



Attachment 1: Chair's 2019 Annual Report

Toronto Local Appeal Body



THIRD ANNUAL
CHAIR'S 2019 ANNUAL REPORT
IAN JAMES LORD



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I. Transmittal Letter

Mayor and Members of Council

March-June, 2020

City Manager

Court Services

In December, 2016, Council constituted a new statutory tribunal, the Toronto Local Appeal Body (the 'TLAB').

I have had the honour to serve the City of Toronto (City) as its first Chair from inception through to December 13, 2020.

Provided herein is a record of the TLAB's activities in calendar 2019. Some statistics provide a comparison with 2017 and 2018. 2017 was a partial year as scheduled Hearings did not commence until after the second half of 2017.

This Report for 2019 is a snapshot of an entire (second) full year of operations.

This Report also contains some 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 headings:

- 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 to include OPA 320 revisions respecting '*Neighbourhoods*' policies, as well as site specific amendments.

I am equally pleased to report that the constitution, staffing, support and oversight by Court Services has been excellent. Moreover, Court Services tribunal staff have embraced the creation of systems and liaison with the public that is modern, comprehensive, responsive and continues to exemplify and be a credit to the public service.

In 2018, due to three resignations and an increase in tribunal composition from seven to ten part-time members, Council appointed six (6) new Members at various stages bringing the total TLAB compliment to ten (10). Four of these Members began service in



the first quarter of 2019. Late in 2019, one (1) further Member resigned accepting service with the provincial Local Planning Appeal Tribunal (LPAT). Council appointed a replacement Member in late 2019 who will begin service in the first quarter of 2020.

In December 2020, four (4) Member appointments expire; as Chair, I had requested in mid-2019 that the City canvass their intentions respecting re-appointment to ensure continuity and ensure consistent file management. Integration of a new Member, once identified can take four (4) months. Tribunal Member booking assignments run an additional four (4) months in advance.

I encourage the City Member appointment process to:

- a). **identify one (1) year in advance of their term expiry, a Member's intention to seek re-appointment; and**
- b). **maintain a roster of Member appointment candidates,**

such that vacancy and resignation replacement Members can be in service to the public for assignments within four (4) months.

To date, I am assured that the City's Public Appointments office is on track to complete the appointment process to ensure continuity of service.

I hope this Report is informative and its **Recommendations, Article X**, considered as a component to future City governance.

Respectfully submitted,

X

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



II. Chair's Opening Remarks

There have been several objectives in 2019 including:

- 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 2019, with the assistance of external legal counsel, the TLAB Members held more than the requisite four (4) Public Meetings including the conclusion of deputations to review the initial TLAB *Rules* and its all electronic *Forms*, adopted originally in May 2017 to govern TLAB activities.

A revised set of ***Rules of Practice and Procedure (Rules)*** was adopted and set in force, including new and updated *Forms* effective May 6, 2019. All file matters with a *Notice of Hearing* issued on or after that date are governed by the *Rules*. The revisions, while extensive, retained the core structure for the deliberative processing of an appeal to the TLAB, while responding to several suggestions from representative interest group and the general public, for improvements.

These revisions by the end of 2019 had begun to be worked into the TLAB diet with generally positive results and acceptance.

As well, extensive revisions were made to the TLAB **Public Guide**, an on-line publication that provides advice on TLAB procedures.

The presence of '*Rules*' and their necessity in law, results in a approach in Hearing settings that is admittedly legalistic but very customary for the framework of tribunals in English common law jurisdictions dealing with real property matters. If anything, the process of revision demonstrated that continuous monitoring of *Rules* topics remains warranted.



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

To that end, the revisions instituted greater accountability on disclosure, and extended certain filing time-lines to permit a greater opportunity for discussion, settlement negotiations or mediation. They also provide for greater flexibility in public participation including new privileges for persons wishing ‘Participant’ status, over the more onerous responsibilities of a full ‘Party’.

The revisions also clarified the right and obligations in accessing and participating in a TLAB Review Request of a Member’s decision.

In 2019, the public depositions evidenced a growing acceptance of the TLAB, its *Rules*, *Forms*, Practice Directions, 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.

