2021, to March 31, 2022.

3. Cases resolved are all cases that were marked as "disposed" within the fiscal year, whether through decisions, withdrawals, settlements or other means.

4. The opening balance reported in the OLT's 2022/23 Annual Report does not equal the closing balance reported in its 2021/22 Annual Report.

In 2022/23, OLT publicly reported having resolved 825 cases. We found that only 309 cases were resolved through OLT decisions. The remaining cases had been disposed by other means, such as being withdrawn by parties, closed due to late filing or settled out of OLT. OLT did not report them separately and included them in the general category of “Resolved.”

### **Recommendation 17**

We recommend that OLT:

- determine a threshold for “inactive” cases to be identified and reported separately;
- work with adjudicators and case co-ordinators to understand the status of cases when the performance measurement target is not met;
- where possible, work with adjudicators and case co-ordinators to promptly issue decisions and dispose cases; and
- accurately report OLT’s overall workload by presenting lead and standalone cases, as well as separately reporting cases resolved through adjudication decisions, settlement hearings and other means, such as withdrawals.

For the auditees’ responses, see [\*\*Recommendations and Auditee Responses\*\*](#).

## **4.4.4 Workplace Issues Not Fully Addressed**

### **Many Acting Roles Were Filled without an Open and Competitive Recruitment Process**

As of February 2024, about 40% of OLT’s staff were in acting positions, meaning that they performed the functions associated with the positions on a temporary basis. During 2023/24, at least seven acting management and other positions were filled by internal staff, with assignments ranging from one year to more than four years. These acting employees performed key functions of the organization without being selected through a transparent and competitive process. As of October 1, 2024, we found the following information:

- » An employee has been acting as the executive director for more than four years. Senior management at MAG told us that due to the significant change of the Tribunal structure and the needed continuity for the organization, MAG had not conducted a competitive hiring process to fill this position permanently until recently. MAG only began the hiring process in April 2024, more than three years into the acting executive director’s term.
- » To fill the executive director’s home position of senior manager for communication and business transformation, another employee has been acting in this senior manager position for three years. OLT indicated that it could not permanently fill the senior communication and business transformation manager position until the executive director position is filled permanently or the executive director is retired. In May 2024,

the acting senior manager resigned and the acting position was filled by an employee through an Expression of Interest (EOI), explained below.

- » Another employee has been acting as the registrar (senior manager of the case management function) for more than two years.
- » Three employees have been acting as deputy registrars (managers of case management teams) for nearly two years on average.
- » An employee has been acting as the controller for eight months.

OLT leadership told us that some of the acting staff were selected through internal EOIs, which are commonly used within the Ontario Public Service (OPS). EOIs are job postings circulated informally, typically through the OPS internal employee network. In certain urgent or unplanned situations, managers may need to fill vacancies quickly. Such practices can create the perception that the recruitment process may not be fair and transparent, as EOIs do not give an equal opportunity to all qualified OPS employees or to applicants outside of the OPS.

During our audit, OLT leadership continued to work through reducing the number of acting employees by converting them into permanent staff or through OPS internal recruitment. As of September 1, 2024, about 27% of OLT staff (35 out of 110) were still acting in their roles.

### **Repeated Workplace Issues and Outstanding Recommendations from Workplace Reviews Indicate a Need for OLT-Specific HR Support**

OPS's centralized human resource (HR) model does not allow OLT to have an in-house, stand-alone HR function. Instead, a business service co-ordinator provides administrative support to OLT management when requested.

Leadership told us that OLT managers conducted some key HR activities, such as recruitments, using support provided by the Treasury Board Secretariat's (TBS's) centralized talent acquisition team.

In late 2021 and 2022, a few individuals alleged to MAG that they had experienced unfair hiring practices, inequitable treatment and workplace bullying. In response to the allegations, MAG and OLT worked with TBS to conduct a workplace review at OLT. The review included interviews with the complainants, as well as other individuals within OLT selected by OLT's leadership.

A January 2023 report, prepared as a result of the review, presented both positive and more critical views of OLT's workplace environment, and made constructive recommendations toward improving it. Given the sensitive and confidential nature of the allegations, OLT leadership did not share the report with its staff.

At the time of our audit, MAG and OLT leadership and MAG's Human Resources Business Unit expressed concerns with the report. We asked why clarification was not sought from TBS representatives to resolve the concerns and require OLT to implement the report's

recommendations. MAG leadership responded that the report was intended to provide preliminary information on a confidential basis to management. Further, based on their discussions, MAG and OLT decided that, given the limited number of people interviewed, the factual inaccuracy of some of the information, the fact that some the information related to past conduct/workplace conditions, and the ambiguity and potential overlap of some recommendations, it would be important to undertake a “deeper dive” with a broader group of OLT staff, leadership and adjudicators to better understand the issues raised in the report and assess appropriate next steps.

