

Toronto Licensing Tribunal Annual Report Requirements

Date:	August 13, 2008
To:	Licensing and Standards Committee
From:	City Manager
Wards:	All
Reference Number:	

SUMMARY

The Licensing and Standards Committee requested a report on any conflict between the independence of the Toronto Licensing Tribunal and the requirement for the Tribunal to submit its Annual Report to the Deputy City Manager responsible for licensing issues for transmittal to the committee along with any comments from City staff.

Staff in the City Manager's Office reviewed the relevant provisions of the Toronto Municipal Code and the Toronto Licensing Tribunal Relationship Framework, as amended by Council, and did not find these provisions to be in conflict. Appendix "A" to this report includes extracts of the Toronto Municipal Code, §543-3, Licensing, and Council-approved requirements for the Licensing Tribunal's Annual Report.

Financial Impact

None.

Equity Statement

Relationship Frameworks are based on the principle that all City bodies, with their unique mandates, structures and relationships to the City, should operate under the same principles of social and economic inclusion as the City.

DECISION HISTORY

The Licensing and Standards Committee on May 9, 2008, considered a report (May 1, 2008) from Deputy City Manager Richard Butts forwarding the Tribunal's 2007 Annual Report: <http://www.toronto.ca/legdocs/mmis/2008/ls/bgrd/backgroundfile-12942.pdf>

The Licensing and Standards Committee requested:

1. the City Solicitor to review the apparent conflict between provisions of Toronto Municipal Code Chapter 545-3B(2) which establishes the Toronto Licensing Tribunal as a quasi-judicial arm's length body, with a requirement under Section E (Annual Report) to report annually to the Licensing and Standards Committee, and the interpretation of the Relationship Framework, Section C; and
2. Deputy City Manager Richard Butts to meet with the Chair, Licensing and Standards Committee, and the City Solicitor to bring back a recommendation to the Licensing and Standards Committee at its next meeting on June 6, 2008, and/or prior to the transmittal of the 2008 Annual Report of the Toronto Licensing Tribunal.

ISSUE BACKGROUND

In June 2005, City Council adopted the Toronto Licensing Tribunal Relationship Framework, which sets out the matters to be discussed in the Tribunal's Annual Report prepared by the Chair. The Relationship Framework was subsequently updated by Council in September 2006 to reflect the transfer of the Tribunal support staff and budget to Court Services and other housekeeping matters.

City Council also adopted an amendment which states that: "for clarity, it is not recommended that the Tribunal be expected or encouraged to submit to City Council recommended changes to the Licensing By-law since this is the role of staff and the Tribunal can describe in its Annual Report any issues that may ultimately require By-law amendment after staff review and comment on implications."

The Toronto Municipal Code, §543-3, Licensing, sets out the mandate of the Tribunal and general requirements relating to the Annual Report.

COMMENTS

The Toronto Licensing Tribunal is an arms-length, quasi-judicial body that operates independently of the licensing and enforcement functions performed by City staff.

The Annual Report of the Toronto Licensing Tribunal is one of the key vehicles for the Tribunal to communicate with the Licensing and Standards Committee about its activities during the year and any changes made to the hearing process. It also serves as a vehicle for the Tribunal to comment on emerging licensing issues and observations, or on any other matters that impact the effective operation of the Tribunal.

Current Requirements

During its approval of the Relationship Framework, City Council adopted a separate recommendation in the covering report from the City Manager that the Deputy City Manager responsible for licensing issues be designated the Program Liaison to the Toronto Licensing Tribunal, responsible for coordinating policy and program issues between the Tribunal and City staff, including the review of the Tribunal's Annual

Report for onward transmittal to City Council along with any relevant comments from civic officials.

Independence of the Tribunal

A concern was raised by the Chair of the Licensing and Standards Committee that under the current requirements, program staff could unduly delay submitting the Annual Report to committee which may lead to the perception that City staff could fetter the independence of the Tribunal.