Another principle the Members strive to meet is that the disposition of variance and consent applications should be timely based on site familiarization and full disclosure. As seen from the statistical analysis, while the TLAB goal for disposition remains about one-third the time of the former provincial adjudication process, some slippage has occurred in TLAB’s service level. There were a number of factors at work in 2019 that contributed: a Member departure; a replacement appointment and lengthy training period; increased workloads; long hearings, adjournments, variable Member availability; and, to a lesser extent, competing demands for hearing dates.

The TLAB facilities at 40 Orchard View in the Yonge Eglinton area continue to provide effective Hearing venues despite minor inconveniences in on-site facilities, particularly HVAC.

It is noteworthy that Member appointments are part-time, premised upon an expectation of one to two (1-2) Hearing Days per week with significant additional responsibilities. These include: the review of all materials pre-filed for each appeal; the conduct of a site



inspection of the subject property; the review and rendering of a written decision and the preparation and attending of multiple business and select training meetings.

The actual and realistic time commitment from Members needs to be properly identified and appreciated from the outset of recruitment and appointment. A Hearing scheduled for one day requires at least one-half day for the site attendance and file familiarization. Decision writing can easily occupy a full day or more.

The expectation of one to two (1-2) Hearing Days per week exceeds a forty (40) hour work week.

With a revolving complement, an increased number of Hearing events and many combined consent/variance hearings occupying two or more days, the reality is that many Members are working full weeks. Added to the file stream are Motions, Mediations, Settlement Hearings and Review Requests which are incapable of being scheduled in the normal 'anatomy of a TLAB Appeal' timeline, but must be dealt with on an expedited basis. Review Requests continue in the order of one additional matter per month; all require decisions and several can result in ordering new hearings being added to the schedule.

There is considerable dissatisfaction with the remuneration system for TLAB Members, based primarily on piece-work allocations for hearing days, written decisions and business meeting considerations. Members, excluding the Chair and Vice Chair, are appreciative of the recognition in 2019 of an annual stipend of \$1500 for administrative considerations.

A request, made in late 2019, to address the inadequacy of a fixed allowance of \$200 for decision writing remains under review and an answer is pending. This aspect is addressed more fully later and in the Recommendations.

The Tribunal has also requested that the City certify to Revenue Canada that Members are not 'employees'; that the City position on the issuance of T2200 Income Tax Forms be clarified. Namely, to indicate that the City takes no position on Member expenses incurred in the business of TLAB for home offices and related disbursements, that are not otherwise reimbursed by the City.



A response in 2020 from the Comptroller on this issue has gone some distance to clarify that members of City Tribunals, including the TLAB, are not ‘employees’ of the City. In one instance, the historical ambiguity shown by the City issuing, not issuing and then offering to issue T2200 Forms contributed to an audit by Revenue Canada. While the maintenance of a ‘home offices’ is not formally required by the City, for Members home offices are a real and essential element of their service and any ambiguity as to their efficacy is a direct disincentive to the retention of Members.

This Annual Report was entirely prepared from a ‘home office’.

On a performance metric, from experience in 2019, it is expected that a consistent and stable Member compliment of ten (10) persons should be sufficient to address the workload of Committee appeals, provided that an equal sharing of Member responsibilities can be sustained. If it is not, enterprise risk management, as above indicated, continues to warrant measures to ensure the availability of a roster of candidates for timely appointment.

Furthermore, as a tribunal, the TLAB has continued to address the alleged divide between professional and citizen evidence – a factor that can alienate community members. ‘Participants’ before the TLAB need to feel comfortable in voicing their concerns without procedural intimidation, 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 ‘local knowledge experts’ and assure that unrepresented members of the public have an opportunity to expressing their views, subject to the *Rules* and the prerequisites of disclosure. “Trial by ambush” is not supported by the TLAB.

In addition, TLAB Staff have further worked to overcome, in 2019, systemic constraints to its ‘all-electronic’ processes. Now, filings can be done online in greater capacity and evidence can be easily exchanged and accessed. A ‘Common Document Book’ record has been advanced with the potential to cut the repetitive nature of attachments to witness statements, exchanges and filings.

In 2019, a meeting and exchanges with a representative of the Office of the Ombudsman has led to improved publication of complaint procedures, respecting both



Members and Staff, such that the public have full disclosure and recourse to identifiable processes. This information is in the **Public Guide** and is accessible on-line.

