

Toronto Local Appeal Body



FOURTH ANNUAL
CHAIR'S 2020 ANNUAL REPORT
DINO LOMBARDI

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I. Transmittal Letter

Mayor and Members of Council

April 22, 2021

City Manager

Court Services

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

I have had the honour to serve the City of Toronto (City) as a Panel Member since January 1, 2018 and I was elected its first Vice-Chair for two consecutive, one-year terms, first in 2019 and then in 2020.

I was also recently appointed Chair of the Tribunal for a four-year term that commenced on December 14, 2020. My appointment followed that of the TLAB's first ever Chair, Ian James Lord, who served as Chair since the TLAB's inception but who decided not to pursue a 2nd term.

Former Chair Lord served with great distinction, putting in place many of the foundational aspects of the Tribunal including its Rules of Practice and Procedure and its guiding Practice Directions. His influence on the TLAB was immeasurable and on behalf of all the Members I would like to take this opportunity to thank him for his extensive contributions and public service to the TLAB and to the City itself.

For each of its years in existence, the Chair has prepared the TLAB's 'Annual Report' for City Council. As the new Chair and the author of the current edition, I am honoured to present the Tribunal's 2020 Annual Report.

The Report, provided herein, is a record of the TLAB's activities in the calendar year 2020. Some statistics provide a comparison with previous years including 2017, the TLAB's first year in service and considered a partial year as scheduled Hearings did not commence until after the second half of 2017.

The years 2018 and 2019, full years of operation for the Tribunal, were the subject of the previous Chair's Annual Reports and the statistics contained in those Reports are provided, herein, for annual comparative purposes and analytical context.

This Report for 2020 is a snapshot of the Tribunal's third full year of operations.

It 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 by 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, Council increased the Tribunal's composition from seven to ten **part-time** members. Council appointed six (6) new Members at various stages bringing the total TLAB complement to ten (10) in 2018 and in 2020, TLAB started the year with a complement of ten (10) Members.

In December 2020, four (4) Member appointments expired and three (3) of those Members re-applied for a 2nd term and were re-appointed. The former Chair did not seek re-appointment and a new Member was appointed by Council as a Member replacement.

In mid-2019, the former Chair requested that the City canvass their intentions respecting re-appointments to the Tribunal to ensure continuity and ensure consistent file management. Given that the integration of a new Member, once identified, can take up to four (4) months and Tribunal Member booking assignments run an additional four (4) months in advance, this was considered an important component of succession management.

In the previous Annual Report (2019), the Chair included the following Recommendation in the '*Going Forward – Recommendations*' section at the end of the Report.

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.

As an update, I can report that there has been productive and on-going dialogue between the TLAB and the City's Public Appointments Office regarding Member succession and replacement plans for the Tribunal and, as the new Chair, I have been assured that this open dialogue will continue. Such communication is imperative to the success of the appointment process, is important to the Tribunal's objective of achieving its targeted service standards, and is fundamental 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,

2021-04-22

X 

Signed by: dlombar

II. Chair's Opening Remarks

There are several objectives that the Toronto Local Appeal Body (TLAB) has attempted to maintain which were set by Council as the TLAB's mandate:

- a) 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 the City of Toronto.*
- b) To sharpen fair and workable 'Rules of Practice and Procedure (Rules)' that the TLAB could adopt and adhere to; and*
- c) Ensure the application of key fairness principles that the public could recognize and rely on.*

These objectives continue to be the foundational tenets of the TLAB's mandate as an independent, quasi-judicial adjudication body dealing with land use planning appeals of decisions from the four panels of City Committee of Adjustment (Toronto & East York, Scarborough, North York, and Etobicoke & York).

This mandate was severely tested in 2020 with the emergence of a global pandemic, the COVID-19 virus, with the result that on March 20, 2020, the Government of Ontario passed an Emergency Order (Ontario Regulation 73/20) under the Emergency Management and Civil Protection Act.

In response, the City of Toronto declared an emergency ordering City services including City Clerk's Office, City Planning, Toronto Building, City Legal, Court Services, and the Committee of Adjustment to reduce its in-person staff presence to comply with the closure of non-essential services.

This closure, retroactive to March 16, 2020, in effect severely impacted the overall functioning of the operations of Court Services, and by association the TLAB's operations.