Subsequently, MAG’s Human Resources Business Unit conducted focus group sessions at OLT to “dive deeper” with a larger group of employees and adjudicators in spring 2023. These sessions yielded a list of recommendations to OLT (see **Appendix 5**), similar to those presented by the initial review.

In 2024, the OLT executive director began to implement some of these recommendations, such as Code of Conduct training, a new hiring protocol and career development trainings for employees. Some other recommendations raised by both the initial review and the focus group sessions remain outstanding, including recommendations related to diversity, equity and inclusion, as well as the shortcoming of the hiring practices.

In July 2024, TBS’s Workplace Discrimination and Harassment Prevention advisor received a new complaint of workplace bullying and harassment from an OLT employee. At the time of our audit, the complaint was being investigated and pending resolution as of October 1, 2024.

### **Recommendation 18**

We recommend that MAG work with OLT to:

- utilize its existing Human Resources Strategic Business Unit to increase review, advice and oversight for OLT’s human resources activities;
- immediately begin competitive, merit-based recruitment for positions currently occupied by acting staff;
- implement recommendations from various workplace reviews and increase OLT leadership’s accountability for implementing outstanding recommendations; and
- engage an arm’s-length entity to re-evaluate OLT’s workplace environment.

For the auditees’ responses, see **Recommendations and Auditee Responses**.



## Recommendations and Auditee Responses

### Recommendation 1

We recommend that MAG work with OLT and MMAH to clarify and communicate the independence of OLT's adjudicative mandate by removing and avoiding references to specific government priorities, such as increasing the housing supply, in all communications and public representations.

### Ministry of the Attorney General Response

MAG agrees that OLT must continue carrying out its adjudicative mandate independently, in accordance with legislation including the *Planning Act* and other planning instruments. MAG, in working with MMAH and OLT, will review communications for clarity regarding the independent adjudicative role of OLT.

### Ontario Land Tribunal Response

OLT agrees to work with MAG to clarify and communicate OLT's independent adjudicative role to the public.

### Recommendation 2

We recommend that OLT clarify its policy for when and how much money to award, should OLT be granted the authority to award costs to the successful party of an appeal.

### Ontario Land Tribunal Response

OLT agrees with this recommendation. The authority has not been granted and the timing, if proclaimed, is not yet known.

OLT is currently not planning to change its existing rules, which require that costs are only awarded in cases where parties have acted unreasonably, frivolously or in bad faith. OLT will review and clarify its rules if the amendment to the OLTA is proclaimed.

### Recommendation 3

We recommend that MAG work with OLT and the other relevant ministries, incorporating input from consultation with the public and stakeholder groups as needed, to:

- re-evaluate the cost and benefit of the former Local Planning Appeal Support Centre; and
- based on this analysis, put in place the suitable structure to provide legal support to the public on OLT matters.

### Ministry of the Attorney General Response

MAG will work with OLT and other relevant ministries on potential options to increase access to justice at OLT, which, subject to government direction, may include consideration of the need for legal supports to the public on OLT matters.

### Ontario Land Tribunal Response

OLT will work with MAG and MMAH in identifying ways to increase access to justice.

### Recommendation 4

We recommend that OLT, in consultation with MAG:

- review the composition of OLT's appeal cases to determine what fields of practice and length of experience a candidate should have to qualify as an OLT adjudicator;
- develop a competency matrix to define OLT's requirements of experience and to guide the selection of adjudicators; and
- recommend only those candidates that meet its requirements based on the competency matrix.

### Ontario Land Tribunal Response

OLT agrees with the importance of having qualified adjudicators. In consultation with MAG, it will confirm requirements for adjudicators and will develop a competency matrix to guide and inform the recommendation of candidates for government approval.

### Ministry of the Attorney General Response

MAG will support OLT in the development of a competency matrix to guide and inform the assessment process of qualified adjudicators.

### Recommendation 5

We recommend that MAG work with OLT to:

- perform a market assessment and prepare a business case to identify the potential need for adjusting competitive salary arrangements toward recruiting qualified adjudicator candidates; and
- if the business case is justified, submit it to the Treasury Board/Management Board of Cabinet.

### Ministry of the Attorney General Response

MAG will work with OLT and the Treasury Board Secretariat on any opportunities to proceed with such a review.

### Recommendation 6

We recommend that OLT:

- develop a centralized system to record and consolidate the evaluation results of all panel members for each candidate participating in adjudicator recruitment competitions;
- create a record-retention policy to maintain all documentation related to each competition, including assessment results and ranking of each candidate selected for interview; and
- ensure all recommendations for reappointment are supported by documented evidence of adjudicator competency and merits.

### Ontario Land Tribunal Response

OLT agrees with this recommendation and will strengthen the documentation and retention of key documents related to adjudicator competitions and reappointments, including recruitment evaluation results of panel members, and supporting documentation for reappointment recommendations. A corresponding record-retention policy will be created.

