

# PH5.7 - Attachment 1

Attachment 1: Chair's 2018 Annual Report

## Toronto Local Appeal Body



CHAIR'S 2018 ANNUAL REPORT  
IAN JAMES LORD

---

## Table of Contents

I. Transmittal Letter .....	2
II. Chair's Opening Remarks .....	3
III. Panel Member Biographies.....	8
1. Chair.....	8
2. Vice Chair .....	8
3. Members.....	9
IV. TLAB Milestones.....	11
V. Key Principles of TLAB.....	14
VI. The TLAB Appeal Process* .....	16
VII. Business Meetings and External Consultations .....	18
1. Business Meetings .....	18
VIII. Performance Metrics & Summary Statistics .....	21
1. Service Standards.....	21
2. Performance Metrics.....	23
3. Summary Statistics .....	24
IX. Practice Directions .....	26
X. Going Forward: <b>Recommendations</b> .....	27
XI. Contact Information.....	32

## I. Transmittal Letter

Mayor and Members of Council

March, 2019

City Manager

Court Services

In December, 2016, Council constituted a new statutory planning appeals tribunal, the Toronto Local Appeal Body (the 'TLAB'). Its jurisdiction is confined to severance and variance appeals from the City of Toronto (City) Committee of Adjustment Panels.

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

Provided herein is a record of the TLAB's activities in calendar 2018. Some statistics provide a comparison with 2017; however, that latter year was incomplete as scheduled Hearings did not commence until after the second half of 2017.

This Report for 2018 is a snapshot of an entire year of operations.

This Report also contains some new information respecting the origin and generation of file stream appeals from the four Panels of the City's Committee of Adjustment.

I take this opportunity to communicate on four substantive topics:

- 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 continue 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 - all on proper principles of good community planning. The primary policy guide is the City Official Plan, as amended.

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 the public service.

In 2018, due to three unrelated resignations, Council appointed six (6) new Members at various stages bringing the total TLAB compliment to ten (10). Four of these Members will begin service in the first quarter of 2019.

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

Respectfully submitted,

X 

---

Ian James Lord, Chair  
Toronto Local Appeal Body  
Signed by: ilord

## II. Chair's Opening Remarks

In 2017, I recited several objectives set by Council as TLAB's mandate:

- i). City residents 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.
- ii). to sharpen fair and workable 'Rules' that the TLAB could adopt and adhere to; and,
- iii) ensure the application of key fairness principles that the public could recognize and rely on.

In 2018, with the assistance of external legal counsel, the TLAB Members held many Public Meetings with numerous deputations to review the initial TLAB Rules and its 'all electronic' Forms, adopted in May, 2017, to govern TLAB activities.

The presence of 'Rules' and their necessity in law result in an approach that is admittedly legalistic but very customary for the framework of tribunals in English common law jurisdictions. By the end of 2018, a set of draft revised Rules were in the late stage of readiness and adoption. The revisions, while not extensive, retain the core structure of processing the anatomy of a TLAB appeal, while responding to several suggestions from representative interest group and the general public, for improvements.

If anything, the process of revision demonstrated that continuous monitoring of Rule topics is warranted.

The TLAB Members recognize that neighbourhood disputes over planning applications can be contentious and can poison the otherwise positive relations hopefully enjoyed between neighbours in a great City; a system that addresses these disputes should attempt to avoid confrontation and encourage the mutual resolution of disputes, where possible.

To that end, the revisions propose greater accountability for up-front, in-depth disclosure and the avoidance of surprise. They propose the extension of most filing time lines to permit a greater opportunity for discussion, settlement negotiations and mediation. The revisions propose greater flexibility in public participation including new privileges for persons wishing 'Participant ' status, over the more onerous responsibilities of a full 'Party'. And the revisions will clarify the right and obligations in accessing and participating in a Review Request, of a Member's decision.

In 2018, the public depositions evidenced a growing acceptance of the TLAB, its Rules, Forms, procedures and Hearings. This gaining of familiarity, especially on the part of the practicing professions and sophisticated ratepayer organizations has noticeably lessened the expressions of concern raised by the public, as perceived within the TLAB office.

