

Attachment 1: Chair's 2017 Annual Report

## Toronto Local Appeal Body



CHAIR'S 2017 ANNUAL REPORT  
IAN JAMES LORD



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## I. Transmittal Letter

Mayor and Members of Council

April, 2018

City Manager

In December, 2016, Council constituted a new statutory tribunal, the Toronto Local Appeal Body (the 'TLAB').

I have had the honour to serve the City as its first Chair.

Provided herein is a record of the TLAB's activities in calendar 2017. The file stream of appeals from the four Panels of the City's Committee of Adjustment commenced in May, 2017, with formal full hearings beginning in August. As such, a complete year of performance statistics is not available.

I take this opportunity to communicate four matters:

- a) Performance overview, including scheduled Performance Metrics and Statistics;**
- b) Operating Key Principles;**
- c) Information on Members, Milestones, Meetings and Outreach;**
- d) Recommendations.**

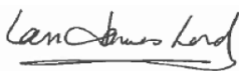
I am pleased to advise that the Council appointed tribunal Members have engaged their responsibility with determination and resolve providing for the fair, thorough and timely resolution of appeals on proper principles of community planning.

I am equally pleased to report that the constitution, staffing, support and oversight by Court Services has been excellent. Moreover, tribunal Staff have embraced the creation of systems and liaison with the public that is modern, comprehensive, responsive and a credit to their public service.

I hope this Report is informative and its Recommendations considered as a component to future City governance.

Respectfully submitted,

X



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Ian James Lord, Chair

Toronto Local Appeal Body

Signed by: Ian Lord



## II. Chair's Opening Remarks

I responded to the call for prospective members of the Toronto Local Appeal Body (the 'TLAB') because I felt that Council's goal of assuming responsibility for the resolution of neighbourhood disputes within the City was an important and useful objective; namely, that citizens should be given the assurance that their views would be conscientiously considered in a reasonable time frame, in City premises and by people who are themselves residents of Toronto.

As someone with a background in the discipline of land use planning through both legal practice and experience teaching and working with planners for many years, my focus would be to contribute on two fronts: helping to sharpen fair and workable 'Rules' that the TLAB could adopt and adhere to and, second, ensuring the application of key fairness principles that the public could recognize and rely on.

Upon receiving Council's privilege in being appointed to the TLAB, my fellow panel Members and I were tasked with developing the 'Rules of Practice and Procedure' required of tribunals by provincial legislation and guided by City policies and practices. With the assistance of external legal counsel, the TLAB Members drafted the 'Rules' and 'Forms' in compliance with the obligatory provisions of the Statutory Power Procedures Act and attendant Regulations, resulting in an approach that was admittedly legalistic but very customary for the framework of tribunals in English common law jurisdictions. With that backdrop, the TLAB set about to work within these constraints to identify the principles we thought were important.

The TLAB Members recognize that neighbour disputes over planning applications can be contentious and can poison the positive relations hopefully enjoyed between neighbours in a great City; a system that addresses these disputes should attempt to avoid confrontation and encourage a mutual resolution of disputes, where possible. Another principle the Members strongly believed in was that the disposition of minor variance and consent applications should be timely based on site familiarization and full disclosure. Furthermore, as a tribunal, TLAB had to address the divide between professional and citizen evidence – a factor that can alienate community members;



participants need to feel comfortable in voicing their concerns without the heavy threat of costs or overly onerous obligations and attendances.

These principles, with Council's lead in its directions, led TLAB to an all-electronic process where filings could be done online and evidence could be easily exchanged and accessed.

Members also wanted to tweak the 'system' to correct an inefficiency seen happening elsewhere: historically, once an appeal had been filed, not only was there a lengthy delay before conducting the hearing, often up to a year, but at the last minute, revisions by the applicant/owner would alter the context of the hearing to the disadvantage and inconvenience of those who had prepared their evidence based on the original application. The TLAB has instituted Rules that have moved that disclosure up front and early, to avoid last minute changes. While controversial, the public appears to have accepted this as a material improvement to the system.

Finally, the TLAB Members wanted to craft rules that everybody, regardless of their familiarity with land use planning or legal procedures, could easily adhere to. To be avoided was the creation of a system that afforded any advantage to one group over another. Members have sought to enhance all aspects of the legitimacy of the TLAB process. While a learning curve on systems was obvious in 2017, a gaining in acceptability is obvious and apparent.