### Recommendation 7

We recommend that the OLT work with MAG to:

- implement a process to proactively screen professional and personal backgrounds of adjudicator candidates, so that recommended candidates' potential conflicts of interest or risks to their impartiality can be identified and further assessed by decision-makers throughout the appointment process;

- establish criteria for when potential conflicts of interest or risks to impartiality in adjudicator candidates may constitute a risk to OLT, and request such cases to be referred to the Office of the Integrity Commissioner of Ontario (OICO) for independent assessment prior to appointment; and
- develop a formal process to confirm conflict of interest does not exist before the adjudicator is assigned to each case.

### Ontario Land Tribunal Response

OLT agrees with this recommendation and the importance of proactively managing potential conflicts of interest. It will work with MAG to strengthen screening practices of adjudicator candidates and formalize its processes during case assignment to address potential conflicts of interest. OLT will also develop a protocol for when to refer matters to OICO.

### Ministry of the Attorney General Response

MAG will support OLT to review and strengthen its current practices and protocols in order to proactively manage potential conflicts of interest.

### Recommendation 8

We recommend that OLT:

- review best practices related to adjudicator performance assessment and professional development;
- develop a formal hearings and decisions quality review process based on best practices;
- collect reviewer feedback for adjudicators as one of its performance review procedures and use it to inform training and professional development needs; and
- document and deliver written feedback to adjudicators as part of OLT's annual performance review process for adjudicators.

### Ontario Land Tribunal Response

OLT agrees with this recommendation and will review and update its adjudicator performance assessment and documentation process based on best practices, strengthen its hearing and decision quality assurance practices, and ensure alignment with professional development. Performance review feedback to adjudicators will be documented. For example, written feedback is now being provided and shared with adjudicators.

### Recommendation 9

We recommend that MAG, working with MMAH, immediately begin the evaluations necessary to complete OLT's mandate review by 2026/27, including:

- conducting a thorough study of alternative dispute resolution practices from other jurisdictions, such as Nova Scotia and Alberta;
- evaluating the benefits and drawbacks of different potential models for the provincial land-use dispute resolution function (adversarial court-like adjudication versus review of municipal decisions), including steps to address the risks identified by MMAH as part of the 2019 mandate change;
- assessing opportunities to give higher regard to the land-use planning work done by municipalities; and
- proposing timely legislative changes necessary to implement reforms identified through the mandate review.

### Ministry of the Attorney General Response

MAG confirms that OLT's mandate review is on track to be completed by March 31, 2027, in accordance with the schedule approved by the Treasury Board Secretariat.

Further, MAG will seek MMAH's input regarding the review of alternative dispute resolution practices from other jurisdictions, evaluations of different potential models, and propose any necessary changes specified in the recommendation as part of the mandate review.

### Recommendation 10

We recommend that OLT:

- consult with its adjudicators, MAG, MMAH, and other stakeholders, to evaluate and determine where written guidance can be developed to enhance the general consistency and transparency of OLT's decision-making process; and
- review and adopt best practices from other tribunals to enhance the transparency of the OLT hearings process, such as making evidence OLT examines easily accessible through its website, publishing notices of upcoming hearings and recording hearings.

### Ontario Land Tribunal Response

OLT agrees to consult with stakeholders to identify where it can develop guidance, and review and implement best practices to enhance general consistency and transparency of OLT's decision-making process.

## Ministry of the Attorney General Response

MAG will support OLT as appropriate while respecting the Tribunal's adjudicative independence.

### Recommendation 11

We recommend that OLT:

- develop a process to increase the number of cases referred to mediation;
- create performance measures to monitor and report on the effectiveness of using mediation, such as the percentage of cases referred to mediation and the percentage of cases resolved by mediation; and
- complete a cost/benefit analysis and monitor workloads to determine if hiring external mediators is the most cost-effective way of providing mediation.

## Ontario Land Tribunal Response

OLT agrees with this recommendation and the importance of increasing the number of cases referred to mediation. OLT will develop a process to increase the number of cases referred to its mediation program, measure its performance and determine the most effective way to provide mediation. Future updates to OLT's case management system (OLTIS) will include tracking of cases referred to and resolved through mediation.

### Recommendation 12

We recommend that OLT:

- set performance measures for caseload data that align with best practices for similar tribunals;
- set performance measures for case disposition and overall case-processing time;
- regularly analyze its caseload data to understand its workload, inform its resource needs and support its future budget and funding requests;
- analyze and monitor the average duration of each stage of its case-processing life cycle compared to the performance measurement target to identify and understand potential bottlenecks; and
- address root causes of caseload backlogs through identifying best practices and implementing operational improvements.