The Chair of the Tribunal prepares a draft Annual Report for consideration at a Tribunal business meeting. Business meetings are open to the public and the agenda and minutes are public documents. The Tribunal-approved Annual Report is sent to the Deputy City Manager who serves as the Program Liaison to determine if there are any proposed policy or program issues that require input from City staff on financial or other implications.

Providing City staff with the opportunity to review potential implications prior to forwarding the Annual Report to the standing committee is in keeping with Council's previous decision as noted above. The Deputy City Manager transmits the actual Annual Report as approved by the Tribunal, and does not alter it in any way. Any comments from staff may be included in a separate staff report.

The public has open access to the Tribunal's deliberations on the content of its Annual Report. Any delay on the part of staff in transmitting the Annual Report through the City's decision-making process is subject to public scrutiny.

Prior to the preparation of this report, staff in the City Manager's Office met with the Chair of the Licensing and Standards Committee. In addition, the Deputy City Manager responsible for licensing issues and staff in the City's Legal Services Division were consulted in the preparation of this report.

CONTACTS

Joanne Hamill, Senior Corporate Management and Policy Consultant
Strategic and Corporate Policy Division, City Manager's Office
Telephone: 416-392-4499; FAX: 416-696-3645; email: jhamill@toronto.ca

Nancy Autton, Manager, Governance and Corporate Performance
Strategic and Corporate Policy, City Manager's Office
Telephone: 416-397-0306; FAX: 416-696-3645; email: nautton@toronto.ca

SIGNATURE

Shirley Hoy, City Manager

ATTACHMENTS

Appendix "A": Licensing Tribunal Annual Report Requirements

Licensing Tribunal Annual Report Requirements

This document contains extracts of the Toronto Municipal Code, Council decisions and the Relationship Framework governing the Toronto Licensing Tribunal, as amended, which set out the Council-approved mandate of the Tribunal and matters to be discussed in the Annual Report from the Tribunal.

Extract of Toronto Municipal Code, §545-3, Licensing:

B. Mandate of the Toronto Licensing Tribunal.

- (1) The Toronto Licensing Tribunal shall conduct the hearings and perform the duties that are assigned to it under this chapter.
- (2) City Council has delegated its decision-making powers to the Toronto Licensing Tribunal as a quasi-judicial adjudicative body to hear evidence and submissions and make independent decisions after a hearing respecting whether a licence should be issued, refused, suspended, revoked or have conditions placed upon it.
- (3) Chapter 545 of the Municipal Code sets out City Council’s objectives with respect to licensing matters, and the Toronto Licensing Tribunal, through its independent adjudicative powers, shall:
 - (e) Report on its activities through the Annual Report required by Subsection E.

C. Relationship Framework.

The Chair and members of the Toronto Licensing Tribunal shall be guided by the Relationship Framework for the Toronto Licensing Tribunal, as amended from time to time by City Council, which outlines the roles and responsibilities of the stakeholders in the licensing hearing process.

D. Business Meetings.

- (1) The Chair of the Toronto Licensing Tribunal shall convene at least two business meetings of the Toronto Licensing Tribunal every year for the purposes of:
 - (a) Reviewing the operating of the Toronto Licensing Tribunal;
 - (b) Making decisions regarding administrative matters, procedural policies and the content of the Annual Report required by Subsection E;
 - (c) Discussing emerging policy issues relating to Toronto Licensing Tribunal Hearings; and

- (d) Discussing any other matters pertinent to the effective operation of the Toronto Licensing Tribunal.
- (2) All business meetings shall have a formal agenda, be recorded via meeting minutes and be open to the public.
- (3) Public notice of the Toronto Licensing Tribunal's business meetings shall be given by posting the notice on the notices page of the City of Toronto's web site for at least 10 days immediately preceding the business meeting.

E. Annual report.

The Chair of the Toronto Licensing Tribunal shall report annually to the Planning and Transportation Committee [now the Licensing and Standards Committee] or its successor, and the report shall include:

- (1) A summary of the activities of the Toronto Licensing Tribunal, including the number of hearings and hearing days, the types of hearings, and any changes made to the hearing process during the past year;
- (2) Any recommended changes to the policies and procedures of the Toronto Licensing Tribunal and any educational training proposed for the members of the Toronto Licensing Tribunal for the upcoming year;
- (3) Emerging licensing issues and observations that, in the Toronto Licensing Tribunal's opinion, should be reviewed by the City of Toronto; and
- (4) Any other matters that, in the Toronto Licensing Tribunal's opinion, impact the effective operation of the Toronto Licensing Tribunal.