Internally, the TLAB has instituted regular Operations Meetings between the Chair, Vice Chair, Senior Tribunal Staff and Court Services to ensure the timely consideration of a multitude of discussion points. For attending Members, these meetings, although an additional demand on time, are productive.

I am pleased to again report to Council that a prolific body of administrative law has evolved from the TLAB through the conscientious decision writings of its Member. This jurisprudence is giving a growing basis of consistent interpretation of Councils policies and goals as expressed in its Official Plan. Consistency in approach for the respect, reinforcement and the gradual evolution of City neighbourhoods worthy of preservation and protection, following the policy priorities set by Council, remains 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 2019, 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. Bill 108, now enacted, has returned this pre-eminence Hearing role to the provincial Local Planning Appeal Tribunal for all similar and additional matters outside the City.

This approach of a new hearing remains contentious to some who mistakenly understand the concept to be closed to only the 'evidence' of experts. In reality, no Hearing held by the TLAB can be entirely *de novo*. The *Planning Act* requires that the TLAB give consideration to, among other things, a litany of provincial policy, prescribed statutory tests and, as well, the decision of the initial consideration. The TLAB Members are provided all Committee filings and must be conscious of the decision made by the applicable City Committee of Adjustment panel. To the extent that the Committee's express reasons, they are a helpful and important contribution to the record provided on



a TLAB appeal. In addition, statutory and common law oblige the TLAB to hear all persons who properly come before it “for that is the duty lying upon anyone who decides anything” respecting the rights and interests, including real property, of citizens.

In 2019 Council requested that City staff report on procedures employed by the Committees and reflected in the work of the TLAB. These included matters such as the consistency of approach to illegal construction, potential improvements to file procedures and the advisability of establishing a City support centre for residents with matters of interest before the Committees and the TLAB. This has resulted in recommendations for efficiencies, communication and education sessions, the latter of which, on matters of Planning and Urban Forestry procedures, are scheduled to be pursued with the TLAB in 2020.

The TLAB Members listen attentively to all contributors. City Council members have generally continued on the advice of the Integrity Commissioner to decline any attempt at interventions or comment in the appellate role of the TLAB. This is viewed as a responsible and appropriate advice that is longstanding from the Integrity Commissioner and serves to reinforce Tribunal independence, freedom from perceived influence and the avoidance of the potential for judicial review. This aspect is addressed further below and under ***Recommendations, Article X***.

Many stakeholders who address 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.

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

The TLAB Members in 2019 continued to be available for outreach to organizations that would like to know more about the appeal process. The TLAB Members remain receptive to invitations to educate groups, through Council members and otherwise, including a variety of public and private organizations. Informational videos instituted form a further outreach effort.



III. Panel Member Biographies

The inaugural seven (7) Members of the TLAB were appointed to a four (4) year coterminous term of office by City Council on December 13th, 2016 based on the recommendations made by the citizen-member Nominating Panel. In 2017, and transitioning into 2018, two (2) Members of the original appointment roster resigned and were replaced by two (2) new Council appointments. A third original appointee resigned in late 2018 and another in 2019. Beginning in 2019, but appointed in the late fall of 2018, four (4) new Council appointees and a fifth in late 2019 brought the TLAB Hearing complement to ten (10) Members.

A brief summary of the past and current Members follows. As well, in July 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 for a one-year term on December 5, 2018, with responsibilities that commenced January 1, 2019. The Vice Chair was re-elected for a second one year term in December 10, 2019.

The more recent appointments are for staggered terms. The TLAB Member term appointments in place are ending in 2020 (5), 2022 (4) and 2023 (1).

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. As well as tribunal Chair, he continues as Editor of the *Ontario Municipal Tribunal Reports* for Thomson, Reuters and is a Fellow of Lambda Alpha International, a world-wide membership land economics society.



2. Vice Chair

Dino Lombardi, Vice Chair (effective January 1, 2019 and 2020)

Dino Lombardi has been a professional planner since 1998 and has over 30 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 in the Greater Toronto Area managing complex planning and development applications/projects. Dino actively volunteers with the Ontario Professional Planners Institute and the Professional Standards Board for the Planning Profession in Canada. And has guest lectured in the University of Toronto's Masters Planning program and in York University's School of Public Administration. He is a member of the Simcoe Chapter of Lambda Alpha International, a world-wide membership and honorary land economics society.