The consequence was the imposition by the TLAB of a 'Suspension Period' during which all in-person activities of the Tribunal were, in effect, suspended and in-person hearing matters postponed as of March 16, 2020. However, I can report that hearing activity via audio conference continued uninterrupted. Written Hearings and electronic hearing events on consent resumed in June with a fuller resumption of virtual Hearings via video conference resuming on August 14, 2020 when the Suspension Period was eventually lifted.

Although the Suspension Period necessitated the postponement of all Hearing events and most administrative functions at the TLAB, the Tribunal was nevertheless able to continue to offer Applicants and Parties the ability to participate in limited matters during this Period either through audio conference Hearings, Motions for a Written Hearing or electronically on consent.

In conducting matters remotely in a virtual setting, the TLAB was able to adapt quickly and proficiently to what has now become essentially our 'new reality'.

The TLAB's rapid adaptability to working remotely was due entirely to the structural processes put in place contemporaneously at the time of Tribunal's inception whereby its Rules require all materials to be filed electronically in a 'paperless' environment. In doing so, the TLAB was able to resume partial remote operations during and post Suspension Period allowing it to accommodate certain procedural matters using the 'WebEx' web-conferencing tool.

This conferencing tool has been lauded for improving access to justice and for generally allowing hearing events to continue safely during the pandemic, and its use by the Tribunal was critical in its ability to rapidly resume some postponed matters.

During this period, the TLAB also developed and implemented procedural guidelines in the form of an 'Urgent Relief Motion' which allowed the Tribunal to address matters postponed but identified and considered urgent and/or of a time-sensitive nature on a case-by-case basis. It established parameters to ensure consistent practices when processing these types of applications and allowed the TLAB to assess matters adjudged to have met threshold qualifications requiring urgent relief on grounds accepted by the TLAB.

Furthermore, during this Suspension Period, the Chair directed Court Services staff to identify all Hearings postponed for eligibility to be heard within a virtual setting, where feasible and on consent. The basis for accommodating virtual Hearings followed the Ontario Courts' recognition and acknowledgement that 'virtual' or 'electronic' proceedings were appropriate and that judicial and quasi-judicial processes must continue in the public interest.

Parties and Participants were canvassed by way of a 'Technology Inventory' survey to determine whether there existed the capability to engage in such Hearings electronically among those wishing to participate.

The Tribunal lifted its Suspension Period on August 14, 2020 and established a target of September 2020 for the resumption of eligible 'in-person' Hearings. On the direction of the Chair, staff proceeded to proactively scheduled Hearings, both in-person and virtually, in an organized framework to address the backlog of re-scheduled matters premised on a 'first in, first out' basis.

Contemporaneously, City staff also prepared the Tribunal's offices at 40 Orchard View Blvd. to accommodate the resumption of in-person hearing events in accordance with all health and safety protocols and public health guidelines set out by the Province of Ontario and the City. However, due to the 'opening and closing' directives from the Provincial Government in the fall of 2020, almost all Hearings have continued as virtual events.

To assist Members in the 'new normal' required of the remote Hearings environment, staff undertook supplemental training sessions providing guidance regarding 'virtual' Hearings using the City's WebEx platform. The TLAB also provided an optional 'hybrid' Hearing event to participants to further accommodate attendance both in-person and remotely where such accommodation was required.

As a result, Members continued to hear matters and were seen as exercising control to the highest standards of public health, safety, and judicial standards commensurate with the mandate to make decisions and conduct dispute resolution.

In 2020, Members held the requisite four (4) Public Meetings with the assistance of external legal counsel at which various matters were addressed including receiving deputations with respect to the revisions to Rule 31 (Review of Final Decision or Final Order), adopted originally in May 2017 and further revised by the TLAB on May 6, 2019.

For clarity, a Review Request of a final Decision and Order of a Member (Review Request) is restricted to those who have elected Party status in a proceeding and encompasses a formal process. It engages an internal reconsideration of a Member's Decision and includes an administrative process. A Review Request is not an opportunity to simply re-argue a Decision and Order that a Party objects to but rather requires the Requestor to address only the stated grounds found in the Rule.

It is a serious matter, and a Request must be considered with due '*gravitas*'.

At its Quarter 4 Business Meeting on December 2, 2020, the TLAB adopted a revised Rule 31 which set in force a streamlined version of its Rule 31. The previous iteration of the Rule was operational for over a year having been adopted following extensive consultations and input from the public.

Following some practice with the Rule and its 'use-in-action', the Members recognized that Rule 31, as it then existed, was perceived as being more inconsistent and complicated than the original version and would benefit from an additional review for consistency and cohesiveness.

