

CHAIR'S REPORT

February 18, 2009

To: The Deputy City Manager
And to: Licensing and Standards Committee

From: Carol Shirtliff-Hinds BA, LL.B
Chair, Toronto Licensing Tribunal

Re: Toronto License Tribunal Report.

As Chair of the Toronto Licensing Tribunal ("Tribunal") I am pleased to file the following report for the January to December 2008 period.

Update

Mr. Angelo Amenta resigned as a member of the Tribunal effective August 2008 to pursue other interests. We thank Mr. Amenta for his contribution to the Tribunal. The Tribunal was fortunate enough to secure Mr. Lionel Miskin as of November 2008 as a replacement member. Mr. Miskin was a previous member of the Tribunal and he brings with him the skill and knowledge of his previous term. We welcome Mr. Miskin to our team.

The Tribunal hearings will now be conducted in Committee Room A for the months of January to August 2009 as opposed to the Council Chambers which had been its previous home. The move was made in order to accommodate the collective bargaining of Local 416. I anticipate that this is a temporary measure and in September of 2009 the Tribunal will return to its usual location.

Issues that have arisen in 2008

In accordance with City Council's adoption of the motion to amend the relationship framework of the Tribunal on December 1, 2 and 3, 2008 so that the Tribunal is encouraged to identify improvements to the Licensing By-laws, I submit as follows:

Published Tribunal decisions on the City's website:

A recurring issue before the Tribunal is that our decisions are not available on the website for applicants to review and thus prepare themselves for a hearing before the Tribunal by reviewing similar cases. It was and still is the Tribunal's view that there should be transparency in the Tribunal's process and published decisions would go a long way towards that goal.

The concern of the City has been privacy of the individuals appearing before them. It is noted that court decisions are a matter of public record. In order to further examine this issue, the city is in the process of conducting a privacy impact assessment. As Chair, I have been invited to participate in the assessment. It is hoped that the final report would provide some guidance in dealing with the competing interests outlined above.

Appendix K to Chapter 545 of the City of Toronto Municipal Code:

An issue has arisen with respect to clarity of the wording of Appendix K. In many cases an applicant with a conviction or a pending charge is advised in a report prepared by MLS that MLS will be opposing the granting of a license as the applicant's conviction is directly related to a breach of Appendix K.

Appendix K contains the business licensing thresholds. Section 1-A provides that Municipal Licensing and Standards shall not issue or renew a licence and may make such a recommendation to the Tribunal if the applicant has *inter alia* one or in some cases more than one restriction code convictions. The restriction code convictions are described in Schedule A with a corresponding restriction code number.

The restriction code offences are in no particular order and one has to scroll through all of them to see which ones may apply. More than one of the restriction code offences have the same restriction code number so one also has to attempt to discern which one is applicable to the facts of the case. In addition, although Appendix K refers to offences under various codes, no section number is provided which may lead to confusion.

I will provide an example to illustrate. One *Criminal Code* offence that is listed in Appendix K is assault. The description for assault in Appendix K is "assault, of a peace officer". It is open to debate whether that means simple assault or another criminal code offence which is assault of a peace officer. These are two different offences under the *Criminal Code*.

The Tribunal recommends in the interest of clarity the addition of section numbers that correspond to the various codes referred to in Appendix K.

The courts have repeatedly stated that an applicant has to know the case they have to meet. In *1657575 Ontario Inc.*¹ recent decision of the Ontario Court of Appeal, rendered on July 31, 2008 the court reiterated the principal at page 382 of the decision as follows:

¹ *1657575 Ontario Inc. Operating as Pleasures Gentleman's Club v. The Corporation of the City of Hamilton*. 2008 92 O.R. (3d) 374.(Ont. C.A.)

When one's ability to carry on business is being put at risk, one should not have to guess why revocation of the licence is being proposed or speculate as to the grounds for the proposed revocation.

I have enclosed a copy of the decision for your information. The Tribunal has identified Schedule K as being in need of review. As Chair in accordance with my mandate I bring it to your attention.

Requirement for Business meeting:

We have had two judicial review applications in 2008: Douglas Coleman, an application for judicial review commenced by Municipal Licensing and Standards("MLS") and Malkait Singh an application by the Applicant.

In the *Coleman* decision. MLS brought a Judicial Review Application in the Divisional Court on the basis that the Tribunal did not have jurisdiction to grant an interim licence. The Tribunal was made a party to the hearing. The Court upon reading the application and factum of MLS and upon the consent of both MLS and Douglas Coleman set aside the decision of the Tribunal. The Tribunal was not represented before the Divisional Court.