## Ontario Land Tribunal Response

OLT agrees with this recommendation and will review and expand its caseload and life-cycle performance measures, regularly analyze caseload and case-processing data, and use the data to inform funding requests and help improve performance.

### Recommendation 13

We recommend that OLT:

- develop and implement a system to properly account for job activities that are not currently captured, such as decision-writing, hearing preparation and other administrative duties;
- regularly review and analyze the time adjudicators spend on various activities to determine optimal utilization levels and opportunities to rebalance workload; and
- establish a protocol for scheduling and rescheduling hearing dates to reduce time lost due to cancellations and/or hearings that finish earlier than scheduled.

## Ontario Land Tribunal Response

OLT agrees with the goal of optimally utilizing adjudicator time and balancing workloads. OLT will review its scheduling practices for adjudicators and identify ways to improve work allocation and (re)scheduling.

### Recommendation 14

We recommend that MAG work with OLT to monitor the use of the new floor, including meeting rooms, and evaluate if the additional space is needed and whether there are any opportunities to reduce costs.

## Ministry of the Attorney General Response

MAG will work with OLT to assess its facility needs, including identifying opportunities to reduce costs. This will be an ongoing exercise as OLT continues its transition activities, including refining its in-person hearing plans.

### Recommendation 15

We recommend that OLT:

- develop and report on performance measures that cover the entire case-processing life cycle as well as all of its stages;
- categorize the various types of cases it receives to develop different performance measurement targets for specific case types; and
- monitor situations when the targets are not being met.

### Ontario Land Tribunal Response

OLT agrees with this recommendation and the importance of meaningful performance measures. OLT will review its existing performance measures and develop additional performance measures in line with its case-processing life cycle and case types, and monitor its performance against targets.

### Recommendation 16

We recommend that OLT:

- conduct a formal review of the integrity, accuracy and completeness of case data entered into its case management system;
- based on the results of this review, implement updates to the case management system, create definitions and protocols for data entry and management, and provide additional training for staff; and
- enhance and develop the routine data analysis process by identifying and creating meaningful reports to inform management decisions, such as balancing workloads, and to support performance monitoring of OLT operations.

### Ontario Land Tribunal Response

OLT agrees with this recommendation and the importance of data integrity. OLT will review data quality issues and take necessary steps to improve data quality through changes to systems. It will enhance protocols, such as business rules and data definitions, and staff training. OLT will also develop reports to enable quality assurance and support management decisions.



### Recommendation 17

We recommend that OLT:

- determine a threshold for “inactive” cases to be identified and reported separately;
- work with adjudicators and case co-ordinators to understand the status of cases when the performance measurement target is not met;
- where possible, work with adjudicators and case co-ordinators to promptly issue decisions and dispose cases; and
- accurately report OLT’s overall workload by presenting lead and standalone cases, as well as separately reporting cases resolved through adjudication decisions, settlement hearings and other means, such as withdrawals.

### Ontario Land Tribunal Response

OLT agrees with this recommendation and will review the threshold for inactive cases. OLT has been resolving legacy cases that were filed prior to June 2021. The number of pending legacy cases has been further reduced to about 130 cases as of November 2024.

OLT will assess its outstanding decisions and work with adjudicators to improve the timeliness of decision issuance and case disposition. It will also review its data reporting protocols and definitions to improve the accuracy and clarity of its reports.

### Recommendation 18

We recommend that MAG work with OLT to:

- utilize its existing Human Resources Strategic Business Unit to increase review, advice and oversight for OLT’s human resources activities;
- immediately begin competitive, merit-based recruitment for positions currently occupied by acting staff;
- implement recommendations from various workplace reviews and increase OLT leadership’s accountability for implementing outstanding recommendations; and
- engage an arm’s-length entity to re-evaluate OLT’s workplace environment.

### Ministry of the Attorney General Response

MAG will best utilize the existing accountability mechanisms in place and will continue to work with OLT, MAG’s Strategic HR Business Unit and centralized corporate support ministries (e.g., Treasury Board Secretariat) to support OLT with HR matters as required.

MAG will support OLT in filling positions through the competitive, merit-based processes in accordance with OLT's existing recruitment policy while adhering to collective agreement provisions and human resources policies.

MAG will support OLT in implementing actionable recommendations from workplace reviews and, working with MAG's Strategic HR Business Unit, engage with OLT staff to determine whether the implementation of the recommendations has addressed the issues raised in the focus group sessions.

## Audit Criteria

In planning our work, we identified the audit criteria we would use to address our audit objectives (outlined in **Section 3.0**). These criteria were established based on a review of applicable legislation, policies and procedures, internal and external studies, and best practices. Senior management at OLT and MAG reviewed and agreed with the suitability of our objectives and associated criteria.

