

GL14.8 Attachment 1

Attachment 1: Chair's 2019 Annual Report

Administrative Penalty Tribunal

CHAIR'S 2019 ANNUAL REPORT

PAUL SOMMERVILLE

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Background

The Administrative Penalty Tribunal is an independent adjudicative body consisting of 25 public Panel Members referred to as Hearing Officers. Hearing Officers are appointed by City Council and provide a second, independent review and decision in a parking violation dispute. Hearing Officers have the authority to affirm, vary or cancel the decision of a Screening Officer and extend time for payment. In carrying out this mandate, the Tribunal is authorized to conduct pre-hearings and mediations. Decisions of the Hearing Officers are final – there is no further appeal.

The Administrative Penalty System assumed its jurisdiction on August 28th 2017. The Tribunal is governed by the Statutory Powers Procedure Act, its own Rules of Practice, Guiding Principles, The Municipal Code of Conduct, and is governed by Chapter 610 of the Toronto Municipal Code.

Chair's Opening Remarks

Report covers a period from January 1, 2019 to December 31st 2019.

The advent of the Administrative Penalty System (APS) represents a fundamental change of direction in the management of administrative penalties in general, and parking violations in particular.

The former regime, which operated within the Provincial Offenses Act, was widely regarded as less than optimal. Relatively insignificant cases dragged on and on over months without resolution. There was a realization that valuable Court resources were being squandered in simply managing and adjudicating minor administrative penalty matters to uncertain and often unsatisfactory outcomes.

It became apparent to many across the Province that a better way of managing the extremely high volume of municipally generated cases needed to be found. To this end the Province enacted enabling legislation which empowered municipalities to establish Administrative Penalty Tribunals to address these deficiencies, and a number of municipalities, including the City of Toronto, have done so.

The enabling legislation, the City By-Law, and City administration made it clear that the adjudication of administrative penalties needed to accomplish a few critical goals:

- Manage the high volume of cases definitively within proportional time frames;
- Provide finality with respect to outcomes; and
- Respect the rights of litigants under administrative law requirements and norms.

The Administrative Penalty Tribunal plays a key role in the achievement of these goals. It is an expert review body operating in a sophisticated IT environment, with demonstrable adherence to administrative law requirements. It provides timely and definitive outcomes.

And equally important it does so with sensitivity and respect for the unique characteristics and circumstances of the litigants. This is a core value of the Tribunal, one that gives practical effect to the enabling legislation's inclusion of procedural safeguards and Undue Hardship criteria.

In conducting its work, the Tribunal is mindful that it represents a meaningful intersection between City administration and citizens. It is our goal to ensure that litigants coming before us leave with a sense that, successful or unsuccessful, they have had a full, fair, and effective opportunity to make their case.

All of this occurs within the current context of parking regulation - a key feature in maintaining the quality of life within the City. We have a keen sense of the importance of effective

enforcement of City regulations and exercise our mandate so as to reinforce that principle with expertise and an appropriate measure of sensitivity.

Submitted respectfully on May 25, 2020

A handwritten signature in black ink, appearing to read "Paul", with a large, stylized loop at the end.

Paul Sommerville

Chair, Administrative Penalty Tribunal

Panel Members

The inaugural Administrative Penalty Tribunal body was appointed to a four year term of office by City Council on May 26th, 2017, based on the recommendations made by the citizen-Member Nominating Panel.

The Membership of the Tribunal represents a good cross section of skill sets and experience and reflect the diversity of the community.

Members of the Administrative Penalty Tribunal (as of Dec. 31/19)		
Richard Austin	Beri Sudershen	Deborah Boudreau
Daniel Boyer (resigned)	Cherie Daniel	Joanne Foot
Cheryl Gaster	Christina Gural	Mumtaz Jiwan
Kathleen Kelly	Randal Montgomery	Nicola Mulima (resigned)
Jonathan Ng	Sancia Pinto	Andy Radhakant
Vince Scaramuzza	Fizul Sima	Paul Sommerville (Chair)
Sylvia Verkerk		
Natasha Bronfman (Appointed 2019)	Ben Drory (Appointed 2019)	Suzanne Graves (Appointed 2019)
Jenny Gumbs (Appointed 2019)	Larry Swartz (Appointed 2019)	Walsh, Helen (Appointed 2019)

Training

Adjudication Course

All new Members are encouraged and supported to take the Society of Adjudicators and Regulators (SOAR) Certificate in Adjudication course. This course is offered in conjunction with Osgoode Hall Law School. Nine Members enrolled in the course in 2019.