Under the legislation, the TLAB sits as the appellate jurisdiction on decisions from the Committee of Adjustment, in a *de novo* or 'first instance' jurisdiction: it is a new hearing. This is contentious to some who understand the concept to be closed to only the 'evidence' of experts. However, no TLAB hearing can be entirely *de novo* as the *Planning Act* requires that the TLAB give consideration to, among other things, a litany of provincial policy, prescribed statutory tests and, as well, the decision of the initial consideration. The TLAB Members are provided all Committee filings and must be conscious of the decision made by the applicable City Committee of Adjustment panel. To the extent that the Committee's express reasons, they are a helpful and important contribution to the record provided on a TLAB appeal.

The TLAB Members listen attentively to all contributors.



The TLAB also has the benefit of a considerable body of administrative law produced by the (former) Ontario Municipal Board over many years. Many stakeholders who address the Members have expressed strong support for consistent, anchored decision-making, based on City and provincial policy direction and the continuity of established administrative law principles, where applicable.

The TLAB is not bound by the administrative law created by the OMB, except where endorsed by the judiciary; it does have the ability to create new administrative law on matters that fall within its jurisdiction. The tribunal recognizes that it is bound by statute law and judge-made law.

In respect of the 'all electronic' feature of its process, the TLAB Staff have conducted multiple training sessions to familiarize the Bar, the Professions and the Public with its equipment and display protocols. This continues as an ongoing feature: user training, through demonstration projects, web site postings and media training access.

It is important to note that the Rules governing how the TLAB operates are not meant to remain fixed in time; once a suitable evaluation period has passed TLAB has repeatedly expressed its willingness and intent to revisit the Rules, Forms and Practice Directions and solicit feedback from interested parties.

A series of Public Meetings are planned and have been widely advertised for spring/summer 2018, to allow for an in-depth discussion on the TLAB's processes and to identify ways to further improvement. The TLAB website has posted this schedule: [www.toronto.ca/tlab](http://www.toronto.ca/tlab).

Furthermore, the TLAB Members continue to provide outreach to organizations that would like to know more about the appeal process. The TLAB Members have been actively responding to invitations to educate groups through Council members and a variety of public and private organizations.



### III. Panel Member Biographies

The inaugural seven (7) Members of the TLAB were appointed to a four year term of office by City Council on December 13<sup>th</sup>, 2016 based on the recommendations made by the citizen-member Nominating Panel. In 2017, and transitioning into 2018, two Members of the original appointment roster resigned and were replaced by two new Council appointments. A brief summary of the past and current Members follows.

#### 1. Chair

##### **Ian Lord, Chair**

Ian Lord is recognized as one of Canada's leading counsel, litigators, educators and facilitators in dispute resolution involving land development problems. Since 1977, Ian has paralleled his legal practice related to municipal planning and development approvals for both the private and public sectors with teaching at Ryerson University, York University and through continuing education programs of the Ontario Professional Planners Institute. In 2014, Ian restricted his practice to advancing mediation in municipal dispute resolution.

#### 2. Members

##### **Gillian Burton**

Gillian Burton has been a public sector lawyer for most of her career, with long experience in tribunal practice. She chaired the Residential Rental Standards Board in the Ministry of Housing, provided counsel services to several Ontario Ministries, and to the Ontario Municipal Board as well as the Assessment Review Board. Recently she chaired a panel of the Committee of Adjustment, acquiring in-depth knowledge of the subject matter of appeals to the Local Appeal Body. She has been a Hearing Officer under the Expropriations Act since 2002.



### **Sabnavis Gopikrishna**

Sabnavis Gopikrishna is the Executive Director of The Housing Help Centre, a non-profit organization which helps tenants access and sustain habitable housing. His passion for community building and planning has resulted in his volunteering for many non-profit organizations. He was formerly a Member of the City of Toronto's Committee of Adjustment and was appointed in 2014 by the Province of Ontario to the Board of Directors of the Central East Local Health Integration Network.

### **Dino Lombardi**

Dino Lombardi has been a professional planner since 1998 and has 25 years of diverse experience in land use planning, project management, urban research, and economic development. Dino has held a number of progressively more responsible positions both in the public (municipal) and private sectors throughout the Greater Toronto Area and actively volunteers with the Ontario Professional Planners Institute and the Professional Standards Board for the Planning Profession in Canada.