I can report that the new Rule 31 now in place reintroduces flexibility into the process, thereby creating greater consistency while also being accessible and not overly demanding upon the resources of the TLAB. Rule 31, along with the set of Rules of Practice and Procedure adopted in 2019, have continued to work into the TLAB diet with generally positive results and acceptance by all stakeholders.

The presence of '*Rules*' and their necessity in law, results in an 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 revisions 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 comprehensive revisions to the Rules undertaken in 2019, and again in 2020, have instituted greater accountability on disclosure and extended certain filing timelines to permit a greater opportunity for discussion, settlement negotiations and mediation. They have also provided for greater flexibility in public participation including new privileges for persons wishing 'Participant' status, over the more onerous responsibilities of a full 'Party'. Furthermore, the modifications have resulted in clarifying the rights and obligations in accessing and participating in a TLAB Review Request of a Member's decision.

To date, Public depositions received and heard by the Tribunal have 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.

In supporting further public awareness of the TLAB's operations, extensive revisions have been made to the TLAB **Public Guide**, an on-line publication that provides information on TLAB procedures. Additionally, in 2020 the TLAB developed and uploaded to its website an informative (4-minute) animated video intended to augment the Public Guide as a resource for those interested in the Tribunal. These efforts are intended to provide the public with a concise overview of the TLAB, its operations and its mandate, and offers a visual appreciation of what the public can expect in the adjudicative process.

A key guiding principle of the TLAB codified in its Rules directs the disposition of variance and consent applications should be timely based on site familiarization and full disclosure. As evidenced from the statistical analysis in this Report, while the TLAB goal for disposition remains about one-third the time of the former provincial adjudication process, some slippage has occurred in the Tribunal's service levels.

There were several factors that contributed to the disruption in service levels, the most significant and detrimental being the COVID-19 pandemic and the unprecedented impact of the virus on City services.

Other factors have contributed as well: a lengthy suspension of all Hearing matters; multiple extensions of that suspension period; a backlog of suspended Hearings and adjournments; resultant increased workload; variable Member and staff availability; technological challenges related to virtual Hearing events; competing demands for Hearing dates on resumption of TLAB Hearings; and, to a lesser extent, a replacement appointment and lengthy training period.

Furthermore, it should be noted that seven of the ten (10) current Members are employed in full-time, primary positions outside of their Tribunal appointments. It is important to reiterate 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.

In 2020, Member responsibilities were strained even further due to the impacts of COVID-19 and, as a result, they were abruptly and expectantly required to undertake 'virtual or remote' Hearing assignments from their homes using personal computers. This sudden turn of events further burdened and, in some cases challenged their technological capabilities. The Tribunal, Members and staff are to be commended for overcoming these unanticipated hurdles and time commitments which allowed the Tribunal to maintain operations during a particularly challenging and unprecedented period.

The time commitment dedication from Members in executing their 'civic duty' is exemplary and is not new. Members dedicate a great deal of time and effort in undertaking their collective responsibilities of fulfilling the Tribunal's mandate, and this must 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 for TLAB Members to accept Hearing assignments of one to two (1-2) Hearing Days per week required as part of their Tribunal appointments can, at times, result in an exceedance of a twenty (20) to twenty-five (25) hour work week. That expectation includes reviewing all pre-filed materials, site visits, the Hearings themselves, and reviewing the DAR recordings of the Hearing when required.

For the Tribunal Chair, the administrative and operational responsibilities associated with that role coupled a full workload of assigned Hearings can result in a forty (40) hour work week, including weekend hours.

With a revolving complement, an increased number of Hearing events and many combined consent and 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 and contemporaneous basis. Review Requests continue in the order of one additional matter every two months; all require decisions. and several can result in ordering new Hearings being added to the schedule.

There continues to be considerable dissatisfaction with the remuneration system for TLAB Members, based primarily on the 'piece-work' type of 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 \$1,500 for administrative considerations.

However, a request made by the former Chair in the 2019 Annual Report to address the inadequacy of a fixed allowance of \$200 for decision writing remains under review by the City and I am advised that an answer is pending. This is an extremely important matter to the Members as decision writing is likely the most intensive and time-consuming component of the appeal adjudicative process. This aspect is addressed more fully later and in the Recommendations section of this Report.

The Tribunal had also requested that the City certify to Revenue Canada that Members are not ‘employees’ and requested City’s position on the issuance of T2200 Income Tax Forms. A response was received from the Comptroller in 2020 and has gone some distance to clarify that members of City Tribunals, including the TLAB, are not ‘employees’ of the City. And, 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’.