3. Members

Gillian Burton (resigned, November 2019)

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.

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).

Ana Bassios (Appointed December, 2019)

Ana Bassios is a City Planner with over thirty years of experience in the municipal sector. Ana has led large-scale public consultations, completed major municipal planning policy plans, (including a municipal Official Plan) and negotiated resolutions to contentious development applications. She is a former Commissioner of Planning in the GTA. A long-time resident, Ana appreciates the uniqueness of each of Toronto's neighbourhoods and the desire of communities to have a say in how they change.



IV. TLAB Milestones

- July 8th, 2014: City Council approves the establishment of a Local Appeal Body.
- March 31st, 2016: City Council adopts the Local Appeal Body governance structure.
- July 12th, 2016: Members of the Nominating Panel are appointed by City Council.
- December 13th, 2016: City Council appoints Local Appeal Body Panel Members recommended by the Nominating Panel.
- March 29th, 2017: Chapter 142 of the Toronto Municipal Code is adopted by City Council by By-law 294-2017.
- May 3rd, 2017: Rules of Practice & Procedure, TLAB Forms, Procedural Bylaw, and Public Guide are adopted by TLAB. TLAB begins accepting Committee of Adjustment appeals.
- June 14th, 2017: Guiding Principles are adopted by TLAB. External legal counsel for TLAB is selected.
- July 23rd, 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.
- December 5th, 2018: Toronto Local Appeal Body appoints a Vice Chair for the Tribunal.
- March 4th, 2019: Toronto Local Appeal Body adopts revised Rules of Practice & Procedure with an effective date of May 6, 2019.



May 6th, 2019: Toronto Local Appeal Body's Revised Rules of Practice & Procedure, revised Forms and Public Guide are effective and live on TLAB's website.

See: Article VII for 2019, Quarterly Meetings and Summary Statistics Schedule (Article VIII) for performance metrics.



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 (variances only – two day Hearings for combined variance/consent matters)) should be scheduled with the definitive timeline of the Rules, approximately 100 days from the Notice of Hearing to the Hearing Date.
- 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 fourteen (14) business days 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 2019 post May 6, 2019; the revisions to the Rules contributed to different processes and requirements commencing on that date.**

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

Step 1: Appealing a Committee of Adjustment Decision
Submission Required: Notice of Appeal (Form 1).
Due Date: 20 calendar days after the Committee of Adjustment Decision for minor variance appeals.
20 calendar days from the Committee of Adjustment Notice of Decision issued for consent appeals.

Responsibility: The Appellant.

Step 2: Notice of Hearing
Submission Required: Notice of Hearing (Form 2).
Due Date: 5 calendar days (objective) after the receipt of a Notice of Appeal from the Committee of Adjustment.
Full identification of timelines for procedural obligations.

Responsibility: TLAB Staff.

Step 3: Applicant's Disclosure of Revisions
Submission Required: Applicant's Disclosure of Revisions (Form 3).
Due Date: 20 calendar days after the Notice of Hearing is issued.

Responsibility: The Applicant.

Step 4: Identification of Parties and Participants
Submission Required: Notice of Intention to be a Party or Participant (Form 4).



Due Date: 30 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: 60 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: 60 calendar days after the Notice of Hearing is issued.

Responsibility: Parties (Form 12 and Form 14) and Participants (Form 13). Responses and Replies are governed by Rule 16.

Step 7 (Optional): Filing a Motion.

Submission Required: Notice of Motion (Form 7).

Due Date: 15 days before the Motion and 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) in accordance with City disclosure practices. Four (4) quarterly business meetings are scheduled throughout the year, in advance.

1. Business Meetings

- March 4th, 2019: Business Meeting, adoption of Revised Rules of Practice and Procedure, review of Complaint Protocol.
- May 17th, 2019: Business Meeting, review of Complaint Protocol, review of Service Measures and a review of a Party's Right of Further Review.
- August 23rd, 2019: Business Meeting, refresher orientation session delivered by City Manager's Office, Public Appointment's Office and City Clerk's Office, review of Public Guide, review of Rule 31.10 of TLAB's Rules of Practice & Procedure.
- December 10th, 2019: Business Meeting, election of Vice-Chair for 2020, review of Practice Direction #6 (Expert Witnesses), consideration of standard consent conditions.