### **Stanley Makuch**

Mr. Makuch, a Toronto lawyer and academic, has had an outstanding career in municipal, planning and development law. Called to the Bar in 1976 and now a John Bousfield Distinguished Visiting Professional at the University of Toronto, he has extensive experience before the Ontario Municipal Board, the Environmental Appeal Board and the courts. As a professor of law and planning he has served on many boards and commissions and published many influential municipal and planning articles and books.

### **Laurie McPherson**

Laurie McPherson is a Professional Planner with over 30 years of experience. She began her career as a planner with the City of Etobicoke in 1982 and became the Director of Policy and Research from 1991 until 1998. She was with Bousfields Inc., a prominent Toronto planning and urban design firm, from 1999 to 2016. She is active in





the Ontario Professional Planners Institute and has extensive experience in working with the public and appearing before the Ontario Municipal Board.

### **Ted Yao**

Ted Yao, a descendent of a Chinese head-tax payer, has been a lawyer adjudicator for the Law Society Tribunal since 2012. He was an in-house municipal lawyer for several GTA municipalities, including the City of Toronto. Mr. Yao was a full time member of the Ontario Municipal Board for over a decade. Subsequently, he has worked in private practice. Recently he has served on tribunals in Vaughan and Toronto, including chairing Toronto's first Sign Variance Committee.

### **Susan Bryson**

Susan Bryson is an adjudicator for the Human Resources Professionals Association of Ontario and Chair of its Review Committee. She prosecuted discipline cases for The Law Society of Upper Canada and, prior to that, she was a civil litigator with a Toronto law firm. Ms. Bryson has also taught advocacy for the Bar Admission Course. She is on the executive of the Public Sector Lawyers Section of the Ontario Bar Association, and holds a Bachelor of Laws and a Bachelor of Urban and Regional Planning. (Resigned)

### **Sophia Ruddock**

Sophia Ruddock was called to the Ontario Bar in 1995 and has over 20 years of experience practicing before various administrative tribunals and agencies. Ms. Ruddock has also organized and taught a number of workshops on human rights and health law issues. She is very active in her son's school as a member of the School Advisory Committee and has served on numerous community boards and committees, in various capacities, including acting as Chair. (Resigned)



#### IV. TLAB Milestones

- July 8<sup>th</sup>, 2014:** City Council approves the establishment of a Local Appeal Body.
- March 31<sup>st</sup>, 2016:** City Council adopts the Local Appeal Body governance structure.
- July 12<sup>th</sup>, 2016:** Members of the Nominating Panel are appointed by City Council.
- December 13<sup>th</sup>, 2016:** City Council appoints Local Appeal Body Panel Members recommended by the Nominating Panel.
- March 29<sup>th</sup>, 2017:** Chapter 142 of the Toronto Municipal Code is adopted by City Council by By-law 294-2017.
- May 3<sup>rd</sup>, 2017:** Rules of Practice & Procedure, TLAB Forms, Procedural Bylaw, and Public Guide are adopted by TLAB. TLAB begins accepting Committee of Adjustment appeals.
- June 14<sup>th</sup>, 2017:** Guiding Principles are adopted by TLAB. External legal counsel for TLAB is selected.

See: **Summary Statistics Schedule** for performance metrics, *infra*.



## V. Key Principles of TLAB

The following are a set of key principles that Panel Members have strived to enshrine into the Rules of Practice & Procedure governing how the TLAB operates:

- a) Disputes between neighbours can become contentious and every effort should be made to ensure timely resolution, emphasizing alternative dispute resolution, within the framework that finality is a necessary hallmark of administrative justice.
- b) Justice delayed is justice denied. A lengthy interval between an appeal and an appeal decision serves no party or participant. People lose interest, events change, memories fade, reasons of convenience intercede and delay has procedural consequences and incurs unnecessary expense. The TLAB has established Rules which provide a regimented disclosure obligation on parties and participants.
- c) One day Hearings should be scheduled within the definitive timeline of the Rules, approximately 100 days from receipt of an eligible appeal.
- d) Every person with an interest is provided the opportunity to participate within the statutory scheme including TLAB's Rules of Practice and Procedure, limited only by relevance and repetition.
- e) A Hearing Decision and Order should be issued within two weeks of the close of the final sitting.
- f) Moving to an all-electronic format, while requiring a learning curve for parties, participants, the public and the Members, can dramatically advance exposure, timeliness, connectivity, and cost reductions by providing instantaneous file access without the need for paper deliveries, repetitive attendances, reproduction costs, witness meetings, delays, challenges and other risks associated with multiple pre-hearing processes.
- g) Early disclosure of Applicant's revisions are required. In the past, practices revealed many modifications to plans and variances sought at



