

Toronto Licensing Tribunal 2019 Annual Report and Update on 2018 Recommendations

Date: October 19, 2020

To: General Government and Licensing Committee

From: Executive Director, Municipal Licensing and Standards and Director, Court Services

Wards: All

SUMMARY

In accordance with the Relationship Framework approved by City Council for the Toronto Licensing Tribunal, the Chair's 2019 Annual Report is being communicated to the General Government and Licensing Committee for information. This report also responds to General Government and Licensing Committee's direction through Item GL8.18 to report back in 2020 on any recommended changes to the Toronto Licensing Tribunal's hearing processes, policies, or procedures arising from the Chair's 2018 Annual Report. Actions taken by staff related to the five (5) recommendations from the 2018 Annual Report are described in the comments section.

The Toronto Licensing Tribunal is an independent quasi-judicial body comprised of seven residents appointed by City Council for a four-year term. The tribunal receives administrative support from the City of Toronto's Court Services Division. The Toronto Licensing Tribunal makes decisions about business licensing matters that are brought forward by Municipal Licensing and Standards or at the request of a licensee or applicant, in accordance with the City of Toronto Municipal Code Chapter 545, Licensing, and Chapter 546, Licensing of Vehicles-for-Hire.

In 2019, the Toronto Licensing Tribunal processed 155 case files. The tribunal scheduled 225 appearances before a hearing panel. There were 51 hearing dates, including 4 special hearing dates and one-motion hearing. In addition, there were 33 pre-hearing dates. These resulted in 162 meetings between a holder or an applicant and Municipal Licensing and Standards.

As indicated in the Toronto Municipal Code and the Relationship Framework for the Toronto Licensing Tribunal, the Annual Report contains recommendations of the Chair for improvements or changes to the tribunal's policies and procedures.

RECOMMENDATIONS

The Executive Director, Municipal Licensing and Standards and the Director, Court Services recommend that:

1. The General Government and Licensing Committee receive this report and the Toronto Licensing Tribunal Chair's 2019 Annual Report, as contained in Attachment 1, for information.

FINANCIAL IMPACT

There are no immediate financial impacts beyond what has already been approved in the current year's budget.

The Chief Financial Officer and Treasurer has reviewed this report and agrees with the financial impact information.

DECISION HISTORY

On October 7, 2019, General Government and Licensing Committee requested the Director, Court Services, in consultation with the Executive Director, Municipal Licensing and Standards, to report back to the General Government and Licensing Committee on any recommended changes to the Toronto Licensing Tribunal's hearing processes, policies, or procedures arising from the Tribunal Chair's 2018 Annual Report. The link to the General Government and Licensing Committee's decision is available at:

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2019.GL8.18>

On October 7, 2019, General Government and Licensing Committee received for information GL8.18: Toronto Licensing Tribunal 2018 Annual Report. The link to the Chair's report is available at:

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2019.GL8.18>

On March 7, 2019, City Council adopted new rates of remuneration for tribunal members as part of its consideration of the 2019 Capital and Operating Budgets. The link to City Council's decision is available at:

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2019.EX2.5>

COMMENTS

The Toronto Licensing Tribunal (the tribunal) is an independent quasi-judicial body consisting of seven residents appointed by Toronto City Council for a four-year term. The tribunal receives administrative support from the City's Court Services Division. Hearings are open to the public, scheduled every Thursday, unless otherwise noted.

Due to the impact of the Coronavirus on tribunal operations, the tribunal has rapidly responded by implementing electronic hearing measures. Tribunal processes will continue to evolve to respond to the needs of the public and take advantage of opportunities provided by technological improvements.

The tribunal conducts itself in accordance with the *Statutory Powers Procedure Act* and its members are bound by the *Municipal Conflict of Interest Act*.

The tribunal has the authority to:

- Approve or refuse an application for a license;
- Approve or refuse the renewal of a license;
- Place conditions on a license; or
- Suspend or revoke a license.

Municipal Licensing and Standards licenses stationary businesses such as restaurants, public garages, and commercial parking lots, as well as mobile businesses such as vehicles-for-hire, tow truck drivers and owners, and driving instructors.

Municipal Licensing and Standards shall refer a license to the tribunal for a hearing if the applicant has not met the screening criteria or may bring an applicant before the Toronto Licensing Tribunal if there are reasonable grounds to believe the conduct of the applicant will result in a breach of the law. Applicants who are denied a licence by Municipal Licensing and Standards may request a hearing before the tribunal by completing a Request for Hearing application.

Decisions of the tribunal may be the subject of an Application for Judicial Review through the Ontario Divisional Court. The tribunal will issue written Reasons for Decision for each contested case before the tribunal, which are posted online.

The 2019 Annual Report for the period of January 1, 2019 to December 31, 2019 from Mary Lee, Chair of the Toronto Licensing Tribunal, is contained in Attachment 1.

Status of Recommendations – 2018 Annual Report

This section of the report responds to General Government and Licensing Committee's direction through Item GL8.18 to report back in 2020 on any recommended changes to the Toronto Licensing Tribunal's hearing processes, policies, or procedures arising from the Chair's 2018 Annual Report. The five recommendations and a description of actions taken by staff are outlined below.