Some principles, the Members strongly believe, are that the disposition of minor variance and consent applications should be timely based on site familiarization and full disclosure. As seen from the statistical analysis, while the TLAB goal of disposition remains about one-third the time of the former provincial adjudication process, some slight slippage has occurred in TLAB's own 2018 service level. There were a number of factors at work in 2018 that contributed to this: Member departure; lengthy new appointments and training periods (6 months); increased workloads; variable Member availability; facilities disruption to permanent space; and, booking constraints for larger Hearing rooms. It is expected that in 2019 many of these issues will be resolved with Council's increase in the Member complement.

It is noteworthy that Member appointments are part time, premised upon an expectation of one to two (1-2) Hearing Days per week. In fact, in 2018, it is proven that with 2 scheduled hearings a week, a 4 to 5 day work week commitment was typical. A Hearing

scheduled for one day requires at least one-half day for site attendance/inspection and file familiarization. Decision writing can easily occupy a day. With the reduced complement in 2018, an increased number of appeals and many combined consent/variance hearings occupying two or more days, the reality is that the Members can be working full normal weeks, or more. Added to the file stream are Motions, Mediations, Settlement Hearings and Review Requests which are incapable of being scheduled in the normal 'Hearing anatomy' timeline, but must be dealt with on an expedited basis. Review Requests are in the order of one additional matter per month; all require decisions and several have resulted in new hearings being added to the schedule.

In 2018, the TLAB moved to scheduling two-day sittings for combined consent/variance appeal files.

It is hoped that as the four (4) new Council appointments enter the sittings stream in 2019, that some of the burden will be reduced. If it is not, enterprise risk management warrants consideration be given to the City maintaining a roster of candidates available for timely appointment.

As a tribunal, the TLAB has continued to find ways to address the alleged divide between professional and lay-citizen evidence – a factor that has been seen to alienate community members. Participants before the TLAB need to feel comfortable in voicing their concerns without the heavy threat of costs or overly onerous obligations and attendances. Members have worked assiduously to reduce the formalities of the Hearing process, offer recognition to 'community experts' and assure unrepresented members of the public that they can have an opportunity to expressing their views, subject to the Rules and the prerequisite of disclosure. "Trial by ambush" is not supported by the TLAB, regardless of its origin.

In addition, TLAB staff have worked to improve access, in 2018, and to reduce I.T. system constraints to its 'all-electronic' processes, where filings can be done on-line. Both greater capacity and information sharing has enhanced the ability for evidence to be easily exchanged and accessed. A 'Common Document Book' record is being

advanced to cut the repetitive nature of attachments to witness statements, exchanges and filings.

In 2017, it was reported that the TLAB had instituted Rules that have moved that disclosure up front and early in the anatomy of the Hearing process, to avoid last minute changes. While controversial, the public appears to have accepted this as a material improvement to the system. Several requests in the review of the Rules, in 2018, asked that disclosure be postponed until a period closer to the Hearing Date. TLAB proposes to lengthen somewhat the disclosure periods but retains the belief that early, timely, mandatory disclosure is superior to the prospect of consequential dalliance and surprise, all leading to adjournment requests and a multiplicity of additional procedural practices causing expense and delay.

I am happy to report to Council that a prolific body of administrative law has evolved from the TLAB through the conscientious decisions of its Members. This jurisprudence creates a growing platform and basis for consistent interpretation and application of Council policies and goals, as expressed in the City Official Plan. Consistency and respect for neighbourhood preservation and protection, following the policy priorities for directed growth set by Council, is an important element of City building which the TLAB Members take seriously. Members have sought to enhance all aspects of the legitimacy of the TLAB process in the provision of fair, impartial and accessible Hearings. While a learning curve on 'systems' was obvious again in 2018, a gaining acceptance is also obvious and apparent.

I also reassert that, 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 or self-define the concept of a TLAB Hearing to be closed and where only the 'evidence' of experts truly counts.

However, no TLAB hearing can ever be entirely *de novo*. The *Planning Act* requires that the TLAB give consideration to: a litany of provincial policy as well as prescribed statutory tests and, as well, the decision on the initial consideration. The TLAB Members sitting on an appeal are provided all Committee filings and must be conscious

of the decision made by the applicable City Committee of Adjustment panel and the materials before it. To the extent that those 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.