the late stage of Hearing commencement. Parties and participants who had prepared their positions based on the material before the Committee of Adjustment were faced with changed circumstances and settlements not revealed. This dislocation of effort and resources, angst and costs of 'trial by ambush' is remedied by the mandatory requirement of an Applicants' Disclosure up front, early and while the matter is fresh in the minds of those interested.

- h) The Rules provide for the online filing and service of Motions that can request any form of relief and any form of Hearing, written, oral or electronic; Members are open and free to grant relief in warranted circumstances made known to all concerned, even where not presented on consent. Although there are many Forms and Rules, there is flexibility to ensure that individual hardship can be addressed and eliminated in the context of a process that is open to all.
- i) Hearing premises are generally fixed, relatively central to the geography of the municipality and are accessible by public transit.





**Step 5:** **Document Disclosure**  
**Submission Required:** Any document evidence including photographs that will be presented at the TLAB hearing, in digital format.  
**Due Date:** 30 calendar days after the Notice of Hearing is issued.  
**Responsibility:** Parties and Participants.

**Step 6:** **Submission of Statements**  
**Submission Required:** Witness Statement (Form 12), Participant's Statement (Form 13), and Expert's Witness Statement (Form 14).  
**Due Date:** 45 calendar days after the Notice of Hearing is issued.  
**Responsibility:** Parties (Form 12 and Form 14) and Participants (Form 13).

**Step 7 (Optional):** **Filing a Motion.**  
**Submission Required:** Notice of Motion (Form 7).  
**Due Date:** 45 days before the hearing date.  
**Responsibility:** Parties.

**Step 7A:** **Responding to a Motion.**  
**Submission Required:** Notice of Response to Motion (Form 8).  
**Due Date:** 7 days before the motion date.  
**Responsibility:** Parties.

**Step 7B:** **Replying to Response to Motion.**  
**Submission Required:** Notice of Reply to Response to Motion (Form 9).  
**Due Date:** 4 days before the motion date.  
**Responsibility:** Party that filed the Notice of Motion.



## VII. Business Meetings and External Consultations

The TLAB regularly convenes business meetings to discuss items of interest and members of the public are encouraged to attend. The rules governing the TLAB business meetings are outlined in Procedure By-law 1-2017. Notice of Business Meetings together with the Agenda are published on the TLAB website ([www.torontoca/tlab](http://www.torontoca/tlab)) in accordance with City disclosure practices.

### 1. Training and Orientation

- February 10<sup>th</sup>, 2017:** Panel Orientation, Schedule of Meetings
- February 24<sup>th</sup>, 2017:** Chair's Address, Training Presentation
- March 1<sup>st</sup>, 2017:** Introduction to Rules of Practice & Procedure, Guiding Principles
- March 3<sup>rd</sup>, 2017:** Freedom of Information and Protection of Privacy, Draft Versions of TLAB Forms
- April 19<sup>th</sup>, 2017:** Draft of Procedural Bylaw, Draft of TLAB Public Guide



### 2. Business Meetings

- May 3<sup>rd</sup>, 2017:** Adoption of Rules of Practice & Procedure, TLAB Forms, Procedural Bylaw, Public Guide, Discussion of Future Meetings



- June 14<sup>th</sup>, 2017:** Adoption of Guiding Principles, Addressing Correspondence from City of Toronto and OBA, Adoption of Practice Direction No. 1, Selection of External Legal Counsel, Legal Training Session
- July 17<sup>th</sup>, 2017:** Panel Member Training
- October 11<sup>th</sup>, 2017:** Business
- December 13<sup>th</sup>, 2017:** Business

The TLAB actively responds to requests for constituent education from Councillors and external organizations; organizations interested in receiving information from a TLAB representative should arrange a session using the contact information listed on the last page of this Report.