Recommendation #1 – Membership Size, Staggered Terms, and Vice-Chair

Membership Size

The 2018 Toronto Licensing Tribunal Annual Report recommended increasing the number of tribunal members from seven (7) to eight (8). This recommendation was discussed by the City Manager's Office, Court Services, and the Public Appointments Secretariat in 2019. The review did not support an increase in the tribunal's complement as the tribunal's case load was manageable with existing members in place.

Staggered Terms

The 2018 Toronto Licensing Tribunal Annual Report recommended staggered terms for tribunal members. Staggered terms were not implemented because the Relationship Framework for the Toronto Licensing Tribunal outlines that members are appointed for a term coincident with the term of Council. The Tribunals Nominating Panel, responsible for recommending candidates for appointment to City Council, takes into account the importance of continuity and tries to maintain a balance between incumbents and new appointees. Current members of the Toronto Licensing Tribunal were appointed for a term of office ending on November 14, 2022, and until successors are appointed.

Vice Chair

The 2018 Toronto Licensing Tribunal Chair's Annual Report recommended the addition of a Vice-Chair. The tribunal members discussed the Vice-Chair role at a business meeting on June 19, 2019. It was decided there was no need for a Vice-Chair role. In September 2019, the current Chair of the Toronto Licensing Tribunal completed a further analysis of the Vice-chair position through consultation with the Manager, Tribunal Operations and the Supervisor of the Toronto Licensing Tribunal. The review concluded that a Vice-Chair was not necessary to meet the tribunal's policy and operational objectives.

Recommendation #2 – Working with Unrepresented Parties

The 2018 Toronto Licensing Tribunal Annual Report recognized that unrepresented parties need sufficient resources and support. Information related to the Toronto Licensing Tribunal's processes and procedures is available on the City's website. This includes:

- Information about the tribunal
- Instructions for filing a hearing request
- Tips on how to prepare for a hearing
- What to expect at the pre-hearing or hearing
- Hearing agendas and previous decisions
- Links to relevant municipal by-laws and provincial legislation

City staff are considering enhancements to pre-hearing processes to better serve unrepresented parties. Potential enhancements include adding Language Line translation services at the pre-hearing stage and encouraging proposed resolutions through pre-hearings which can be confirmed in writing by tribunal members. The

prehearing pilot project draft model was reviewed by Legal Services and the members of the tribunal in February 2020. Further discussions around this proposal are underway after a period of practice.

Recommendation #3 – Changes to the Rules of Procedure

The 2018 Toronto Licensing Tribunal's Annual Report recommended changes to the tribunal's Rules of Procedure. These included reducing the quorum for a hearing panel from two members to one, establishing a mechanism to avoid a deadlock if there is a two-member panel, making it possible for a one-member hearing panel to conduct a motion or make an order that is procedural in nature, and allowing a member who conducts a pre-hearing conference to preside at the hearing if there was no settlement. This recommendation resulted in a review of the Rules of Procedure 16.(1) to 16.(4) inclusive by the current Chair of the Toronto Licensing Tribunal, the tribunal Supervisor, members of the tribunal, and Legal Services. At its business meeting on October 23, 2019 the members unanimously confirmed a rule change where the tribunal may at its sole discretion decide to proceed with a hearing panel of one (1) member on consent matters.

Further rule revisions consistent with the recommendations in the 2018 annual report were tabled at the tribunal's business meetings with the support of Legal Services. Potential rule changes arising from this meeting are currently in draft. They require further review by the members and will be reported on in the Chair's 2020 Annual Report. Changes to the Rules of Procedure are within the authority of the tribunal in accordance with the *Statutory Powers Procedure Act, R.S.O 1990*.

Recommendation #4 – Sharing between Toronto Adjudicative Tribunals

The 2018 Toronto Licensing Tribunal Annual report indicated that the City's adjudicative boards and tribunals would benefit from the sharing of best practices, training, members, and resources. The Society of Ontario Adjudicators and Regulators (SOAR) has an existing community of practice for this purpose and the City's tribunal members are encouraged to complete SOAR training. Given that an existing community of practice is available to the City's tribunal members, staff do not recommend the establishment of a duplicate resource.

Recommendation #5 – Standardize per diem payment policies across Toronto's Adjudicative tribunals

In 2018 and 2019, the Public Appointments Secretariat within the City Clerk's Office met with various stakeholders, tribunal administrators, supervisors, and others to review the City's remuneration policy for tribunals. The purpose of this review was to identify any gaps or inconsistencies in remuneration for the City's various arms-length adjudicative bodies.

The review resulted in harmonized remuneration rates and stipends for members of Adjudicative Boards (Tribunals). For members of the Toronto Licensing Tribunal, this resulted in an increase in per diem rates and an annual stipend. In addition, the Chair's annual stipend was increased. These new rates of remuneration were adopted by

Council as part of its consideration of the 2019 Capital and Operating Budgets and came into effect on April 1, 2019.

CONTACT

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SIGNATURE

Carleton Grant
Executive Director
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ATTACHMENTS

Attachment 1: Chair's Annual Report 2019 Toronto Licensing Tribunal