Many stakeholders who addressed 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.

This is a responsibility the TLAB Members respect; in 2018, they began to draft a more cogent 'Statement of Principles' expected to be released with the new Rules revisions in the late spring, 2019.

The TLAB website continues to post its schedule of Hearings by property address: [www.toronto.ca/tlab](http://www.toronto.ca/tlab).

TLAB Members also continue to provide outreach to organizations that would like to know more about the appeal process. The TLAB Members have continually responded to invitations to educate groups, through Council members and otherwise, including a variety of public and private organizations.

Finally, on behalf of the TLAB, appreciation is expressed to the many ratepayer organizations, planning and legal consultants, members of the public and trade associations who made oral and written deputations before multiple Business Meetings of the TLAB in 2018. Those expressed views contributed appreciably to Member education and the revisions undertaken to the Rules and Forms.



### 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 third original appointee resigned in late 2018. Beginning in 2019, but appointed in the late fall of 2018, four new Council appointees will bring the TLAB Hearing complement to 10 Members. A brief summary of the current Members follows. As well, late in 2018 Council authorized the appointment of a Vice Chair of the TLAB, selected by the TLAB from among its Members. The TLAB elected its Vice Chair, Member Dino Lombardi, for a one-year term on December 5, 2018, with responsibilities commencing effective January 1, 2019.

#### 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. Vice Chair

##### **Dino Lombardi, Vice Chair** (effective January 1, 2019)

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.

### 3. 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.

#### **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** (resigned December, 2018)

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.

**Sean Karmali (Appointed December, 2018)**

Sean Karmali obtained his law degree from Osgoode Hall Law School. He also holds two Master's degrees, one in Political Science from the University of Toronto and the other in Public Policy from York University. Sean has served on the City of Toronto's Committee of Adjustment panel for 7 years as a decision-maker and chair. He works in the public service where he has held progressive positions within various departments. Sean's skills include statutory interpretation, planning law, and ADR.

### **Justin Leung (Appointed December, 2018)**

Justin graduated from York University's planning program in 2013 and first entered the workforce in the public sector. He then joined the Town of Aurora as Secretary-Treasurer, Committee of Adjustment and as a Planning Technician. He is continuing to learn by pursuing a college certificate for AutoCAD and is active in his community by volunteering with the Bruce Trail Conservancy.

### **Shaheynor Talukder (Appointed December, 2018)**

Shaheynor Talukder is a lawyer practicing in estates law and business law in Toronto. She is active in the Toronto community and volunteers at several community-based and law organizations. She is a graduate of the University of Toronto (M.Sc.) and University of Ottawa (J.D.). She is also a member of the Society of Trust and Estate Practitioners, Canada.

### **John Tassiopoulos (Appointed December, 2018)**

John is a senior urban designer within WSP Canada Group Ltd. with 19 years of experience. He is a graduate of the University of Toronto in Urban and Economic Geography and Political Science. He has experience in urban design and planning ranging from large to small scale projects. He also serves as an instructor with the RAIC Syllabus program and as a member of the Vaughan Design Review Panel. He previously served as a member of the Toronto East York Committee of Adjustment (2009-2015).

## **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.
- May 22<sup>nd</sup>, 2018:** TLAB moves into the permanent facilities complete with three hearing rooms.
- June 18<sup>th</sup>, 2018:** TLAB Chair appears before the Planning and Growth Management Committee to present TLAB's first Annual Report (2017).
- July 23<sup>rd</sup>, 2018:** City Council approves an increase in the Toronto Local Appeal Body Member composition from seven (7) to ten (10) part time Members including the Chair.
- City Council amends the terms of reference for the Toronto Local Appeal Body to provide for a Vice Chair.
- November 14<sup>th</sup>, 2018:** TLAB instituted a new hearing management control processes including limiting assignments of motions to 1 motion/day to Members; scheduling 2 day sittings in defined circumstances of joint files and multiple parties; and withholding communications to Members in defined

circumstances to protect the integrity of the Hearing processes.

