

GL8.18 Attachment 1

Chair's Annual Report 2018 Toronto Licensing Tribunal

Gary Yee, Chair

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TORONTO LICENSING TRIBUNAL

CHAIR'S ANNUAL REPORT 2018

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1) INTRODUCTION

This is the 2018 Annual Report of the Toronto Licensing Tribunal.

The Toronto Licensing Tribunal (TLT) is an adjudicative tribunal that is part of the City's regulation of certain occupations and businesses, to protect consumers and the public. A licence holder or applicant may request a hearing before the TLT to challenge a decision of the City's Municipal Licensing & Standards Division (MLS), or MLS may require a licence-holder or applicant to appear before the Tribunal. Most of the cases before the TLT involve vehicle-for-hire licences, which includes taxicabs. The TLT acts independently from MLS and the City when it hears and decides cases in accordance with the evidence and the law.

Further information about the Tribunal is available at:

<https://www.toronto.ca/services-payments/permits-licences-bylaws/toronto-licensing-tribunal/>.

Submitted respectfully on April 15, 2018.

2) CHAIR'S MESSAGE

I have chaired three Ontario tribunals in my administrative law career, and this has been my first municipal tribunal and first part-time chair position. From this broader vantage point in the tribunal community, it is clear that the City of Toronto has made great progress in modernizing the appointment system and the management of its adjudicative tribunals. We are well-placed to build on these achievements and be responsive to the current trends. There is huge potential in sharing best practices and resources within the City's group of adjudicative tribunals. In addition, many tribunals are working towards more proactive case management and adjudication, and becoming more accountable for the user-centric experience of dispute resolution, especially from the perspective of unrepresented parties.

My experiences at the Toronto Licensing Tribunal have been both rewarding and challenging. This has reconfirmed to me the tremendous honour and responsibility that is given to tribunal members. Along with the Tribunal staff, we are indeed the face of administrative justice for many people.

I wish to acknowledge and thank the members and staff of this tribunal for their significant contributions. I always see wonderful examples of excellent public service, and I appreciate everyone's commitment and hard work.

The 2018 year has been marked by three member resignations and the appointment of two new members. It was also a year with a municipal election – for this tribunal, it meant that our terms ended on November 30, 2018, but continued until reappointments or new appointments in 2019. I appreciate all the members' flexibility and understanding over these past several years when we have had fewer than our full complement of seven members. I am hopeful for some more stability with the new terms for a full complement beginning in the spring of 2019, as well as my recommendation for an additional member.

As an adjudicative tribunal, we are drawn together by our common goal of fair and accessible dispute resolution and our passion for justice. This is reinforced by our interactions with the individual licensees and the members of the public whose daily lives and livelihoods may be profoundly affected by our conduct and our decisions. These goals are also shared by the parties and representatives who appear before us. Together, we can all continue building an accountable, predictable and proactive tribunal.

Yours sincerely,

A handwritten signature in black ink that reads "Gary Yee". The signature is fluid and cursive, with the first name "Gary" and last name "Yee" clearly distinguishable.

Gary Yee, Chair

3) SUMMARY OF ACTIVITIES

a) Member Changes

In 2018, the Tribunal continued to face gaps in the full complement of members. This affected the business meetings and initiatives that could be effectively or efficiently done. As in 2016 and 2017, there were many periods of only five or six members (instead of seven).

The Tribunal had member resignations in January, May and July. The City appointed two new members in late June. The Tribunal has been operating with six members (including the Chair) in the last half of 2018.

As in the past few years, the gap in full membership was addressed by the existing members providing more availability for scheduling. The Chair started the formal process to request changes in the Municipal Code to change the limit of seven members to add an eighth member (see Chair's recommendations in section below).

b) Business Meetings

The Tribunal held two public Business Meetings, on January 23 and November 23, 2018. A Business Meeting scheduled for May 15, 2018 was cancelled after the Tribunal was reduced to five members due to a second member's resignation. This resulted in a heavier burden of assigned hearings and decisions for the remaining members.