I am pleased to report that on January 27, 2021, the TLAB was advised by City staff that due to impacts of the COVID-19 Emergency eligible Members can now request a T2200 and apply to the CRA to claim work from home expenses for the tax year 2020.

Based on the 2020 performance metrics prepared by staff, 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 such as increasing the Member complement with an additional Member 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 residents. ‘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, offering recognition to ‘local knowledge experts’ and assuring that unrepresented members of the public have an opportunity to express their views, subject to the *Rules* and the prerequisites of disclosure.

“Trial by ambush” is not supported by the TLAB.

In this regard, the TLAB adopted Practice Direction 6 on May 26, 2020 clarifying the role and duties of Expert Witnesses in Hearings before the Tribunal. This Practice Direction introduced a new category of expert witness, a 'Local Knowledge Expert', that can be qualified as an expert to provide eligible expert opinion evidence before the TLAB.

Creating such a category of expert represents an effort by the TLAB to accord some members of the public, who have gained specific recognized experiential knowledge in their neighbourhoods, with additional standing in Hearings. This improves the ability of residents to present their cases effectively and contributes overall to a more fulsome consideration of the evidence being heard by Members in the decision-making process.

Furthermore, in 2020 TLAB Staff have worked to overcome 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. All these improvements have served the TLAB well in helping it to adapt to a new normal during the COVID-19 pandemic.

The Tribunal has continued its liaison with a representative of the Office of the Ombudsman which 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 resumed regular virtual Operations Meetings between the Chair, Vice Chair 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 extremely productive.

The TLAB, again, is pleased to report to Council that a prolific body of administrative law has evolved from the TLAB through the conscientious decision writings of its Members. 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 has occurred over the years since the TLAB's inception in 2017, a gaining acceptance was also obvious and apparent in 2020.

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 '*de novo*' 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 consider, 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 four City panels of the Committee of Adjustment. To the extent that the Committee's express reasons, they are a helpful and important contribution to the record provided on a TLAB appeal.

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.

It is acknowledged that the appeals process requires residents to attend hearing events that may engage multiple Hearing days. However, hearing time is allocated in order that all persons with an interest have fair opportunity to express their views and that those views are heard. This is the duty on any hearing officer charged with the responsibility to decide anything under statutory direction.

In this regard, and following input received from residents, the TLAB has attempted to address the length of Hearings through the implementation of a strict Chair's protocol for Hearing day extensions. That process directs Members to exercise prudent case management discipline that best ensures the disposition of assignments based on a

formula that schedules a one (1) day Hearing for ‘variance only’ applications and two (2) day Hearings for combined ‘consent & variance’ appeals.

While Members are allowed latitude for additional Hearing days to a specific limit, any further extension requests are now escalated to the Chair’s attention. In the case of initial scheduling, a Pre-Hearing Conference involving the Chair (or designate) and the presiding Member is required before any additional dates are accepted or scheduled by administrative staff.

The TLAB is in the process of further calibrating and perfecting this protocol with the anticipation that a revised procedure will be established in 2021.

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, have been pursued with the TLAB in 2020.

On matters of Planning and Urban Forestry procedures, Council in 2020 added a new qualification for prospective candidates for appointment to the TLAB requiring applicants to have acquired knowledge of or experience in urban forestry and environmental planning.

In this regard, the Tribunal has scheduled additional training in 2021 through the approval of a fifth (5th) Business Meeting intended solely to accommodate education session on various topics of relevance to augment the training and expertise of sitting Members.

Also in 2020, Tribunal Members discussed an initiative at its Q1 Business Meeting on February 25, 2020 to measure some elements of its performance through the use of a feedback instrument such as a survey. The initial intent was to create an Evaluation Form for Hearings that could be completed by participants to measure how well the

Tribunal hearing format is working. However, after preliminary discussions, the Members deferred the matter to facilitate further investigation and to receive input from the public and Court Services in order to establish clear and realistic evaluation objectives.

Following a deferral of this matter and after receiving deputations from residents' associations, the TLAB, at its Q4 December 2, 2020 Business Meeting, struck a 'sub-committee' comprised of four (4) Members to further this initiative and to establish the purpose, methodology and design of a template for the evaluation of hearing events.

The TLAB Members listen attentively to all contributors. City Council members have generally continued 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.

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 Members have continued to be available for outreach to organizations that would like to know more about the appeals process. 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.