**November 26<sup>th</sup>, 2018:** TLAB adopts a new Written Motion Practice whereby administrative staff no longer issue fixed motion dates for written motion requests but will provide a deadline for perfecting the Notice of Motion. The deadline provided will be a date after the election due date. Staff will also provide to the moving party the following submission deadlines that are to be included in the Notice of Motion; the Response submission deadline (7 calendar dates after the Notice of Motion submission deadline) and the Reply to Response deadline (11 calendar days after the Notice of Motion submission deadline).

**December 5<sup>th</sup>, 2018:** Toronto Local Appeal Body appoints a Vice Chair.

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.



## VI. The TLAB Appeal Process\*

\*NOTE: The timelines noted herein are applicable to 2018; in 2019, proposed revisions to the Rules change the timelines and MAY result in slightly different processes and requirements.

The timelines associated with document submission are outlined below to illustrate the steps involved with the TLAB appeal process. Please refer to the Rules of Practice and Procedure for compliance purposes.

- |                             |   |
|-----------------------------|---|
| <b>Step 1:</b>              | <b>Appealing a Committee of Adjustment Decision</b>   |
| <b>Submission Required:</b> | Notice of Appeal (Form 1).  |
| <b>Due Date:</b>            | 20 calendar days after the Committee of Adjustment Decision for minor variance appeals.<br>20 calendar days from the Committee of Adjustment Notice of Decision issued for consent appeals. |
| <b>Responsibility:</b>      | The Appellant.  |
| <br>                        |   |
| <b>Step 2:</b>              | <b>Notice of Hearing</b>  |
| <b>Submission Required:</b> | Notice of Hearing (Form 2).   |
| <b>Due Date:</b>            | 5 calendar days (objective) after the receipt of a Notice of Appeal from the Committee of Adjustment.<br>Full identification of timelines for procedural obligations.                       |
| <b>Responsibility:</b>      | TLAB Staff.   |
| <br>                        |   |
| <b>Step 3:</b>              | <b>Applicant's Disclosure of Revisions</b>  |
| <b>Submission Required:</b> | Applicant's Disclosure of Revisions (Form 3).   |
| <b>Due Date:</b>            | 15 calendar days after the Notice of Hearing is issued.   |
| <b>Responsibility:</b>      | The Applicant.  |
| <br>                        |   |
| <b>Step 4:</b>              | <b>Identification of Parties and Participants</b>   |
| <b>Submission Required:</b> | Notice of Intention to be a Party or Participant (Form 4).  |

**Due Date:** 20 calendar days after the Notice of Hearing is issued.  
**Responsibility:** Parties and Participants.

**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.

In 2018, multiple Business Meetings with formal, posted on-line Notices and Agendas addressed many matters. Primary among these, for deputations, were the considerations applicable to Rule and Form revisions experienced by and projected through interest groups.

### 1. Business Meetings

<b>January 26<sup>th</sup>, 2018:</b>	Establishment of the framework for the revision of the Toronto Local Appeal Body's Rules of Practice and Procedure
<b>April 18<sup>th</sup>, 2018:</b>	Day 1 – Public Consultation on the Toronto Local Appeal Body's Rules of Practice and Procedure
<b>May 30<sup>th</sup>, 2018:</b>	Day 2 – Public Consultation on the Toronto Local Appeal Body's Rules of Practice and Procedure
<b>July 4<sup>th</sup>, 2018:</b>	Business Meeting and receipt of legal advice on the review process of the Toronto Local Appeal Body's Rules of Practice and Procedure
<b>July 31<sup>st</sup>, 2018:</b>	Receipt of legal advice on the review process of the Toronto Local Appeal Body's Rules of Practice and Procedure
<b>September 10<sup>th</sup>, 2018:</b>	Business Meeting and receipt of legal advice on the review process of the Toronto Local Appeal Body's Rules of Practice and Procedure

- October 29<sup>th</sup>, 2018:** Business Meeting and Day 3 – Public Consultation on the Revised draft of the Toronto Local Appeal Body's Rules of Practice and Procedure.
- November 23<sup>rd</sup>, 2018:** Business Meeting and receipt of legal advice on the review process of the Toronto Local Appeal Body's Rules of Practice and Procedure
- December 5<sup>th</sup>, 2018:** Business Meeting, adoption of revised Procedural Bylaw, election of Vice Chair and review of the Toronto Local Appeal Body's Rules of Practice and Procedure as revised by external legal.