The January 23, 2018 Business Meeting covered the following areas:

- 2017 Annual Report – content, suggestions
- Short-term rentals – overview of the new By-Law
- Statistics and service standards – update, 30-day target for written decisions
- Establishing a stakeholders consultative committee
- Self-represented parties – resources, support, training
- Member Training – professional development plan, topics, speakers
- Pre-hearings – review processes; settlement conferences; hearing readiness
- Hearing panels with one or two members – process, policy

- Decision process – decision template, draft decision review, timeframes, decision production and release.

The November 23, 2018 Business Meeting covered the following areas:

- Case management – pre-hearing conferences; interlocutory or procedural orders, adjournments
- City Council's traditional aboriginal land acknowledgment
- 2018 TLT Annual Report – recommendations
- Public Appointments Secretariat (Aretha Phillip) – appointments and reappointments; Vice-Chair position; number of members; remuneration; impact of new City Council
- Statistics – caseload, service standards, decision time frames
- Tribunal Records – Retention Process – presentation from City Clerk's Office
- Training – motion to go into closed training session.

c) Training

In 2018, the two new Tribunal appointees continued the pattern of members having significant adjudicative or administrative law experience. One member had previously completed the five-day Certificate in Adjudication course from the Society of Adjudicators and Regulators (SOAR) and Osgoode Professional Development. The other member came from the City's Administrative Penalty Tribunal, and she completed the SOAR/Osgoode course in December 2018.

Partly due to the gaps in the full complement of members, there was only one formal training session in 2018. In November, the members met to discuss the following topics:

1. Administrative law update – recent cases
2. One-person panel for procedural matters
3. Interim orders – interim suspensions or conditions during an adjournment – legal requirements, criteria to use

4. Working with interpreters
5. Criminal or provincial offence charges or convictions – evidentiary issues; adjournments
6. Unrepresented parties – proactive approach, November 1, 2018 SOAR Conference
7. Proposed resolutions – procedural fairness if hearing panel might not accept the P.R.

d) Pre-hearings

Many of the cases at the Tribunal are scheduled for a pre-hearing. The Tribunal facilitates a process in which MLS and the Applicant will meet to discuss the option of a joint proposed resolution or agreed statement of facts. If the two parties can reach an agreement, the Tribunal will schedule a hearing date during which the proposed resolution will be presented to the hearing panel for consideration. The panel may ask for more information, and either approve the settlement or send the case to be scheduled for a full hearing. Currently, the Tribunal is not involved in this pre-hearing process as a mediator, but this is under review.

In 2018, there were 127 cases scheduled for a pre-hearing, leading to more than half of these cases (71) being resolved without a full hearing.

e) Toronto Licensing Tribunal Administration Office

The Tribunal is supported by a team of staff under the management of the Tribunal Supervisor, Pauline Chandarpaul. The staff include three support assistants who coordinate a wide array of activities in support of Tribunal proceedings. The Tribunal office is instrumental in the timely and efficient functioning of the Tribunal, which includes responsibility for case management and processing of MLS reports, hearing notifications for pre-hearings and hearings, confidential distribution of material, resources during hearings, responding to inquiries, and administering member remuneration. The staff oversee the Summary of Decisions and the release and posting of all Tribunal decisions and reasons.

The dedication and hard work of all the staff is essential to the smooth operation of the Tribunal's case management procedures, front-line service, operational coordination with MLS, and adjudicative support for the members and proceedings. The Tribunal office is part of the City's Court Services Division, and it has

collaboratively worked with other Court Services units to provide ongoing client and operational support.