The following are our criteria associated with the objectives related to the processes at OLT:

1. OLT identifies, evaluates and recommends qualified candidates for the appointment and reappointment of adjudicators through a transparent, competitive and merit-based process.
2. Effective processes are in place to ensure that OLT decisions (including mediation) are impartial, independent and supportable, and are based on adjudicators' assessment of evidence presented to them.
3. OLT has effective and efficient processes in place to consistently fulfill its legislative mandate and achieve its access to justice commitment.
4. Effective and efficient processes are in place to help ensure fair, transparent and timely resolutions of appeal cases according to established service standards and best practices.
5. Effective processes are in place to ensure OLT's human resources, information systems and facilities are utilized efficiently and with due regard for economy in supporting its adjudication function.
6. OLT sets relevant performance measures and collects reliable data to support decision-making and public reporting.

The following are our criteria associated with the objectives related to MAG:

1. OLT's role and responsibilities are well defined and aligned with its quasi-judicial mandate of delivering fair, efficient and effective dispute resolutions.
2. Effective and efficient processes are in place to enable oversight of OLT's operations.
3. Effective and efficient processes are in place to ensure a competitive and merit-based selection process for candidates that are recommended for appointments or reappointments.

## Audit Approach

We conducted our audit between January and October 2024. We obtained written representation from OLT's and MAG's management that, effective November 28, 2024, they had provided us with all the information they were aware of that could significantly affect the findings or the conclusion of this report.

As part of our audit work, we:

- » interviewed relevant staff from OLT, MAG and MMAH;
- » reviewed, analyzed and confirmed accuracy of data from OLTIS and the legacy case management system;
- » attended 30 OLT case management conferences and hearings;
- » reviewed over 100 decisions;
- » tested 43 adjudicator appointments/reappointments;
- » reviewed scheduling and analyzed workload per staff member/adjudicator;
- » interviewed former staff members and adjudicators;
- » spoke with external stakeholders and subject-matter experts, including 10 municipalities, two planning organizations, two builders' associations, four environmental stakeholders, one ratepayers' group, two similar organizations (Toronto Local Appeal Body and Tribunals Ontario), two advocacy groups and three experts.
- » spoke with other Canadian jurisdictions, including British Columbia, Alberta, Saskatchewan, Manitoba, Quebec and Nova Scotia, to understand their approach to resolving disputes related to land-use planning;
- » researched relevant Ontario legislation and regulations;
- » reviewed relevant emails collected from MAG; and
- » confirmed factual accuracy of information in audit findings with the auditee.

## Audit Opinion

To the Honourable Speaker of the Legislative Assembly:

We conducted our work for this audit and reported on the results of our examination in accordance with Canadian Standard on Assurance Engagements 3001—*Direct Engagements* issued by the Auditing and Assurance Standards Board of the Chartered Professional Accountants of Canada. This included obtaining a reasonable level of assurance.

The Office of the Auditor General of Ontario applies Canadian Standards on Quality Management and, as a result, maintains a comprehensive system of quality management that includes documented policies and procedures with respect to compliance with rules of professional conduct, professional standards and applicable legal and regulatory requirements.

We have complied with the independence and other ethical requirements of the Code of Professional Conduct of the Chartered Professional Accountants of Ontario, which are founded on fundamental principles of integrity, objectivity, professional competence and due care, confidentiality and professional behaviour.

We believe the audit evidence we have obtained is sufficient and appropriate to provide a basis for our conclusions.

December 3, 2024

A handwritten signature in black ink, appearing to read 'Spence', with a stylized flourish at the end.