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.



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. It is important to note that in 2019 the TLAB administratively scheduled ‘variance only appeals’ for a one (1) day sitting and ‘combined variance/severance appeals’ for two (2) day sittings. In most circumstances this proved realistic and satisfactory; however, several instances (some 35% of all scheduled Hearings) saw hearings engaging lengthier periods with consequent interruptions in scheduling. Hearings that extended over several days for unanticipated reasons, themselves interrupted by scheduling slots that are not contiguous, has had the effect of lengthening timeframes from the Notice of Appeal to final hearing dates and decisions.

1. Service Standards

A. Timely review and setting of Hearing Dates (5 business days target metric from the date TLAB receives an appeal from the Committee of Adjustment)

Of the appeals received, on average, appeal matters were scheduled for hearings within 4 days of TLAB receiving the appeal. No change from 2018.

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

Of the appeals scheduled, on average, matters were scheduled 124 days from the day a Notice of Hearing is issued. This is an increase of 7% from the 2018 performance of 116 days.

C. Timely issuance of Decisions (14 business days target metric from the date of Hearing or Motion to decision).

Of the decisions issued, the average time taken to issue a decision was 50 days, a 92% increase over the 2018 average of 26 days.



D. Timely disposition of appeal matters. TLAB appeals are to be completed within 120 days as a target metric from the date the Notice of Appeal is received by the TLAB to the date the decision is issued.

Of the appeals that were completed the average time taken to dispense of matters to the time a decision was issued was 191 days, up 39% from the 2018 average of 137 days.

It is noted that these latter two statistics are disappointing.

A number of factors appear to be contributing to the variability in the statistic: hearings that involve multiple sittings with non-contiguous scheduling; decision writing delays arising from less than diligent fulfillment of undertakings by counsel and expert witnesses; a modest increase in the number of Hearings (13%); Member complement changes and Member issues in the delivery of timely decisions.

Decision writing is perhaps the most important deliverable a TLAB Member has to offer the public. Not only do decisions complement the body of administrative law established by this tribunal but also they are the most important contributor to the public that their issues and concerns have been heard and addressed. In modern jurisprudence, the 'reasons' are to not only to provide clear and implementable dispositions of the Applications on appeal, but also communicate to the unsuccessful party or participant, just why that circumstance has occurred.

Decisions can also contribute significant value to the City economy.

Decisions properly articulated constitute the difference between respect for the institution created by the City and the expression of dissatisfaction and the propensity for discord. Decisions that have neither the incentive, time or capacity to be carefully prepared result not only in the potential for political complaint but also the exercise of the right to make Review Requests under the TLAB Rules of Practice and Procedure, or seek judicial leave to appeal, to the Divisional Court of the Superior Court of Justice.

Both aspects have direct cost aspects to the decision making system, the City and to the Parties and Participants who are entitled to just, timely and fulsome reasons.



This aspect is raised again in ***Recommendations***, Article X.

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 | Screening Time (Date Appeal is Received by TLAB to Date a Notice of Hearing is Issued) | Scheduling Time Date Notice of Hearing is issued to First Scheduled Hearing Date (Does not include: Adjournments, Continuations or withdrawals **By month scheduled) | Decision Time Hearing Date to Decision issued **By month Decision is issued | Disposition Time Date Appeal is Received by TLAB to Date Decision is Issued **By month appeal received by TLAB |
|--|---|--|--|---|--|
| January | | | 109 | 76 | 163 |
| February | 13 | 4 | 123 | 35 | 130 |
| March | 12 | 3 | 134 | 23 | 149 |
| April | 12 | 4 | 148 | 64 | 182 |
| May | 24 | 4 | 135 | 20 | 161 |
| June | 14 | 4 | 135 | 41 | 155 |
| July | 11 | 4 | 123 | 38 | 186 |
| August | 3 | 5 | 124 | 50 | 222 |
| September | 9 | 4 | 116 | 42 | 266 |
| October | 4 | 3 | 110 | 60 | 252 |
| November | 7 | 4 | 116 | 50 | 152 |
| December | 7 | 6 | 112 | 96 | 278 |
| 2019 Average | 10.5 | 4 | 124 | 50 | 191 |
| 2018 Average | 13.5 | 4 | 116 | 26 | 137 |
| 2018 vs 2019 | Decrease of 22% | No change | Increase of 7 % | Increase of 92% | Increase of 39% |
| Targeted Service standard | N/A | 5 business days | 100 calendar days | 14 business days | 120 days |