The Supervisor ensures accountability for compliance with the TLT Relationship Framework. In addition, she is accountable for overseeing the case management and scheduling, statistical information and annual activity reporting in relation to the Tribunal performance indicators. The Supervisor works with the Chair to provide training and orientation for newly appointed members and ongoing member scheduling. Her office also provided a forum for learning by hosting a number of students from various local schools and colleges, along with Toronto Employment and Social Services Programs, to enhance skills and advancement through on-the-job learning and training opportunities.

f) Chair's Related Activities

The Chair actively participates in the administrative justice community. In 2018, the Chair continued his involvement in the Society of Ontario Adjudicators and Regulators (SOAR). He was a member of its Education Committee and the Planning Committee for the 2018 SOAR Conference, which is the annual conference of adjudicators and regulators in Ontario. The Chair continued his contributions to promoting access to justice, as a member of the Access to Justice and Adjudicative Excellence Committee of the Council of Canadian Administrative Tribunals (CCAT), and an advisor to the Access As Justice Project (funded by the Law Foundation of Ontario) focusing on racialized participants in tribunals.

In 2018, the Chair was a speaker at several administrative law and tribunal conferences, including the Ontario Bar Association, the Ontario Regulatory Authorities, the Osgoode Professional Development National Forum on Administrative Law and Practice, and the SOAR Conference.

4) CHAIR'S RECOMMENDATIONS

As indicated in the Municipal Code and the Relationship Framework for the Toronto Licensing Tribunal, the Annual Report should contain the recommendations of the Chair for improvements or changes to the hearing process, and other policies and procedures of the Tribunal, as well as proposed educational training.

The recommendations for 2018 are mostly the same as the ones in the 2017 Annual Report, with some updates and revisions.

1) Membership – size, staggered terms, Vice-Chair

These were three separate recommendations in the 2017 Annual Report.

Increasing the maximum number of Tribunal members would enable an eighth member to be added if needed, to address scheduling difficulties caused by gaps between departures and replacements. Staggering the terms would avoid all members facing an end of term every four years when the City Council term ends. Designating a member as a Vice-Chair would provide case management and draft decision review support for files where the Chair is on the hearing panel, and also assist with succession planning or transition.

2) Working with unrepresented parties

The statistics in 2018 indicate that 75% of licensees/applicants did not have legal representation. With the growing recognition that unrepresented parties need more resources and support, this is a clear access to justice issue. We must develop a user-centric focus, with a strategy that includes training on conducting proactive hearings, cultural competence, empathy, and communications. This should include more materials and resources and tools for unrepresented parties, available in different languages.

3) Changes to the Rules of Procedure

The 2017 Annual Report recommended two Rule changes to reduce the quorum for a hearing panel from two members to one, and to establish a mechanism to avoid a deadlock if there is a two-member panel. These changes have not yet been implemented. While the Tribunal has no plans to move away from three-member panels, there should be more flexibility in appropriate or unexpected situations to use one member. In addition, there should be two further changes to the Rules to allow for more flexibility in pre-hearing processes and dealing with procedural motions – both will be in line with similar provisions in the Statutory Powers Procedure Act (SPPA). Most Ontario tribunals use one-member panels. The following four changes are recommended to the Tribunal's By-Law No. 1 (Rules of Procedure):

- a. Quorum – The four paragraphs in Rule 16 should be deleted and replaced with the following:

16. (1) Quorum for a hearing is one member of the Toronto Licensing Tribunal.

(2) Where a hearing panel consists of two members of the Toronto Licensing Tribunal and they do not agree on a decision, the decision of the presiding chair of the panel shall be the decision of the panel.

- b. Procedural or interim matters – Consistent with section 4.2(1) of the SPPA, a one-member hearing panel may be assigned to conduct a motion or make an order that is procedural or interim in nature. No Rules change would be needed for this if the change in Rule 16 above is implemented.