**Shelley Spence, FCPA, FCA, LPA**

Auditor General

Toronto, Ontario

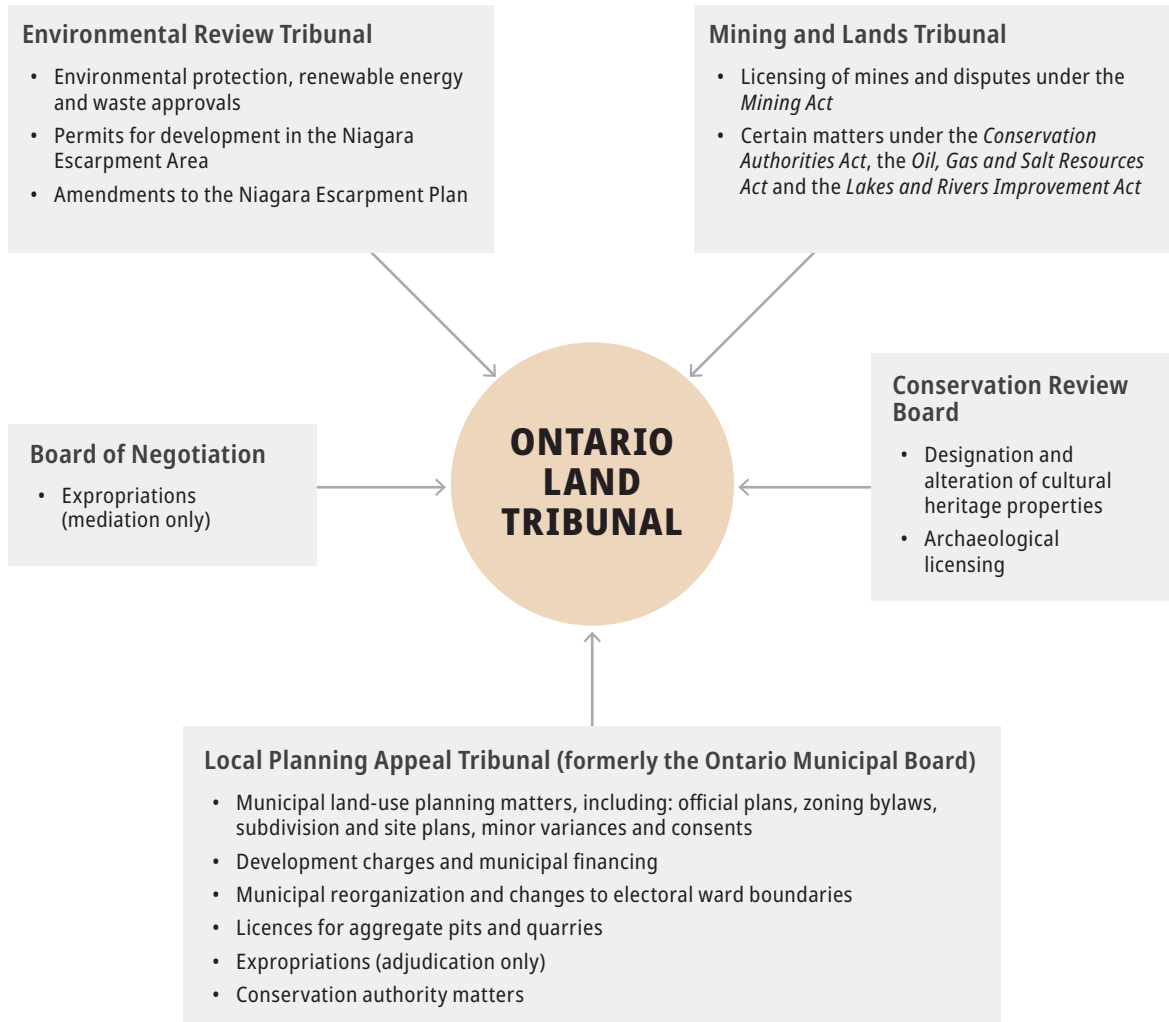
## Glossary

Term	Definition
<b>Acting staff</b>	Staff who perform the functions associated with a position on a temporary basis.
<b>Adjudication</b>	A dispute resolution process in which an adjudicator hears and makes an official decision and/or order.
<b>Adjudicator</b>	A person appointed or reappointed to a tribunal who is responsible for hearing and resolving adjudication cases.
<b>Appeal</b>	Made by an individual, a group of individuals or a company against a single decision of a legislative approval authority or a government decision-maker.
<b>Appellant</b>	A person who commences a proceeding before OLT by appealing a decision (or a non-decision).
<b>Case</b>	May contain one or more appeals, where all appeals relate to the same piece of land. A “lead” case means an appeal case that has “child” cases attached to it. A “standalone” case means an appeal case that has no child cases attached to it. Child cases are processed with their lead case, and standalone cases are processed individually.
<b>Caseload</b>	The amount of work that an adjudicator or staff member is concerned with at any given time.
<b>Competition</b>	The process of selecting one or more candidates from all those interested in a job position based on pre-determined criteria or qualifications.
<b>Conflict of interest</b>	<p>May arise when an individual has a personal, professional or financial interest that conflicts, or has the potential to conflict, with the interests of the entity or the role to which they may be appointed to, as well as with their duties as an appointee. Conflicts of interest may be:</p> <p>Actual: Involving a direct conflict between an individual’s current duties and responsibilities and existing private interests.</p> <p>Perceived: Can exist where it could appear that an individual’s private interests could improperly influence the performance of their duties.</p> <p>Potential: Arises when an individual has private interests that could conflict with their official duties in the future.</p>
<b>Decisions</b>	Decisions made by OLT adjudicators through which appeals are resolved after the completion of hearings of the evidence. This term excludes other types of decisions related to pre-hearing events, such as case management conferences.
<b>Expropriation</b>	The process by which the government takes private property for a public purpose, such as infrastructure. Under the <i>Expropriations Act</i> , compensation must be paid to the landowner. The landowner could dispute the dollar value offered at OLT.
<b>Impartiality</b>	Reaching a decision based on fair and objective criteria, rather than on the basis of bias, prejudice or preferring the benefit to one person over another for improper reasons.
<b>Independence</b>	Not influenced or controlled by others in matters of opinion or conduct.