3. Summary Statistics

| Number of TLAB Appeal Files Received | 2017 | 2018 | 2019 | 2018 vs. 2019 |
|--------------------------------------|------------------------|----------|-----------|-----------------|
| Total Number of Appeals | 314 | 419 | 279 | Decrease of 34% |
| Total Number of Motions | 28 | 95 | 70 | Decrease of 26% |
| Total Number of Hearings | 253 | 318 | 361 | Increase of 13% |
| Avg. Hearing Length (Days) | 3 hours and 52 Minutes | 1.3 days | 1.46 days | |

| Appeal Type | 2017 | 2018 | 2019 | 2018 vs. 2019 |
|--------------------|------|------|------|-----------------|
| Variance | 158 | 204 | 169 | Decrease of 17% |
| Consent | 4 | 10 | 3 | Decrease of 70% |
| Variance + Consent | 152 | 205 | 106 | Decrease of 48% |

| COA Districts | # of TLAB Appeals Received by COA District 2019 | % of TLAB Appeals Received by COA District 2019 | Total COA Appeals received by COA District in 2019 | % appealed of TLAB Appeals Filed in Comparison to Total # of COA Appeals Received by COA District in 2019 |
|---------------------|---|---|--|---|
| Toronto & East York | 100 | 36% | 1353 | 7% |
| North York | 88 | 31.5% | 845 | 10% |
| Etobicoke York | 70 | 25% | 788 | 9% |
| Scarborough | 21 | 7.5% | 406 | 5% |

**Committee of Adjustment (COA) numbers as of March 3, 2020 and does not include cancelled or withdrawn application.

| Appellant Type | 2017 | 2018 | 2019 | 2018 vs. 2019 |
|---------------------------------|------|------|------|-----------------|
| Multiple Appellant Types | 11 | 14 | 8 | Decrease of 43% |
| City of Toronto | 23 | 44 | 13 | Decrease of 70% |
| Applicant/Appellant | 101 | 220 | 80 | Decrease of 63% |
| Appellant – Not Applicant/Owner | 198 | 168 | 178 | Increase of 6% |



| Appeal Outcome | 2019 |
|-----------------------|-------------|
| Allowed | 124 |
| Dismissed | 76 |
| Settlement Hearing | 17 |

| Application Outcome | 2019 |
|--------------------------------|-------------|
| Adjudicative Dismissal | 1 |
| Withdrawn | 26 |
| Approved | 20 |
| Approved with conditions | 117 |
| Approved with Varied Variances | 6 |
| Party initiated settlement | 10 |
| Variances refused | 37 |

| Month | Number of Review Requests by Month initiated |
|---------------------------------------|---|
| January | 4 |
| February | 3 |
| March | 1 |
| April | 0 |
| May | 3 |
| June | 2 |
| July | 2 |
| August | 1 |
| September | 0 |
| October | 3 |
| November | 4 |
| December | 1 |
| Total* | 24 |
| *1 review from 2019 still in process. | |

| Review Request Disposition | 2019 |
|---|-------------|
| Review Request Dismissed - Decision Confirmed | 15 |
| Granted - New Hearing | 3 |
| Decision Suspended | 2 |
| Decision Varied | 2 |
| Review Request Suspended | 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, 2018 and 2019 that continue are:

No. 1: Standard Consent Conditions (Approved June 14th)

(revised, February 2020)

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 11th)

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 11th)

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 11th)

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 2019, a schedule for final public consultation for the review and adoption of revised TLAB *Rules, Forms, Practice Directions* and, eventually, a re-written Public Guide was completed, with new *Rules of Practice and Procedure* effective May 6, 2019.