### 3. External Consultations:

- April 10<sup>th</sup>, 2017:** Building Industry and Land Development Association
- April 12<sup>th</sup>, 2017:** Law Society of Upper Canada
- May 8<sup>th</sup>, 2017:** Ontario Bar Association & Ontario Professional Planners Institute
- June 1<sup>st</sup>, 2017:** Federation of North Toronto Residents' Associations
- June 13<sup>th</sup>, 2017:** Building Industry and Land Development Association
- June 19<sup>th</sup>, 2017:** Committee of Adjustment
- October 18<sup>th</sup>, 2017:** Community Meeting Hosted by Councillor Grimes'





## VIII. Performance Metrics & Summary Statistics

The efficacy of the TLAB rests in part on its ability to deliver its Decisions and Orders in a timely fashion. The following performance metrics were crafted to assess whether the TLAB appeal process is adhering to a set of self-imposed timing standards.

### 1. Service Standards

#### **A. Timely review and setting of Hearing Dates (5 days from the date TLAB receives an appeal from the Committee of Adjustment)**

Of the appeals received, 50 percent were scheduled within 5 days of TLAB receiving the appeal file from the Committee of Adjustment. On average, appeal matters were scheduled for hearings within 6 days of TLAB receiving the appeal.

#### **B. Timely Hearings scheduled (100 days from Notice of Hearing Issue date to Hearing Date)**

Of the appeals scheduled, 77 percent of matters were scheduled within the 100 day mark. On average, matters were scheduled 110 days from the day a Notice of Hearing is issued.

#### **C. Timely issuance of Decisions (14 days) from the date of Hearing or Motion.**

Of the decisions issued, 54 percent were issued within the 14 mark.  
The average time taken to issue a decision was 18 days.

#### **D. Timely disposition of appeal matters. TLAB appeals to be completed within 120 days from the date the Notice of Appeal is filed by the appellant.**

Of the appeals that were completed, 81 percent were completed within the 120 day mark. The average time taken to dispense of matters from the time an appeal is filed by the appellant to the time a decision was issued was 142 days.

See as well: Summary Statistics Schedule for performance metrics.



## 2. Performance Metrics

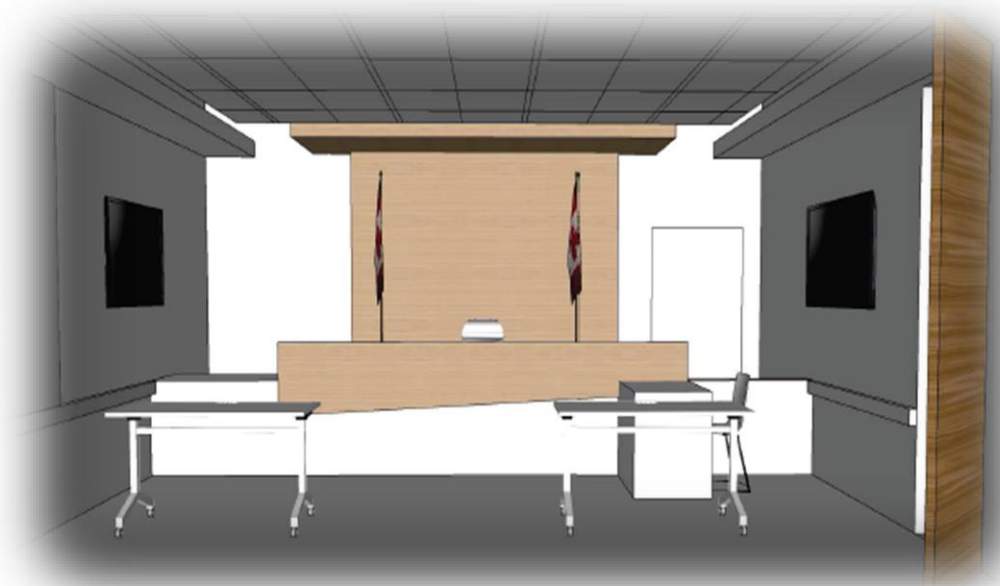
Appeal Received to Final Disposition (Days)	
Average	142
Maximum	216
Minimum	99
% < 120 days	81%