Term	Definition
<b>Legacy case</b>	Cases filed with the predecessor tribunals prior to the establishment of OLT on June 1, 2021.
<b>Mediation</b>	An alternative to adjudication where parties voluntarily choose to actively negotiate their positions and desired outcomes, facilitated by a mediator. This is not a legally binding process.
<b>Mediator</b>	A person who facilitates mediation cases. If an adjudicator facilitates a mediation case, the same adjudicator cannot adjudicate the same case should the case move on to adjudication.
<b>Merit-based</b>	A process of hiring a candidate based on their qualifications, skill or ability.
<b>Minor variance/ consent</b>	Permission to construct or renovate a building in a way that does not fully meet municipal zoning bylaws/permission to split a land plot into smaller lots.
<b>Official plan</b>	A municipality's plan for how land in the community should be used. Official plans typically address where new housing, offices and industry may be located, what services (such as schools, roads and water systems) may be needed and the order in which parts of the community may grow. A secondary plan is a land-use plan for a particular area within a municipality's official plan.
<b>Parties</b>	Statutory parties include the appellant and the administrator or municipality whose decision has been appealed. If a party other than the appellant or the decision-maker requests to become a party to an appeal, OLT must determine whether to grant the request.
<b>Priority case</b>	A case that is regarded and treated as more important than another.
<b>Provincial land-use planning framework</b>	A suite of provincially issued policies and plans that provide direction on matters of provincial interest related to land-use planning and development. Examples of such policies and plans include the Provincial Policy Statement, 2020 (last updated in October 2024 and renamed as the Provincial Planning Statement), A Place to Grow: Growth Plan for the Greater Golden Horseshoe (repealed in October 2024) and the Greenbelt Plan. The <i>Planning Act</i> requires that all land-use planning decisions made by municipalities and OLT are consistent and conform with these plans and policies.
<b>Third-party appeal</b>	Any appeal that is not made by either the applicant or the approval authority.
<b>Tribunals Ontario</b>	A group of 13 adjudicative tribunals with a mandate to resolve and decide matters relating to safety, licensing, property assessment, residential tenancies and social justice. Tribunals Ontario operates separately from OLT.
<b>Zoning bylaw</b>	Municipal bylaws that regulate how specific parcels of land may be used and which types of buildings are permitted, including building heights, densities and setbacks from the street. Zoning bylaws put the policies of municipalities' official plans into effect.

## Appendix 1: Mandates of Legacy Tribunals Amalgamated into OLT

Prepared by the Office of the Auditor General of Ontario





## Appendix 2: Key Legislation under Which Appeals Can Be Filed with OLT

Prepared by the Office of the Auditor General of Ontario

Policy Ministry	Act
Agriculture, Food and Agribusiness	<i>Nutrient Management Act, 2002</i>
Attorney General, Colleges and Universities, Health, and Infrastructure	<i>Expropriations Act</i>
Citizenship and Multiculturalism	<i>Ontario Heritage Act</i>
Environment, Conservation and Parks	<i>Clean Water Act, 2006</i> <i>Environmental Bill of Rights, 1993</i> <i>Environmental Protection Act</i> <i>Ontario Water Resources Act</i> <i>Pesticides Act</i> <i>Resource Recovery and Circular Economy Act, 2016</i>
Mines	<i>Mining Act</i>
Municipal Affairs and Housing	<i>City of Toronto Act, 2006</i> <i>Development Charges Act, 1997</i> <i>Municipal Act, 2001</i> <i>Planning Act</i>
Natural Resources	<i>Aggregate Resources Act</i> <i>Lakes and Rivers Improvement Act</i> <i>Oil, Gas and Salt Resources Act</i> <i>Niagara Escarpment Planning and Development Act</i>
Public and Business Service Delivery and Procurement	<i>Funeral, Burial and Crematorium Services Act, 2002</i>