- c. Pre-hearing conferences – Consistent with section 5.3(4) of the SPPA, a member who conducts a pre-hearing conference should be allowed to preside at the later hearing on the merits if there were no settlement discussions at the pre-hearing conference. The consent of the parties is required only if there were settlement discussions. The current TLT Rule 15(4) requires the consent of the parties even if there were no settlement discussions at the pre-hearing conference. With the Tribunal's seven members and use of three-member hearing panels, the Tribunal needs more flexibility to assign one member to conduct a pre-hearing conference for case management purposes. Therefore, Rule 15(4) should be amended by adding the underlined words as follows:

(4) If a member of the Toronto Licensing Tribunal presides at a pre-hearing conference at which the parties try to settle issues, that member shall not be a member of the panel hearing the proceeding discussed at such pre-hearing conference unless all parties consent in writing or on the record.

4) Sharing between Toronto adjudicative tribunals

With the two recently created adjudicative tribunals (the Toronto Local Appeal Body and the Administrative Penalty Tribunal) and other municipal tribunals, there is great potential for building an administrative justice community within the City of Toronto's adjudicative tribunals. We can all benefit from sharing best practices, training, members, resources, etc., as well as coordinating policies and procedures. The movement in this direction was enhanced in late 2018 with the creation of a new position of Manager, Tribunal Operations.

5) Standardize per diem payment policies across Toronto's adjudicative tribunals

The Public Appointments Secretariat consulted with the Toronto Licensing Tribunal and other tribunals about this issue in 2018. Changes were recommended for approval in 2019. As noted in the recommendation in the 2017 Annual Report, there are major inconsistencies in the per diem policies and rates between the various municipal tribunals. TLT members only receive \$50 for writing reasons for decision after a hearing, which does not account for the many hours needed for this work.

5) STATISTICAL INFORMATION – 2018

In 2018, the Toronto Licensing Tribunal recorded 183 new cases filed. There were 55 updates to the MLS reports filed that expanded the matters to be dealt with in existing cases. The Tribunal scheduled 235 appearances before a hearing panel. These hearings involved some cases with more than one appearance before the Tribunal due to adjournments or other rescheduling requirements. Additionally, some cases were carried over from the year 2017. Scheduled hearings included 92 cases in which MLS presented joint proposed resolutions following settlement discussions between MLS and the Applicant.

Year	Total Appearances Before Hearing Panel
2013	290
2014	139
2015	193
2016	214
2017	336
2018	235

As this table shows, the number of appearances before a hearing panel in 2018 was much less than 2017, but it was more than the three years prior to 2017. The higher than average number of appearances in 2017 reflected the previous year's high level of intake from MLS.

The Tribunal schedules hearings every Thursday, with the exception of two breaks during the last two weeks of August and December. Typically there are 48 scheduled hearing dates per year. In 2018, there were 54 hearing dates, which included several non-Thursdays for multi-day hearings and two motion hearings.

The Tribunal scheduled 26 pre-hearing dates, resulting in 127 meetings between the Applicant and MLS. More than half of the pre-hearings (71 cases) resulted in a resolution of the case without the need for a full hearing.

In 2018, the Tribunal issued 20 written Reasons for Decision following a hearing. This was a decrease in comparison to the 35 decisions issued in 2017, but it is similar to the years prior to 2017. The lower number also reflects the success of pre-hearing conference discussions between MLS and Applicants which resulted in proposed resolutions and no need for a contested hearing. Furthermore, in 2018, the Tribunal had several complex hearings with multiple hearing days.

The full decisions and reasons can be found on the Toronto Licensing Tribunal website:

<https://www.toronto.ca/services-payments/permits-licenses-bylaws/toronto-licensing-tribunal>

Licensing and Enforcement Reports Filed with the Tribunal

MLS Reports	2018	2017	2016
Licensing Reports	162	131	180
Enforcement Reports	21	21	21
Total New Cases	183	152	201
Licensing Updates	32	21	58
Enforcement Updates	23	11	33
Total	238	184	292

Interpreters

Languages interpreted in 2018	Number of Visits
Somali	2
Farsi	4
Punjabi	5
Greek	3
Bengali	10
Urdu	4
Tamil	2
Vietnamese	1
Amharic	5
Total	36

The Tribunal provides language interpretation services that may be required at hearings. The Tribunal scheduled interpreters to appear on 36 occasions. There were nine languages that were translated, with Bengali being the most common.