This preparation is considered to be highly relevant for the Members. The exercise of the Tribunal's mandate takes place within an Administrative Law environment, and ensuring that the requirements of the law are scrupulously observed is key to our success and public confidence in our process. Because many of the litigants are not represented, it is important that Members have a firm grasp of the characteristics of fair hearings, procedural fairness and decision making.

To this end, the Tribunal has also undertaken significant situation- specific training in addition to the SOAR certification. Since our inception the Tribunal has achieved a high degree of expertise in discharging our mandate with acuity and sensitivity, and is well prepared to undertake further tasks requiring these skills. This process has been significantly aided by the fact that a substantial number of Tribunal Members are already experienced licensed legal practitioners.

Business Meeting

On March 22, 2018, several presentations regarding a governance overview were presented, which included the following.

- A presentation on Revenue Services practices and processes
- A presentation on Toronto Parking Enforcement processes and practices

A presentation on Legal Services practices and processes

Technical Training

This Tribunal is virtually paperless. All case information, notes, images are contained within the Ad Hoc Presentation Manager System. Hearing Officers have been trained in the capabilities of the Software as it has evolved. The Software packages consist of:

- Ad Hoc – used to review case details
- Liberty Recorder: Digital Recordings of the proceedings
- Qmatic: Queuing system to call up the next litigator
- Q-SYS: Soft phone system used to call interpreters and integrated to Liberty for digital recording
- Access to Toronto Municipal code chapter 610 and parking violations.

Tribunal Staff has produced a reference binder for the use of Members which includes a collection of resources for Members for their use in the discharge of their responsibilities. It is intended to be a "living" document.

Mentoring

Technical and substantive support is readily available on an on-going basis from Chair, support staff and other divisions. The Tribunal has placed an emphasis on hands-on, highly practical training. While the Tribunal is a very modern, IT intense agency, a key part of its work involves a high degree of sensitivity to the unique circumstances of the offences and the litigants who come before us. This aspect of our work requires more than simple technical expertise, but also a dedication to the principle that litigants have explanations and personal circumstances that are important for our thoughtful consideration of their cases. It is important to the Tribunal that litigants leave their hearings with a clear sense that they have been listened to and their circumstances taken into account, within the scope of our authority, as established by Council.

Business Meetings

The Tribunal plans to have at least one business meeting per year.

To date, the Tribunal has had the following business meetings:

January 25, 2018: APT overview, Practice Directions, Review of Rules of Procedures, Tribunal Processes and Experiences.

March 22, 2018: Addressed issues of interest respecting interpretation of the various parking by-laws, the Revenue Services processes, and the processes of the Legal Services division.

April 11, 2019: Addressed issues of interest respecting proposed updates and amendments to Notices, communication to Parking Enforcement Unit and training session to showcase new features on case management program and new Q-SYS application for calling interpreters.

November 22, 2019: Addressed issues of interest respecting additional resources for the public, orientation/refresher sessions led by Public Appointments Office, City Manager's Office and Integrity Commissioner.

Facilities

- 40 Orchard View Blvd, Suite 253

The Administrative Penalty Hearing Process

A person who disputes a parking violation with a Screening Officer and is unsatisfied with the decision, may, within 15 days of that decision date, request a review of that decision before an Administrative Penalty Tribunal Hearing Officer.

That Request for review may be completed in written form and left with the Screening office to forward to the Tribunal, Emailed, or may be completed and filed on-line. In appropriate cases the Tribunal conducts hearings by way of teleconference. This process is indicated to accommodate the demonstrated disability of the Owner, which makes attendance of the Owner at our offices inordinately challenging or impossible.

Hearing Applications

Tribunal Administration staff receive and review the incoming applications, and process, schedule and serve notices of hearing date for those matters accepted.

Hearing Application Activity	2018		2019	
Requests for hearing received	27456		15503	
Requests refused	546	2%	948	6%
Accepted	26796	98%	14567	94%
Notice of Hearing issued	26765		16679	
Hearings still to be scheduled	31		255	
Requests to change hearing date	2040		1972	

Hearing Dispositions

Hearings are held at 40 Orchard View Blvd, a location which is shared with the TLAB. The hearings are conducted basically at a wicket, mainly one on one.