These changes were well received and have become incorporated in the procedural practice of the TLAB without significant complaint or disruption. The lengthening of allowances for participation within the overall timeframe of appeal disposition was well received.

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

The discussions were instructive to record concerns and methodologies to address the matters raised. Some have been addressed constructively within the limitations of Staff advisors and Council's formation and budget guidelines applicable to the TLAB. As time passes and experience is gained, a number of identified issues remain - and new ones are discovered. These latter aspects result in a series of ***Recommendations***.

These include:

1. *Communications*.

The TLAB is susceptible to work assignments of part-time appointments becoming too onerous, low compensation rates, management issues and group term sunsets. The institution of regular Court Services Operations Meetings with the Chair and Vice Chair has provided a vehicle for the identification and resolution of issues. The City benefits from the support, encouragement and conduct of best management practices arising from these exchanges. Court Services have been diligent throughout in satisfactorily addressing Tribunal support on matters within its mandate and the annual budget.

There are, however, as earlier described, instances where that mandate and the 'Guiding Principles' related to the TLAB Tribunal are not fully sufficient. While an Annual Report is a vehicle to raise general performance issues, it can be unsuited



for timely action and response planning. A review of the Guiding Principles may enable TLAB to broaden its ability to communicate pressing issues arising from the TLAB.

In 2019 instances existed where the channel of communications from the Tribunal through Court Services were undefined or diffused. Direct communications with the executive branch to the Controller and the City Manager, copied to the Mayor, were undertaken by the Chair on the Tribunal's behalf. Timely responses remain outstanding partly attributable to the 2020 COVID 19 crisis.

Recommendation 1:

Council request that City Manager's office to review the Guiding Principals for the Toronto Local Appeal Body, in consultation with it, to provide enhanced communication opportunities. Specifically, that authority be supported therein to the creation of a vehicle whereby a Tribunal Chair can convene a meeting of representatives from the City Managers Office, the Controller, a Committee Chair, Court Services and the Tribunal Chair and Vice Chair.

2. Compensation for Decision Writing.

Decision writing is the essential end product of the appellate process.

TLAB decisions regularly deal with combined jurisdictions, multiple parties, questions of law, policy interpretation and neighbourhood dispute resolution.

Decisions are prepared over many hours by each Member without clerical assistance, require access to on-line data records, often listening to the Digital Audio Recordings of the Hearing and require extensive drafting and editing of text, conditions and directions, consultative syntax review by another Member, 'accessibility' review by administrative Staff, document assembly, digital signature exchanges and associated communications.

At issue is how that is valued.



Decisions, except for consent dismissals or abandonments, always exceed five (5) type written text pages, single spaced. Decisions on occasion exceed thirty (30) text pages. The 'average' decision of a Member of the TLAB can be characterized as consisting of between ten to fifteen (10-15) text 'pages', single spaced.

Staff have advised that fully 22 % of all decisions are fifteen (15) pages or more. This needs more context.

As sole Editor and for manuscript reporting services to Thomson Reuters, publisher of the Ontario Municipal Tribunal Reports, I can report that the TLAB manuscript decision pages are double the density of contribution and detailed content to that of comparable provincial tribunals, the Local Planning Appeal Tribunal (OMB) and the Assessment Review Board (ARB).

By admeasurement, on a comparative basis, this City Tribunal, the TLAB, expresses 78% of its decisions at 28 manuscript pages or less, and 22% of its decisions are 30 comparative manuscript pages, or more.

Request for Review Decisions uniformly exceed these measures.

Decisions constitute the distillation of witness evidence in a prescribed format involving recitations of:

1. Introduction
2. Background
3. Matters in Issue
4. Jurisdiction
5. Evidence
6. Analysis, Findings, Reasons
7. Decision and Order
8. Appendices, Attachments and Plans.

Decision writing, as above described, occurs after the conclusion of the Hearing events and all consequent filings of undertakings.



The Member current **stipend** for the above, inclusive of preparing, writing and issuing a Decision and Order involving all of the foregoing engagements is: **\$200**.

Frequently, even typically, TLAB Decisions address economic value to proponents and the City exceeding one (1) million dollars in expected construction costs.

The City stipend allocation is simple not commensurate with the role and responsibilities owing and reflected in TLAB Member decision writing.