Categories of Licence Types

The cases before the Tribunal can be categorized on the basis of the licence types that were involved. The Chart below lists the cases that were the subject of a hearing in 2018. As this Chart indicates, some of these cases involved more than one type of licence and some cases had more than one appearance.

In 2018, the top licence types that came before the Tribunal were:

- Vehicle-For-Hire Driver's Licences
- Tow Truck Driver's or Owner's Licences
- Taxicab Driver's or Owner's Licences.

The attached chart identifies the number of licence types where an alleged contravention of the Municipal Code was identified by MLS in that licence category. When a contravention occurs, MLS can deny the new application for a licence or renewal of a licence, or notify the holder of a licence (Licensee/Applicant) of their requirement to appear before the Tribunal.

Licence Category	New Applicant	Applicant for Renewal	Holder of Licence
Body Rub Parlour Owner/Operator's Licence		4	8
Building Renovator's Licence	1	1	
Drain Contractor Licence AND Drain Layer Licence	1		
Drain Layer Licence		1	
Driving Instructor's Vehicle Licence		1	
Driveway Paving Contractor's Licence	1		
Eating Establishment Licence	6	1	4
Eating Establishment Licence AND Retail Store (Food) Licence	1		
Eating Establishment Owner Licence			1
Entertainer's Licence	3		1
Entertainment Establishment/ Nightclub Licence		1	
Holistic Centre Owner		1	
Holistic Centre Owner's Licence AND Holistic Practitioner's Licence Master		1	2
Master Plumber's Licence AND Plumbing Contractor's Licence	1		
Motorized Refreshment Vehicle Licence	1		
Public Garage Licence	5	2	
Pedicab Driver's Licence AND Pedicab Owner's Licence			1
Personal Services Settings	2		
Place of Amusement	1		
Retail Store (Food) Licence	2	1	2

Retail Store (Food) Licence AND Eating Establishment Licence			1
Plumbing Contractor's Licence			1
Second Hand Dealer Licence		1	
Taxicab Driver's Licence			2
Taxicab Owner's Licence			13
Taxicab Owner's Licence AND Vehicle-For-Hire Driver's Licence	1	2	
Taxicab Owner's Licence-Estate	2		8
Tow Truck Driver's Licence	31	14	5
Tow Truck Owner's Licence	1	1	1
Vehicle-For-Hire Driver's Licence	36	29	15
Vehicle-For-Hire Driver's Licence AND Taxicab Owner's Licence			2
TOTAL	96	61	67

****Source document: 2018 Toronto Licensing Tribunal Reference List***

6) MEMBERS

Position	Name	Terms of Appointment
Chair	Gary Yee	August 1, 2017 – November 30, 2018
Members	Aly Alibhai	July 9, 2015 – May 10, 2018
	Moirra Calderwood	July 9, 2013 – November 30, 2018
	Hedy Anna Walsh	July 9, 2013 – January 11, 2018
	Melina Laverty	June 9, 2016 – November 30, 2018
	Daphne Simon	July 9, 2016 – November 30, 2018
	Keith Cooper	March 29, 2017 – August 9, 2018
	Anu Bakshi	June 29, 2018 – November 30, 2018
	Victoria Romero	June 29, 2018 – November 30, 2018

Note: Although all terms ended on November 30, 2018 to coincide with the term of the City Council, the members continue until the reappointments and new appointments are announced in 2019.

Please refer to the City of Toronto Public Appointments website for the member biographies. <https://www.toronto.ca/services-payments/permits-licences-bylaws/toronto-licensing-tribunal/tribunal-member-biographies/>