The problem that arises in these cases is that the effect of subsection 7.2(h) and 11.2 of the Relationship Framework make it almost impossible for a Tribunal to meet ahead of time to decide whether an appeal should be made. In addition, should the Tribunal determine that a response is warranted a business meeting would have to be convened to make a request of staff to access any legal funds available to the Tribunal to file a response.

Sections 7.2(h) and 11.2 provide that no decision of the Tribunal can be made outside of a business meeting. The practical effect is that once an appeal is made of a Tribunal's decision and the Tribunal is made a party to the appeal, the cumbersome process that is presently in place makes it difficult for the Tribunal to be able to respond in a timely manner.

It is suggested that the provisions of the Relationship Framework be reviewed with a view to allowing the Tribunal more flexibility outside of a business meeting to determine whether a response to an appeal should be made. This is especially important in cases where the Tribunal is made a party to the proceedings. A business meeting would still have to be held to access any available legal funds to file a response if necessary.

Accomplishments:

In accordance with s. 7.2 (e) of the Relationship framework of the Tribunal I have accomplished the following key duties:

Brochure:

In order to ensure a professional hearing process as mandated by 7.2(e) of the Relationship Framework and to ensure that there is sufficient information of the Tribunal's role at a hearing, the Tribunal has developed a brochure to assist applicants that appear before the Tribunal.

The brochure provides the public with basic information on how to file a hearing, the role of the Tribunal and how to prepare for a hearing. Tribunal members worked hard on the preparation of the brochure. Also invaluable was input from the City staff in bringing the brochure to fruition. I have enclosed a copy of the brochure to this report.

Consistency of decisions:

As Chair I review every decision that is sent out to ensure that they are consistent and clearly outline the facts at the hearing, the rationale for the decision and references to the by-law being applied.

Roster of non-profit groups:

As a Tribunal we have created an Access to Justice Committee whose mandate is to explore whether it is possible to find a source of representation (lawyers, law students, paralegals, or other agents) for the many unrepresented licensees who appear before the TLT. As of the date of this Report we have received a positive response from pro-bono student lawyers.

Code of Conduct:

I attended the Code of Conduct briefing for adjudicative boards on September 30, 2008. Also present were Ms. Marlene Thomas and Ms. Moira Calderwood. I advised the Tribunal members at the business meeting that as of July 2008 there is now a separate Code of Conduct for Adjudicative Boards. It was imperative that they were all aware of the Code. I had distributed to the members copies of the documentation from the Office of the Integrity Commissioner and Part V of the *City of Toronto Act, 2006*.

Statistical Performance Measures:

In accordance with s.5.1.1. of the Relationship Framework for the Tribunal, namely to establish benchmarks to monitor wait times of hearings and decisions, and to take appropriate corrective action where necessary I provide the following tribunal figures.

From January 2008 to December 2008 there were 275 items placed on the agenda. The breakdown of these is as follows:

14 reports were withdrawn
 93 reports finalized by joint settlement
 50 reports finalized by full hearing
 14 reports finalized by pre-hearing and approved by the Tribunal
 98 reports adjourned
 6 reports dismissed/extended/halted/completed
 satisfactorily/cancelled/set date

275 total
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There has been a decrease in the number of cases for 2008. In 2007 there were 354 items placed on the Agenda as follows:

25 Reports withdrawn
 113 Reports finalized by joint settlement
 71 Reports finalized by full hearing
 21 reports finalized by pre-hearing and approved by the Tribunal
 116 reports adjourned
 8 reports dismissed/extended/halted/completed
 satisfactorily/cancelled/set date

As Chair of the Tribunal I have reviewed the assignment of the panels for the scheduled hearings to ensure that there is a fair distribution of workload and adequate rotation of all tribunal members.

In accordance with s. 2 of the motion to amend the Relationship Framework of the Tribunal passed on December 1, 2 and 3, 2008 I enclose for your review the minutes of the business meetings that took place on April 3, 2008 and November 13, 2008.

As Chair, I am pleased by the progress that has been made to date by the Tribunal. We have successfully fulfilled our mandate and in the process created a brochure that not only ensures a professional hearing process as mandated by the Relationship Framework but reflects as well the City's commitment to having a fair and transparent process.

Respectfully submitted,

Carol Shirliff-Hinds, B.A. LL.B

Chair, Toronto Licensing Tribunal.