

Attachment 1: Chair's 2020 Annual Report

Administrative Penalty Tribunal

CHAIR'S 2020 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, 2020 to December 31st 2020.

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 Offences 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 April 07, 2021

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

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. 31/20)		
Richard Austin	Beri Sudershen (not active)	Deborah Boudreau
Daniel Boyer (resigned)	Cherie Daniel	Joanne Foot
Cheryl Gaster	Christina Gural	Mumtaz Jiwan
Kathleen Kelly	Randal Montgomery	Nicola Mulima (resigned)
Jonathan Ng (resigned)	Sancia Pinto	Andy Radhakant
Vince Scaramuzza (resigned)	Fizul Sima (not active)	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.

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.

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.

Court Services Tribunal Administration staff have 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.

As otherwise outlined in this Report, the COVID-19 Emergency has caused the Tribunal to suspend in-person Hearings in favour of Webex-based electronic proceedings. At the present time all of the Tribunal's Hearings are conducted in this format. Hearing Officers have been trained in the Webex methodology, and in the adjustments necessary to ensure our process meets the requirements of Administrative Law and fairness. This transition has been successful, and the Tribunal is processing a substantial volume of Appeals on a daily basis.

Mentoring

Technical and substantive support is readily available on an on-going basis from the Chair, Court Services 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 had no business meetings in 2020.

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.

The COVID-19 Emergency has caused the Tribunal to provide relief from these deadlines, according to direction from the City and the principle of fairness. In conjunction, the Tribunal also observes and respects the Saving Grace Policy enacted by Toronto City Council.

Hearing Applications

Court Services, 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	2019		2020	
	Count	Percentage	Count	Percentage
Requests for hearing received	15503		16470	
Requests refused	948	6%	77	1%
Accepted	14567	94%	16316	99%
Notice of Hearing issued	16679		7696	47%
Hearings still to be scheduled	255		6710	41%
Requests to change hearing date	1972		155	

Hearing Dispositions

At the present time, and throughout most of 2020 Hearings are held by way of Webex-based electronic methodology. This format accommodates the key elements of fair and effective hearings, including the ability to share evidence, including enforcement photographs, the receipt of Owner evidence, the Affirmation of testimony, and the retention of a digital record of the proceeding which is accessible to the public upon request for a small fee.

Prior to the COVID-19 Emergency in-person Hearings were conducted at 40 Orchard View Blvd, a location which is shared with the TLAB. That location has been fully prepared for a return to in-person Hearings, when that transition is mandated by the City.

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 any other format inordinately challenging or impossible.

Hearing Dispositions	2019		2020	
Prepaid prior to hearing date	2095	10%	639	6%
Affirmed	2434	12%	760	7%
Affirmed in Absentia	3303	16%	949	9%
Varied	1616	8%	1999	19%
Varied - hardship	4757	23%	2709	25%
Canceled	2138	10%	1080	10%
Canceled - hardship	2421	12%	787	7%
Adjourned	1972	10%	1876	17%
Agenda Total	20736		10799	

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	2019	2020
Motion to Set Aside Decision	943	144
Complaints	26	11

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 director and 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 COVID-19 Emergency has had a dramatic effect on Tribunal operations.

On March 14, 2020, the APT Chair provided direction to Court Services to issue Notices of Postponement for all in person hearings scheduled between March 16, 2020 and April 3, 2020.

The decision was based on Court Services' recommendation and the completion of a risk assessment based on a list of considerations provided by the Government of Canada.

On March 15, 2020, the Ontario Court of Justice issued an order and extended its period of postponement for all Provincial Offences Act matters scheduled up to and including May 29, 2020. Further, Mayor John Tory declared an emergency in the City of Toronto.

On March 20, 2020, the Government of Ontario passed an emergency order (O.Reg. 73/20) under the Emergency Management and Civil Protection Act.

Given the developments from the week of March 23, 2020 and based on a further risk assessment completed for all scheduled APT hearings until May 29, 2020, on March 27, 2020, Court Services made recommendations to the Tribunal Chair to consider extending its period of postponement up to and including May 29, 2020. On March 27, 2020, APT Chair issued a direction to extend the period of postponement from April 3, 2020 to May 29, 2020.

On April 28, 2020, based on Court Services' recommendations, APT Chair approved electronic hearings for certain matters and for matters postponed between March 16, 2020 and May 29, 2020.

With the declaration of the Emergency in mid-March 2020, the Tribunal postponed all pending in-person Hearings, and did not schedule new Hearings. As the Emergency evolved it became clear that a return to in-person Hearings would be materially delayed. Accordingly, the Tribunal developed a WebEx-based electronic format for Hearings. This effort included the creation of new processes ensuring adequate Notices of Hearing, enhanced Document reception capabilities, and, most importantly, development of an electronic Hearing format that conforms to our legislative mandate, is sure-footed, reliable, and as easy as possible to access for Vehicle Owners.

This evolution also involved extensive training in the new processes for Members. The transition to this electronic format has enabled the Tribunal to continue to serve the public according to our mandate. We have been addressing a significant backlog of cases.

Over this same period, Court Services Staff, with the active support of City Health and Safety resources and the Joint Health and Safety Committee transformed our in-person Hearing space at 40 Orchard Park View Boulevard into a safe and protective environment in contemplation of the eventual return to the in-person Hearing format. This was a major effort involving extensive renovation of the space, ensuring that physical distancing, ventilation and cleaning standards were met or exceeded. This was confirmed by City Health and Safety resources who pronounced the space ready for the resumption of in-person Hearings at such time it is safe to do so under Public Health guidelines.

Office Preparations:

- Protecting Yourself Posters will be up throughout the office including: Wash your hands, sneeze and cough into your sleeve, discard used tissues immediately, avoid touching face, mouth and nose, and avoid contact with people who are sick.
- COVID-19 Self-assessments posters: Signage posted for self-assessments at all COT entrances
- Hand sanitizer stations set up at each entrance/exit / by high travelled locations
- PPE Available: Disposable gloves, disposable masks, hand sanitizer, hand wipes and office disinfectants.
- Staff are required to utilize wipes or other cleaning, disinfecting products to maintain a disinfected environment.
- No sharing of personal items or food, no shaking of hands when greeting others.
- Office communication tools such as telephone, email and Cisco Jabber can be used to communicate throughout the day.

The COVID-19 Emergency has also had an impact on the content of our Decisions. While each Member is independent, and not subject to direction per se, we have established common practices which recognize the special challenges Vehicle Owners face in this difficult time. These practices include heightened sensitivity to the financial consequences of the COVID-19 Emergency for Vehicle Owners, relaxation of deadlines, and extended periods of time-to-pay.

2020 presented many challenges for many people in Toronto. Our response has been directed to trying to confidently continue to provide service according to our mandate. To be sure, the evolution to the electronic format for Hearings creates its own challenges. We are concerned that many Vehicle Owners who wish to appeal the disposition of their parking violation notices may be inhibited or impaired in doing so because of technical resources or competency. However, we are confident that our processes meet a high standard of care, and are as intuitive and as easy to access as possible. Court Services division continues to provide accessibility requests for the public as required and the Tribunal will continue to evolve to meet the needs of Vehicle Owners.

Of a more prosaic nature, the Tribunal faced some challenges related to the availability and quality of interpreter services. Staff continue to work on ensuring that this important facility 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 Vehicle Owners
- A Practice Direction respecting Interpretive guidance respecting Chapter 610 of the Municipal Code

Strategic Plan for 2021

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 an even 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.

Contact Information

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