**Extract of Policy and Finance Committee Report 6, Clause 2,
"Governance of the Toronto Licensing Tribunal",
As amended by City Council in June 2005**

City Council on June 14, 15 and 16, 2005, adopted this Clause with a number of amendments, including:

"and for clarity, it is not recommended that the Tribunal be expected or encouraged to submit to City Council recommended changes to the Licensing By-law since this is the role of staff and the Tribunal can describe in its Annual Report any issues that may ultimately require By-law amendment after staff review and comment on implications".

City Council adopted the following recommendation contained in a report (May 24, 2005) from the City Manager:

- "(10) the Deputy City Manager responsible for licensing issues be designated the Program Liaison to the Toronto Licensing Tribunal responsible for coordinating policy and program issues between the Tribunal and City staff, including the

review of the Tribunal’s Annual Report for onward transmittal to City Council along with any relevant comments from civic officials”.

Extract of Tribunal Relationship Framework as Amended by City Council

7.2 The key duties of the Chair are outlined below and include:

(c) presenting the Annual Report to City Council;

11.1 The Chair of the Toronto Licensing Tribunal shall convene a Business meeting of all members at least twice per year to review the operation of the Tribunal in conjunction with the Tribunal Administrator, to make decisions on administrative matters and procedural policies and the content of the Annual Report, to discuss emerging issues relating to Tribunal hearings, and any other matter pertinent to the effective operation of the Tribunal.

12.1.1 The Annual Report from the Toronto Licensing Tribunal to City Council shall be the primary means of communication with City Council. The Annual Report shall discuss matters such as the:

- (i) activities of the Tribunal during the past year;
- (ii) performance statistics for the past year;
- (iii) improvements made to the hearing process, including new procedural policies implemented;
- (iv) identification of improvements to the hearing process desired for the upcoming year;
- (v) any new training initiatives proposed for members;
- (vi) emerging licensing regulatory policy issues that should be considered and reported on by City Staff; and
- (vii) any other matters pertinent to the effective functioning of the Licensing Tribunal.

and for clarity, it is not recommended that the Tribunal be expected or encouraged to submit to City Council recommended changes to the Licensing By-law since this is the role of staff and the Tribunal can describe in its Annual Report any issues that may ultimately require By-law amendment after staff review and comment on implication.

12.1.2 The Chair, in preparing recommendations in the Annual Report regarding improvements to the hearing process, shall consult with the Administrator on the proposed improvements, including in respect to the potential impacts on the work processes and resource requirements of the City support staff. The Chair shall take the comments into account when recommending changes to the hearing process.

12.1.3 The Annual Report shall be submitted to the Deputy City Manager for transmittal to Council along with any comments from City staff.

12.3 Policies to be Developed

12.3.1 The Licensing Tribunal has the discretion of developing procedural policies for the hearings process that support the principles of the adjudicative process and municipal requirements.

12.3.2 The Licensing Tribunal's administrative practices and procedures for the conduct of business meetings must comply with City directives.

12.3.3 The Toronto Licensing Tribunal shall create, implement and from time to time review and, if appropriate, amend a Practice Direction, Procedure By-law, Code of Conduct, Conflict of Interest Policy, a Media Communications Policy, and a Lobbyist Disclosure Policy.

12.3.4 These policies shall be submitted as part of the Annual Report of the Licensing Tribunal.

14.3 Toronto Licensing Tribunal members are accountable for:

(ii) maintaining a regular and constructive reporting relationship with City Council through the Annual Report;

(15) Amendments:

From time to time, after consultation with the Tribunal, City Council may implement changes to this Relationship Framework and, as part of the Annual Reporting to City Council on the operations of the Tribunal, the Chair of the Licensing Tribunal may request that City Council consider changes to this Framework.