As Chair, correspondence directed to City Administration requesting a deliberative review of the remuneration for written decision is under review and a response is pending. Despite that, executive direction is warranted.

Recommendation 2:

Decision writing of the TLAB be accorded a Member stipend commensurate with full day Hearings, with listed consent and administrative exceptions to be defined at the current rate.

3. *Councillor Contact with TLAB*

In 2019, the TLAB experienced an instance whereby a sitting Council Member wrote the TLAB urging the disposition of a matter under Review in a direction supported by the Councillor.

As part of the tribunal case file, it was received and read by the Member conducting the Request for Review, under the TLAB Rule 31, of a Decision and Order previously determined.

As a result, the Member excused himself from further participation in the Review Request and another Member was appointed for its conduct – all to avoid any potential for the appearance of undue influence.

In 2016, the City Council that had been convened and had engaged in the creation of the TLAB was advised by the City Integrity Commissioner that Councillors are



expected to refrain from attending, participating and attempting to influence the decisions on appeal from the Committee of Adjustment Panels, to the TLAB.

In the intervening years, as Chair I can attest to the appreciation by the Members for the uniform respect afforded this advice, by Councillors. It can be disturbing to the Members of the TLAB and unanswerable and unfair to the potentially affected Parties and Participants, in dealing with any Councillor's (or their offices) attempt to contribute during the TLAB Hearing process. Any communication outside the formal Hearing parameters and protections is not welcomed. Such can jeopardize the independence of the Hearing process and result in disadvantage, inconvenience and expense to City residents.

Since the 2016 advice of the Integrity Commissioner was received by Council, a new and revised Council has taken office.

As Chair, with the support of the TLAB, it is felt that the most appropriate vehicle to deal with this subject matter is to request that the advice of the Integrity Commissioner be again communicated to Council, in public session or as determined appropriate.

Recommendation 3:

The City Manager consider providing information to City Council on its role and individual councillor responsibility in relation to avoiding intervention in Toronto Local Appeal Body adjudication.



4. Site Plan Approval

This is a continuing request made by the tribunal.

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 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 'conditions' power to achieve Official Plan goals of consistency, design, area character and site development objectives, based on local considerations.

Recommendation 4:

Council consideration be given to the delegation of site plan approval jurisdiction to the TLAB independent of whether or not severance, consent or variance jurisdictions are involved.

5. Request for Review Decision Fee

This is a continuing request made by the tribunal.

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, the right to access a Request for Review is 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.



Review Requests occurred in 2019 at a rate of two (2) per month, which, in terms of Hearing dispositions, resources and consideration demands, is materially significant.

A Review Request typically engages all the resources of the TLAB in processing: a Member site inspection; multiple considerations, a possible Motion or Hearing. It requires a written disposition, whether dismissed or allowed.

Currently, Council had no fee for invoking a Review Request under Rule 31 of the TLAB.

Recommendation 5:

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.

6. Timely Appointments Consideration

Even at ten (10) part-time Members, the TLAB complement is subject to severe disruptions of service levels due to many numerated factors earlier reviewed.

Clear administrative procedures are in place to address end of term replacements and replacement of Members who resign from service.

The timeliness of that intervention, preparation and response is very important to continuity and the availability of Members to respond to the file stream in accord with the *Rules* of the TLAB.

No provision exists for the *ad hoc* appointment of supplemental, retired or interim Members.



Recommendation 6:

The City Manager institute measures to ensure that the TLAB Member appointment process:

- a). identify one (1) year in advance of term expiry, a Member's intention to seek re-appointment; and**
- b). maintain a roster of on-call candidates for Council's appointment of Members, such that the vacancy or resignation of a Member can result in a replacement in active service to the public, within four (4) months.**

ALL OF WHICH IS RESPECTFULLY SUBMITTED

March-June, 2020

XI. Contact Information

General Inquiries:

Email: tlab@toronto.ca

Tel: (416) 392-4697

Fax: (416) 696-4307

TLAB A/Manager:

Hsing Yi Chao

Email: HsingYi.Chao@toronto.ca

Tel: (416) 392-5546

Address:

40 Orchard View Boulevard

Second Floor, Suite 211

Toronto, ON

M4R 1B9