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

III. Panel Member Biographies

The seven (7) inaugural 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.

In 2020, the appointment term in place of four (4) current Members ended on December 13, 2020. Those Members advised the Public Appointment Office of their interest in securing a 2nd term with the TLAB and were successful in doing so through the requisite nominating process. Additionally, the Tribunal Chair, Ian Lord, advised the City of his intention to not seek a second term as a TLAB Member and Chair.

Consequently, all four (4) Members were reappointed for a 2nd and final term, with one of those Members recommended to succeed the outgoing Chair. Also, a new Member was appointed with a term commencing on December 14, 2020, bringing the total TLAB Panel complement, again, to ten (10) Members.

The more recent appointments reflect the staggered terms of their selection. Of the ten Member appointments currently in place, four (4) appointments are ending in 2022, one (1) in 2023, and five (5) in 2024.

As well, in July 2018 Council authorized the appointment of a Vice Chair of the TLAB, selected from its Members pursuant to the Tribunal's Procedural By-law.

The TLAB elected its first Vice Chair for a one-year term with responsibilities that commenced on January 1, 2019. That Vice Chair was then re-elected for a second one-year term on December 10, 2019.

The current Vice-Chair was elected on December 2, 2020.

For information purposes, a biographical summary of the Members' Panel in 2020 follows

1. Chair

Dino Lombardi, Chair (effective December 14, 2020; Vice-Chair, 2019 & 2020)

Dino Lombardi is a Registered Professional Planner (RPP) with over 30 years of diverse experience in land use planning both in the public and private sectors. Dino has held several progressively more responsible senior management positions managing complex planning and development projects. He is a Full Member of the Ontario Professional Planners Institute (OPPI) and the Canadian Institute of Planners (CIP), and is actively involved with both organizations. Dino is also a Member of the Simcoe Chapter of Lambda Alpha International, a world-wide, honorary land economics society, a former sole Editor of the Ontario Municipal Tribunals Report, and has an Advanced Certificate in Adjudication for Administrative Agencies, Boards and Tribunals.

2. Vice Chair

Shaheynoor Talukder, Vice Chair (effective December 14, 2020)

Shaheynoor 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.

3. Members

Ian Lord, Former Chair (May 2017 to December 13, 2020)

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.

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

Stanley 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. Mr. Karmali 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 Leung 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.

John Tassiopoulos (Appointed December 2018)

John Tassiopoulos 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 Bassios 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, Ms. Bassios appreciates the uniqueness of each of Toronto's neighbourhoods and the desire of communities to have a say in how they change.

Christine Kilby (Appointed December 14, 2020)

Christine Kilby is a lawyer and accredited mediator with ten years' experience in commercial litigation, including construction and regulatory law. In her full-time alternative dispute resolution practice, she mediates civil and employment lawsuits and conducts workplace restorations, mediations, assessments, and investigations. She is a certified Workplace Fairness Analyst. She has called Toronto home since 2003 and is an active member of her community.

IV. TLAB Milestones

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

May 13, 2020: Urgent Relief Motion (COVID-19) Hearing Parameters and Procedures Manual.

May 26, 2020: Amendment to the TLAB's Procedural By-law 1-2017 to enable remote electronic participation in Business Meeting during an emergency.

August 14, 2020: Lifting of "Suspension Period" and recommencement of all hearing events - announcement of conducting 'virtual or electronic' hearing events for matters where such an approach could be facilitated.

December 2, 2020: Toronto Local Appeal Body adopts revised Rule 31, Review Request, with an effective date of December 2, 2020.

See: Article VII for 2020 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 115 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 is 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. The TLAB has accommodated 'in-person' Hearings at the four (4) municipal Civic Centres in Etobicoke, North York, Scarborough, and East York in the event of a large list of participants in attendance.
- j) The TLAB and all persons participating or communicating on any matters before it shall act in good faith and in a manner that is civil, courteous, and respectful to all. Tribunal Members facilitate hearing from all participants in the Hearing including the public and are expected to treat each with dignity and are in service to all persons with an interest in an appeal.
- k) Matters that have been given consent by parties are encouraged by Members to advance through TLAB-led mediation, agreement or

settlement. This results in expedited Hearings conducted in a less formal manner and encouraged by all available means, subject to statutory requirements.