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.

There is one aspect of the citizen deputations that the TLAB Members agreed to bring to Council's attention.

During the Rules deputations, some local citizen groups envisaged reliance on being able to access assistance in case management and advice. There was some hope that the provincial initiative of funding a 'Local Planning Appeals Support Centre' might offer some opportunity.

Ratepayer organizations, and the public generally, continue to look for ways and means to elevate the appreciation of receptiveness by the TLAB Members to lay citizen evidence juxtaposed against that of professionally qualified counsel and consultants.

While TLAB Members strive to ensure that all contributions receive like consideration, the public remains skeptical that their resources cannot match the professional witnesses and interests of proponents of land development who stand to gain economically from land use approvals.

The resources of the TLAB do not extend to providing professional advisors or detailed procedural advice.

The TLAB has recommended contacting the several Planning Programs at City resident universities, Ryerson University, the University of Toronto and York University, for program mandates that could include community assistance programs.

With the advent of the provincial election in 2018, the 'Provincial Support Centre' initiative was cancelled.

Despite this, citizen groups continue to ask for assistance at levels that TLAB Staff cannot support, especially in respect of active files.

Council may wish to give consideration to having City Staff host information sessions on Committee of Adjustment and TLAB practices and procedures and, perhaps, on advocacy training and advice.

## 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 business days from the date TLAB receives an appeal from the Committee of Adjustment (COA))**

Of the appeals received, **86.5 percent** were scheduled within **5 days** of TLAB receiving the appeal file from the Committee of Adjustment. **28.9 percent** were issued a Notice of Non Compliance within **5 days** of TLAB receiving the appeal file from the Committee of Adjustment. On average, appeal matters were scheduled for hearings within **4 days** of TLAB receiving the appeal.

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

Of the appeals scheduled, **11 percent** of matters were scheduled within the **100 day mark; additionally, 23.7 percent** of hearings were scheduled **110 days out, 27.1 percent** of hearings were scheduled **120 days out** and **37.3 percent** of hearings were scheduled **121 plus days out**. On average, hearings were scheduled **116 days** from the day a Notice of Hearing is issued.

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

Of the decisions issued, **52.3 percent** were issued within the 14 day mark. The average time taken to issue a decision was **25 days**.

#### **D. Timely disposition of appeal matters. TLAB appeals are to be completed within 120 days from the date the Notice of Appeal is received by the Toronto Local Appeal Body.**

As of February 2019, of the appeals that were completed in 2018, **58.4 percent** were completed within the **120 day** mark. The average time taken to dispense of matters from the time an appeal is received by the Toronto Local Appeal Body to the time a decision was issued, was **137 days**.

See as well: Summary Statistics Schedule for performance metrics.

## 2. Performance Metrics

Month appeal is commenced by the Appellant	Appeal Expiry Date to Date Received by TLAB	<b>Screening Time</b> (Date Appeal is Received by TLAB to Date a Notice of Hearing is issued)	<b>Scheduling Time</b> Date Notice of Hearing is issued to First Scheduled Hearing Date <b>(Does not include:</b> Adjournments, Continuations or withdrawals) <b>**By month scheduled</b>	<b>Decision Time</b> Hearing Date to Decision issued  <b>**By month Decision is issued</b>	<b>Disposition Time</b> Date Appeal is Received by TLAB to Date Decision is Issued  <b>**By month appeal received by TLAB</b>
	(Average in Days)	(Average in Days)	(Average in Days)	(Average in Days)	(Average in Days)
January	14	4	106	23	178
February	17	3	125	29	146
March	20	3	127	22	148
April	14	4	106	27	123
May	15	6	106	22	156
June	7	3	105	37	129
July	10	3	105	20	121
August	13	3	98	29	91
September	14	3	119	20	140
October	13	5	122	27	**No Disposition time yet. Hearings scheduled into February 2019
November	12	3	138	24	**No Disposition time yet. Hearings scheduled into March 2019
December	13	3	143	33	**No Disposition time yet. Hearings scheduled into April / May 2019
<b>2018 Average</b>	<b>13.5</b>	<b>4</b>	<b>116</b>	<b>26</b>	<b>137</b>
<b>2017 Average</b>	<b>17.2</b>	<b>6</b>	<b>110</b>	<b>18</b>	<b>142</b>
<b>2017 vs 2018</b>	<b>Decrease of 27 %</b>	<b>Decrease of 33%</b>	<b>Increase of 5%</b>	<b>Increase of 44%</b>	<b>Decrease of 3.5%</b>
<b>Targetted Service standard</b>	<b>N/A</b>	<b>5 days</b>	<b>100 days</b>	<b>14 days</b>	<b>120 days</b>