Appeal Received to Notice of Hearing (Days)	
Average	25
Maximum	84
Minimum	2
% < 30 days	47%

Appeal Received to Hearing (Days)	
Average	133
Maximum	200
Minimum	87
% < 120 days	73%

Notice of Hearing to Hearing (Days)	
Average	110
Maximum	145
Minimum	69
% < 100 days	77%

Hearing to Decision (Days)	
Average	18
Maximum	82
Minimum	2
% < 14 days	54%



### 3. Summary Statistics

General Statistics	
Total Number of Appeals	333
Total Number of Motions	23
Total Number of Hearings	84

Appeal Type (%)	
Minor Variance	53%
Consent	1%
MV + Consent	46%

Outcome (%)	
Approved	10%
Modified Approval	47%
Refused	5%
Dismissed	16%
Withdrawn	17%
Settlement	5%

Appellant Type (%)	
Applicant	66%
City of Toronto	11%
Other	16%
Multiple Appellant Types	7%

Appeals Filed by Month	
May	16
June	35
July	52
August	48
September	20
October	42
November	50
December	42

Appeals by CoA District (%)	
Toronto & East York	32%
North York	38%
Etobicoke York	20%
Scarborough	10%

Decisions Released by Month	
July	3
August	1
September	10
October	15
November	20
December	17







## X. Going Forward: Recommendations

In 2018, a schedule of public consultation for the review of the TLAB Rules, Forms, Practice Directions and Public Guide is well in hand.

In addition, as Chair, I have discussed with the Members and Court Services several structural matters warranting attention.

The discussions were instructive to record concerns and methodologies to address the matters raised. Some have been addressed constructively within the limitations of Staff advisors and Council's formation and budget guidelines applicable to the TLAB. As time passes and experience is gained, a number of identified issues remain and new ones discovered. These latter aspects result in a series of **Recommendations**.

These include:

1. The TLAB appointments are part time for fixed terms all expiring on the same date.

### **Recommendation 1:**

**Council provide latitude for staggered term appointments.**

2. At seven part time members, the TLAB is highly vulnerable to absences, vacations, illness, resignations and conflict of interest.

### **Recommendation 2:**

**At all times, Council provide a roster of appointments for up to ten (10) part time Members.**

3. The role of the Chair is multifaceted and essentially full time while maintaining an equal hearing schedule, conducting Reviews, preparing business meetings and reviewing Member draft decisions.

**Recommendation 3:**

**Provision be made for the appointment of a Vice Chair with responsibilities delegated by the Chair, accompanied by commensurate remuneration for the named position.**

4. In a Confidential Report dated October 26, 2017 to Court Services on the subject of Member Remuneration, as Chair I detailed a litany of Member responsibilities for which no remuneration or reward is provided. These were identified as '*Unpaid Items, Clarifications, Additional Funding Requests*'. For those items involving 'clarifications' as to expense reimbursement, some matters HAVE BEEN addressed. In the main, HOWEVER, the time demands on Members is not commensurate with compensation. In summary, Member retention and recruitment has been and will continue to be adversely impacted by these matters which Court Services alone is unable to address.

I understand, from a December, 2017 exchange, that discussion has been prompted by Court Services with the City Manager's Office and City Clerks on the value of a review of compensation for all tribunal members. While that is welcomed, service in 2017 by the TLAB Members has demonstrated an obvious need for an earlier determination.

**Recommendation 4:**

**That timely consideration be given to a fairer alignment of time, resources and compensation, including consideration to options that involve: a greater range of per unit time categories; an annual (monthly) base stipend for members; an allowance for own disbursement recovery.**

5. Consent applications frequently if not routinely involve the review and approval of project Site Plans involving features, functions and conditions of approval including subjects germane to the disputes with neighbours, ratepayer



associations, City Departments (Heritage Services, Forestry, Traffic and Engineering Services) and other interest groups.

**Recommendation 5:**

**Consideration be given to the delegation of site plan approval jurisdiction to the TLAB independent of whether or not severance, consent or variance jurisdictions are involved.**

**ALL OF WHICH IS RESPECTFULLY SUBMITTED**

*April, 2018*

## XI. Contact Information

### General Inquiries:

Email: [tlab@toronto.ca](mailto:tlab@toronto.ca)

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### TLAB Manager:

Susan Garossino

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