All information relating to the cases is electronic, and may include applications, supporting documentation, photographs, decisions, and notations from the Screening Officer. This information is accessible to the Hearing Officer at the time of review. All hearings are recorded. In appropriate cases hearings are handled by way of teleconference. This occurs when the

demonstrated disability of the Owner makes attendance at 40 Orchard View Blvd inordinately challenging or impossible.

Hearing Dispositions	2018		2019	
Prepaid prior to hearing date	1218	5%	2095	10%
Affirmed	16815	67%	2434	12%
Affirmed in Absentia	1966	8%	3303	16%
Varied	1410	6%	1616	8%
Varied - hardship	1260	5%	4757	23%
Canceled	1469	6%	2138	10%
Canceled - hardship	551	2%	2421	12%
Adjourned	343	1%	1972	10%
Agenda Total	25069		20736	

NOTE: All Variances are attributable to Hardship, similarly Cancellations

Chair Undertakings

The Chair reviews and makes decisions on exceptional processes. In the case of Motions to Set Aside a decision, the applicant has failed to attend the hearing and was automatically affirmed with additional fees added as required by the bylaw. The Chair will review a Motion application to restore the matter and schedule a hearing if the grounds are sound.

In addition to reviews, the Chair also receives and responds to complaints of hearing procedure or conduct in writing Chair Undertakings	2018	2019
Motion to Set Aside Decision	484	943
Motion - change date	518	
Intention to Dismiss		
Complaints	22	26

The role of the Chair requires deep background in Administrative Law, and extensive experience in managing hearings. Subject matter- specific training and mentoring is a key component of the position, activities that are ongoing and build on extensive exposure and experience with Administrative Law processes, and the confident application of statute and case law. We have faced, are facing and are likely to face issues that require the application of all of that background and experience. The role requires a great deal of time, thought and judgement.

Support Staff

The Tribunal administration office is managed by seven Court Services staff who are responsible for, but not limited to: processing and scheduling hearing applications, notification of hearing schedules, responding to complaints of process and inquiries, payroll reconciliation, ensuring the posting agenda & materials on the Web site, providing technical support in the operation of Digital Recordings, Queuing Systems, Case management system and records management. In addition, the City designate performs the duties of Secretary at business meetings, which includes securing appropriate facilities, arranging for equipment, takes and transcribes minutes and is knowledgeable of the rules of procedure.

Support from Court Services staff has been exemplary. From management through to hands-on support, Court Services has been able to provide expert assistance to the Chair and the Members. This is a reasonably complex and demanding environment and Court Services has been there every step of the way to facilitate the relatively seamless transition we have had.

Challenges

- The Tribunal faced some challenges related to the availability and quality of interpreter services. Staff continue to work on ensuring that this service is available to the public in as seamless a manner as possible.

Practice Directions

Several Practice Directions have been issued:

- A Practice Direction requiring Members to ensure that litigants are treated invariably with respect;
- A Practice Direction requiring Members to review the respective case files prior to the appearance of the litigant at the hearing window.
- A Practice Direction respecting the Introduction of the Hearing to the Owners
- A Practice Direction respecting Interpretive guidance respecting Chapter 610 of the Municipal Code

Strategic Plan for 2020

Continued Training: It is our goal to create a highly effective and expert body capable of discharging our mandate efficiently and effectively in every case. This includes continuous improvement of technical expertise respecting the broad range of parking regulations. In addition, we are committed to the thoughtful and consistent application of well informed and sensitive approaches to the wide variety of special circumstances presented by litigants.

Further, the Tribunal fully supports the motion adopted by City Council July 2019 to request the Province to develop and make amendments to the appropriate regulations to permit the City of Toronto to use an Administrative Penalty System for offences enforced through the use of an Automatic Speed Enforcement system and Red Light Camera system (IE6.9). It is also our goal to ensure that the Tribunal has an overall skill set capable of administering a wider range of Administrative Penalty subject matters seamlessly and confidently, should our mandate evolve.

This requires ongoing training and mentoring which will be undertaken throughout the year.

Recommendation

Prospective new Members should be carefully assessed to ensure that they have the necessary skill set and temperament for the work of the Tribunal. A legal background is very helpful, as is an ability to quickly assess the merits of alternate narratives. Members need to be cool headed and not confrontational, even when provoked. These attributes are essential to the successful interaction with the public at the Tribunal.

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