## Appendix 3: OLT Appeal Process

Prepared by the Office of the Auditor General of Ontario

Stage	Key Activities
<b>Intake and review</b>	<ul style="list-style-type: none"> <li>• OLT staff receive appeals, applications and referrals through email, mail and/or e-file portal from appellants</li> <li>• OLT staff review documents for completeness, prepare case summary file for adjudicator, and enter case information and status into case management system</li> <li>• Case information and status is automatically posted on OLT's website once entered</li> </ul>
<b>Prioritization and scheduling</b>	<ul style="list-style-type: none"> <li>• OLT staff assign priority to the case, book hearing times, and may suggest mediation to parties</li> <li>• OLT Chair assigns adjudicator to the case</li> <li>• OLT staff issue notices to parties</li> </ul>
<b>Case management conference</b>	<ul style="list-style-type: none"> <li>• OLT staff communicate with parties over weeks or months to gather all evidence and other information needed for a hearing</li> <li>• Case management conference held prior to hearing to determine key issues of the dispute and direct process leading up to the hearing</li> </ul>
<b>Mediation</b>	<ul style="list-style-type: none"> <li>• Mediation can happen as the first event, after the case management conference or in place of a hearing</li> </ul>
<b>Hearing</b>	<ul style="list-style-type: none"> <li>• Parties (such as landowners, municipalities and community groups) and their lawyers present their arguments, expert testimony and technical analyses as evidence to OLT adjudicator</li> </ul>
<b>Post-hearing and decision issuance</b>	<ul style="list-style-type: none"> <li>• Adjudicator reviews evidence presented at hearings and deliberates</li> <li>• Adjudicator drafts decision</li> <li>• An OLT Vice Chair reviews the draft decision and provides feedback for adjudicator consideration; adjudicator may also seek legal review</li> <li>• Adjudicator finalizes decision, which staff then release to the parties and for publication on OLT website and the CanLII (Canadian Legal Information Institute) website</li> </ul>
<b>Closure</b>	<ul style="list-style-type: none"> <li>• OLT staff enter relevant information and close the case in the OLT's case management system</li> </ul>

## Appendix 4: Matters of Provincial Interest within the *Planning Act*

Source: *Planning Act*, Part 1, Section 2

### **The *Planning Act*, Section 2**

The Minister, the council of a municipality, a local board, a planning board and the Tribunal, in carrying out their responsibilities under this Act, shall have regard to, among other matters, matters of provincial interest such as:

- the protection of ecological systems, including natural areas, features and functions;
- the protection of the agricultural resources of the Province;
- the conservation and management of natural resources and the mineral resource base;
- the conservation of features of significant architectural, cultural, historical, archaeological or scientific interest;
- the supply, efficient use and conservation of energy and water;
- the adequate provision and efficient use of communication, transportation, sewage and water services and waste management systems;
- the minimization of waste;
- the orderly development of safe and healthy communities;
- the accessibility for persons with disabilities to all facilities, services and matters to which this Act applies;
- the adequate provision and distribution of educational, health, social, cultural and recreational facilities;
- the adequate provision of a full range of housing, including affordable housing;
- the adequate provision of employment opportunities;
- the protection of the financial and economic well-being of the Province and its municipalities;
- the co-ordination of planning activities of public bodies;
- the resolution of planning conflicts involving public and private interests;
- the protection of public health and safety;
- the appropriate location of growth and development;
- the promotion of development that is designed to be sustainable, to support public transit and to be oriented to pedestrians;
- the promotion of built form that,
  - is well-designed,
  - encourages a sense of place, and
  - provides for public spaces that are of high quality, safe, accessible, attractive and vibrant;
- the mitigation of greenhouse gas emissions and adaptation to a changing climate.

## Appendix 5: Recommendations from Focus Group Study Conducted by the Human Resources Strategic Business Unit of the Ministry of the Attorney General

Source: Ministry of the Attorney General

### Recommendations Shared to All-Staff Town Hall Meeting

- » Gain a baseline understanding and awareness of key OPS EDI [Equity, Diversity, Inclusion] policies.
- » Consider delivering a session on the OPS Code of Conduct, to enhance staff and management's understanding and awareness of OPS EDI policies and confirm expectations for behaviour consistent with the Code of Conduct.
- » Managers could build the code into team meetings to do a deeper dive and discuss what this means for their respective teams.
- » Reach out to TBS and HR Partners and obtain resources and/or a speaker to present at an upcoming branch meeting to share the OPS hiring process.
- » Ensure that constructive feedback is consistently offered to unsuccessful internal candidates, explaining the reasons for their rejection.
- » Provide training to all managers involved in the hiring process to raise awareness of unconscious bias and promote diversity and inclusion. Continue the use of DIPP [Diversity Interview Panel Program].
- » Ensure transparent and fair hiring practices are followed for all job opportunities that arise, including leadership positions.
- » Continue identifying successors to more senior roles and nominate them to participate in OPS leadership development programs and MAG Talent Development Programs.
- » Provide the opportunity for all staff to engage in 1:1s with their manager specifically about potential barriers to career progression and leadership development opportunities and networking. For OICs [Orders in Council] to engage in regular performance reviews to identify opportunities for performance improvement, recognize exceptional results and potential participation in special projects.
- » Managers to provide regular feedback and hold 1:1s with staff to discuss current roles and responsibilities as well as career aspiration.
- » Develop process guides and knowledge transfer documents to support staff who are new to the Tribunal and for all.
- » Engage new staff and OICs in activities during the onboarding process to learn about the various areas and functions of the Tribunal.
- » Continue to break down silos and schedule opportunities for staff and OICs to come together in-person for Professional Development days or social events to encourage personal connections and to build a culture of trust and respect.



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