### 3. Summary Statistics

<b>Number of TLAB Appeal Files Received</b>	2017	2018	2017 vs. 2018	Notes
Total Number of Appeals	314*	419	Increase of 25%	*2017 Appeals received as of May 3, 2017
Total Number of Motions	28*	95	Increase of 268%	*2017 Motions heard as of June 3, 2017
Total Number of Hearings	253*	318	Increase of 26%	*2017 Hearings held as of August 31, 2017
Avg. Hearing Length (Days)	3 hours and 52 Minutes	1.3 days		

<b>Appeal Type</b>	2017	2018	2017 vs. 2018
Minor Variance	158	204	Increase of 29%
Consent	4	10	Increase of 150%
MV + Consent	152	205	Increase of 35%

<b>COA Districts</b>	# of TLAB Appeals Received by COA District in 2018	% of TLAB Appeals Received by COA District in 2018	Total COA Files received by COA District in 2018	% of COA Decisions Appealed to TLAB By COA District in 2018
Toronto & East York	138	36%	1377	10%
North York	123	25%	940	13%
Etobicoke York	94	27%	1038	9%
Scarborough	58	13%	492	12%

<b>Appellant Type</b>	2017	2018	2017 vs. 2018
Multiple Appellant Types	11	14	Increase of 27%
City of Toronto	23	44	Increase of 91%
Applicant/Appellant	101	220	Increase of 118%
Appellant – Not Applicant/Owner	198	168	Decrease of 15%

Appeal Outcome		Appeal outcome speaks only to the disposition of the appeal.
Allowed	157	
Dismissed	95	
Settlement Hearing	19	

Application Outcome		Application outcome speaks to the decision made with respect to the requested consent and/or variance(s).
Adjudicative Dismissal	7	
Withdrawn	46	
Approved	13	
Approved with conditions	158	
Party initiated settlement	19	
Variances refused	28	

Month Decision Issued in 2018	Number of Decisions Issued	Number of Review Requests by Month Initiated
January	24	1
February	14	
March	25	1
April	20	
May	22	1
June	28	1
July	28	
August	30	1
September	19	1
October	21	1
November	29	1
December	11	2
<b>Total</b>	<b>271</b>	<b>10</b>

Review Request Disposition	10
Original Decision Confirmed	7
Granted -New Hearing Ordered	2
Original Decision Suspended – Pending Revisions	1

## IX. Practice Directions

The TLAB periodically issues Practice Directions that provide consistent guidance to Panel Members, the public and Staff on matters of procedure.

Those adopted in 2017 (and 2018) that continue are:

No. 1:           **Standard Consent Conditions**                               (Approved June 14<sup>th</sup>)

Outlines the standard consent conditions that should be imposed in the case of the granting of a consent.

No. 2:           **Default Format of Motion Hearings**                               (Approved October 11<sup>th</sup>)

Stipulates that motions requesting a written or electronic hearing, the adjournment of a Hearing date, or seeking costs from another Party will be treated as a written motion unless specified otherwise.

No. 3:           **Document Referencing**   (Approval *TBD*)

Provides direction to Staff regarding the creation of a Common Documents Base containing public documents that are frequently referenced in Hearings.

