

CHAIR'S REPORT

March 2, 2010

To: The Deputy City Manager
And to: The 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 2009 period.

Update

This was a challenging year for the Tribunal. The Tribunal had to deal with the effect of the City six week strike on the working of the Tribunal. As a result there was some backlog in getting reports before the Tribunal.

We have had a number of changes this past year. Mr. Ed Shiller resigned as a member of the Tribunal effective August 2009 to accept a position with the City of Winnipeg. He was replaced by Mr. Wayne Habbib, a previous member of the Tribunal who started his term in January 2010.

Mr. Joel Dick also resigned January 2010 to run for City Councillor in the November 2010 elections. His vacated position has not been filled. We presently have a vacancy on the Tribunal during the last year of the terms of the Tribunal members. It is hoped nonetheless that this position can be filled shortly.

We welcome Wayne to the Tribunal and wish both Ed and Joel well in their new endeavours.

Issues that have arisen in 2009

In accordance with the relationship framework the Tribunal is encouraged to identify improvements to the Licensing By-laws, I submit as follows:

Published Tribunal decisions on the City's website:

This remains an outstanding area. By way of background, decisions were posted on the City's website until approximately two years ago when Tribunal staff were advised to stop doing so. The City initiated a Privacy Impact Assessment ("PIA") to examine, among other things, whether the posting of the decisions on the

website was in accordance with privacy legislation. The Tribunal has now received a copy of the draft PIA and will be providing its feedback.

The Tribunal is aware of the decision of the Licensing and Standards Committee that was adopted on October 26 and 27, 2009 to the effect that the Tribunal decisions be posted on the website. This has not yet occurred. The Tribunal remains committed in its view that there should be transparency in the Tribunal's process and published decisions would go a long way towards that goal.

Abandoned Applications:

Applicants for a new license whose applications have been denied can make an application to have their case heard before the Tribunal. In a number of these cases the Applicants decide, for reasons of their own, not to pursue their new application for a business licence. In these cases, the Tribunal cannot simply dismiss the application as abandoned as there is presently no procedure in the by-laws to do so. An *ex parte* hearing has to be convened, the City has to call witnesses and make submissions at which point the Tribunal can make a decision.

It is recommended that the by-law be amended to allow the Tribunal to dismiss as abandoned new applications for licenses where:

- a) the Applicant does not appear despite being duly served at the address provided in his application, such evidence to be received under oath from Tribunal staff; or
- b) the Tribunal receives evidence that the Applicant no longer wishes to pursue the business licence which is the subject of the application.

Security concerns:

There have been a number of occasions where members of the Tribunal have felt during the hearing that their security is at risk. Presently, there is no system in place to address any security concerns.

This is an area that is in need of improvement and the Tribunal would recommend that a security protocol be established to protect Tribunal staff and members of the Tribunal.

Accomplishments:

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

Brochure:

The Brochure for the Tribunal has now been printed and copies placed in the licensing office for potential applicants. The brochure outlines in brief the process of the Tribunal and what an Applicant may expect at his hearing. Applicants can pick up a copy of the brochure at the Licensing office. In addition the brochure is also available on line at the Court Services website.

This has been a great step forward in striving for access to justice for potential applicants before the Tribunal.

Relationship Framework:

Upon the recommendation of the Tribunal, the Licensing and Standards Committee directed the City Manager's Officer to amend the relationship framework to allow the Tribunal to respond in a timely manner to applications for Judicial Review. The Tribunal is therefore permitted to make decision on an interim basis, where necessary, to be later ratified at a business meeting.

Schedule K

Upon the recommendation of the Tribunal as outlined in the 2008 Chair's report, City Staff in 2009 reviewed Appendix K to the *City of Toronto Municipal Code*, Chapter 545 and made a number of revisions. These revisions are now part of Appendix K.

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.

Statistical Performance Measures:

In accordance with s.5.1.1. of the Relationship Framework 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 2009 to December 2009 there were 180 items placed on the agenda. The breakdown of these is as follows:

- 10 reports were withdrawn
- 59 reports finalized by joint settlement
- 48 reports finalized by full hearing

12 reports finalized by pre-hearing and approved by the Tribunal
 50 reports adjourned
 1 cancelled by Applicant

180 total

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There have been no judicial review applications from decisions made by the Tribunal in 2009.

I have enclosed as Appendix "A" the statistics for 2009.

There has been a decrease in the number of cases for 2009. In 2008 there were 275 items placed on the Agenda 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

There was a decrease of 95 reports in 2009 from cases heard in 2008. The reason for the decrease is two fold. There was a City strike that lasted 6 weeks during the summer. In addition, there have been a number of staff changes at the City. The combination of these factors has resulted in fewer reports being submitted to the Tribunal for hearings.

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 minutes of the business meetings for the Tribunal have already been forwarded to the Licensing and Standards Committee as they became available.

As Chair I continue to be pleased by the contribution that has been made to date by the Tribunal towards improving the efficiency of the Tribunal and increasing access to justice for all applicants that appear before the Tribunal. The initiatives that the Tribunal has put in place (the brochures) and are currently working on (posted decisions on the website, possible by-law amendments) reflect well on

the City of Toronto's mandate of creating a fair and transparent process for the applicants while safe guarding the members of the public.

Respectfully submitted,

Carol Shirliff-Hinds, B.A. LL.B
Chair, Toronto Licensing Tribunal.

Encl.