No. 4:           **Video Evidence**   (Approved October 11<sup>th</sup>)

Lays out the requirements that parties must adhere to if they are presenting video evidence at a Hearing.

No. 5:           **Service of Physical Documents**                                       (Approved October 11<sup>th</sup>)

Stipulates the procedures that must be followed by parties if an individual requires an exemption to the digital filing requirements.

## X. Going Forward: Recommendations

In 2018, a schedule for final public consultation for the review and adoption of revised TLAB Rules, Forms, Practice Directions, Principles and, eventually, a re-written Public Guide, was well in hand.

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

The TLAB is grateful for the support shown by Council, Court Services and municipal Staff in the reception and consideration given to the **Recommendations** of the 2017 Annual Report.

These discussions and actions were instructive to record concerns and methodologies to address the matters raised. Some were addressed constructively within the limitations of Staff advisors and Council's formation and budget guidelines applicable to the TLAB. As time has passed and experience is gained, a number of identified issues remain and new one's are discovered. These latter aspects result in a series of **Recommendations** arising from the 2018 calendar year.

These include:

1. The TLAB appointments are part time for fixed terms all expiring on the same date. Recent appointments (4) have different expiry dates. The TLAB is susceptible and vulnerable to: part time appointments; file demands becoming too onerous: resignations; and group term sunsets.

### **Recommendation 1:**

**Council provide latitude for staggered term appointments and instruct the creation of a roster of candidates for the ten (10) positions that are capable of being appointed, taking office and conducting sittings within a three (3) month period.**

2. The role of Members is compensated on a limited list of piece work components generally unrelated to their time component.

No compensation is afforded to a Member for: 1. site attendances, 2. Appeal file reviews, 3. out-of-pocket expenses in: site, Business Meetings and Hearing attendances: home offices, equipment, supplies and Hearing preparation 4. Business Meeting preparation; 5. participation in canvasses and policy formulation; 6. draft Decision reviews; or 7. administrative tasks of Rule, Form, Party and Participant communications/directions and Practice Direction review and drafting.

The piece work stipends for Business Meeting and Hearing attendances are independent of the duration of these attendances and offer themselves entail ten (10) hour days to complete matters without the necessity of rescheduling.

**Recommendation 2:**

**Provision be made for the incorporation of compensation for administrative time demands on all Members equally, either in the City Clerk’s review of City Administrative Tribunals or in the allowance of an annual undifferentiated fixed stipend.**

NOTE: Previously, I wrote in a Confidential Report dated October 26, 2017 to Court Services on the subject of Member Remuneration. As Chair I detailed therein a more detailed litany (from that above) of Member responsibilities for which no remuneration is provided. These were identified as ‘*Unpaid Items, Clarifications, Additional Funding Requests*’. For those items involving ‘clarifications’ as to expense reimbursement, some matters other than those listed above, have been addressed. In the main, however, the time demands on Members is not commensurate with compensation. In summary, Member retention (1 departure in 2018) and recruitment has been and will continue to be adversely impacted by these matters which Court Services alone is unable to address. I requested but was not provided any summary of exit interviews.

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 and now, 2018, by the TLAB Members has demonstrated an obvious need for an earlier determination.

The TLAB was advised in early 2019 of a recommendation moving in the direction requested but not consistent with the merit, quantum or content of the foregoing.

I therefore repeat the Recommendation of the 2017 Annual Report on this subject:

"Recommendation (3) - 2017:

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."

3. Consent and variance applications frequently, if not routinely involve, the review and approval of project Site Plans, elevations, massing, shadows and other features, functions and, especially, 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. The TLAB has made enhanced usage of the consent and variance 'condition' granting power to achieve Official Plan goals of consistency, design conformity, area character and site development objectives, based on local considerations.

**Recommendation 3:**

**Consideration be given to crafting standard conditions of site plan approval and, in conjunction with the mandatory preparation of a Site Plan Application Planning Assessment Report (SPAPAR), the delegation of site plan approval jurisdiction to the TLAB, particularly in circumstances where severance, consent or variance jurisdictions are involved.**

4. An important service offering of the TLAB is a right in a Party aggrieved by a Decision and Order, to request its review and reconsideration by the tribunal. This is a right offered under provincial enabling legislation and the TLAB has incorporated it under its Rules of Practice and Procedure. It engages a process for the full review of the original TLAB Decision and Order.

Increasingly, Review Requests are being employed despite express criteria and limitations that it not be an attempt simply to reargue a case for a second, and different, decision.

The purpose of a Review Request is to identify any errors, omissions of fact, law or natural justice that might result in a different decision. They are an important element of potentially curtailing 'Leave to Appeal' applications to the Divisional Court.

Review Requests are arriving at a rate of one per month, which, in terms of Hearing dispositions and consideration demands, is statistically significant. A Review Request typically engages all the resources of the TLAB in processing: a Member site inspection; possible Motion or Hearing; formal decision writing. It requires a written disposition and, possibly, a complete new Hearing being ordered.

In 2018, the TLAB in its Rules review has sought ways and means to improve the Request for Review process, to provide greater clarity and direction in participation.

Currently, Council had no fee for invoking a Review Request under Rule 31 of the TLAB, an oversight perhaps that can contribute to an indiscriminant invocation of the process without full regard to its attendant administrative and adjudicative responsibilities and obligations.

**Recommendation 4:**

**Council amend its Fees, Licenses and Charges By-law to incorporate a 'TLAB Review Request Fee' in the amount of \$300 per property address, for the institution of a review request under Rule 31 of the Rules of Practice and Procedure of the Toronto Local Appeal Body.**

5. Individual ratepayers claim that individual application appeals require filing fees that are a barrier to public participation. The request is that there be one filing fee per property, independent of the number of Committee of Adjustment decisions



associated with the property and independent of the number of appellants sheltering/appointing a single representative.

**Recommendation 5:**

**Council amend its Fees, Licenses and Charges By-law to provide that an appeal from a Committee of Adjustment (COA) decision to the TLAB be on a property address basis, independent of the number of COA decisions appealed and on an appellant basis, but independent of the number of conjoined persons associated with, represented by or declared in alignment with a particular appellant.**

6. In 2018 there were a small number of 'Leave to Appeal' applications made from the TLAB to the Divisional Court. Typically these originate with an Applicant for planning permission but can be initiated by a ratepayer organization or individual.

Unlike the former Ontario Municipal Board (now Local Planning Appeal Tribunal), the TLAB is not a statutorily named party to such Leave applications, entitling it to notice of the application and to status to participate as-of-right, as the TLAB determines appropriate.

The absence of authority creates cost to the TLAB in monitoring for Leave applications and seeking status prior to addressing the Court on matters pertaining to its house.

This absence of express status being conferred was a likely oversight in the provincial drafting of enabling legislation empowering municipalities to create local appeal bodies, such as the TLAB.

As a consequence, applications for Leave (and the appeal, if Leave is granted) can result in only the Applicant being before the court. The City is only a party if it had participated in the appeal in the first instance and only then if instructed to take a position on the matter.

It is inappropriate that the TLAB not be available as a friend of the court to ensure that the integrity of TLAB practices, its Rules and its Decisions are appropriately and properly represented to the Court.

No individual ratepayer or association is likely able to sustain the cost of representation before the Divisional Court. Where the City is not present or is conflicted and where there is no opposing party, the TLAB can and should provide appropriate advocacy to ensure matters relevant to the tribunal are correctly presented.

**Recommendation 6:**

**The City, through Council instructions to City Legal, seek provincial enabling legislation providing necessary service and party status for the Toronto Local Appeal Body on Leave to Appeal and judicial review applications made under the *City of Toronto Act* or other provincial legislation in respect of the TLAB jurisdiction.**

**ALL OF WHICH IS RESPECTFULLY SUBMITTED**

*April, 2019*

## XI. Contact Information

### General Inquiries:

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

Tel: (416) 392-4697

Fax: (416) 696-4307

### TLAB Manager:

Susan Paolucci

Email: [Susan.Paolucci@toronto.ca](mailto:Susan.Paolucci@toronto.ca)  
(416) 392-3261

### Address:

40 Orchard View Boulevard

Second Floor, Suite 253

Toronto, ON

M4R 1B9