VI. The TLAB Appeal Process*

***NOTE:** The timelines noted herein are applicable to 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

Q1 - February 25th, 2020:	Business Meeting, adoption of Practice Direction 6 – Expert Witnesses and revisions to Practice Direction 1, revisions to the Public Guide.
Q2 – May 26th, 2020:	Business Meeting, amendment to Procedural By-law to allow electronic hearings, Urgent Relief Motion procedure.
Q3 – August 31, 2020:	Business Meeting, consideration of evaluation form for Hearings, consideration of correspondence from FoNTRA.

Q4 – December 2, 2020: Business Meeting, adoption of a revised Rule 31 of the Rules of Practice and Procedure, election of Vice-Chair for 2021.

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, targeted timing and service standards. They were instituted at the outset of the Tribunal's engagement in 2017 and as a means of gauging the TLAB's operative adherence to these standards.

From time to time, these service standards require review to determine whether they are realistic and practical both from a Members' and participants' point of view and to gauge whether re-calibration is required.

In 2021, the TLAB will be undertaking such an assessment and '*self-actualizing*' exercise, commencing with a review of the Members' accepted generalized discipline to prepare and issue Decisions within 14 business days of the conclusion of a Hearing. The current performance standard benchmark was revised from the initial '14 calendar day' guideline set by the Tribunal in its inaugural year in 2017.

An aggregate statistical measurement has been published in the Chair's Annual Report indicative of overall Tribunal performance. The measure and statistic are a helpful discipline to Tribunal Members to recognize that timely decisions are the essence of public service. That statistic, however, needs to be tempered by the reality of events – especially in 2020-21, in so far as the influence of the COVID-19 pandemic has intervened.

Regrettably, delayed Decisions and decisions that involve postponements and adjournments adversely affect this statistical measure, and it has been used to the disadvantage and criticism of the Tribunal by commentators. A review of this standard is both overdue and necessary at this juncture in the growth cycle of the Tribunal.

The TLAB has now been in existence for almost four years, and it continues to review its internal operation on an on-going basis, including performance and service standards. This continual reassessment is conducted on an annual basis, or when appropriate, and is considered with a view to identifying areas in which operational improvements and/or refinements can be implemented. Additionally, this operational

review assists in re-calibrating and optimizing the balance between service to and expectations of the public and the anticipated and actual time commitments required of 'part-time' Members.

Improvements to the Tribunal are considered by its Members with the view of continuing to advance its core guiding principle that it is in service **to dispose of appeals in an efficient, timely, cost-effective, open and fair process to all stakeholders.**

With that in mind, the TLAB has continued to administratively schedule hearing matters using a stable and consistent formula wherein 'variance only appeals' are typically scheduled for a one (1) day sitting and 'combined variance/severance appeals' for two (2) day sittings. In most circumstances this proved realistic and satisfactory. This standard, however, is not always achievable due to various factors including the number of Parties and Participants in a matter, the complexity of the issues in dispute (e.g., planning, heritage, the natural environment, architecture, etc.), and the calling and cross-examination of numerous witnesses, both expert and Party/Participant, to highlight just a few.

The consideration of additional hearing days has also been exacerbated by the necessity of undertaking hearing events exclusively within a virtual or remote environment due to COVID-19. That milieu is fraught with attendant technological issues and glitches which can result in potential adjournments and/or unavoidable recesses during Hearings. This proved to be the case following the lifting of the 'Suspension Period' in some of the Tribunal's Hearings in 2020.

The TLAB is committed to disposing of appeals in a timely and expeditious manner and Members are encouraged to be judicious in the allocation of the TLAB's time in relation to matters before it. The fair and proportionate allocation of time conserves resources and ensures that the resources, time and energy of parties, participants and witnesses are efficiently deployed. The TLAB has heard time and again in deputations at its Business Meetings that from a resident's perspective the issue of Hearings extending beyond the timeframes established by the Tribunal has become a concern for residents.

Accordingly, in 2021 the TLAB will be further revising and perfecting the protocol for consideration by Members to grant requests from Parties for additional Hearing days in

a matter. It is anticipated that this modified protocol will be consolidated into a Practice Direction which will impose a more stringent limit in the Hearing days for the two categories of applications before the Tribunal. Some built-in latitude will continue to be allocated to the presiding Member to a specified limit, after which any extension requests are to be escalated to the Chair's attention.

Furthermore, in certain circumstances such as matters with a significant number of anticipated participants, the scheduling of an initial Pre-Hearing Conference will be a prerequisite.

In 2020, the number of instances where Hearings engaged lengthier timeframes with consequent interruptions in scheduling increased to 62%, up from the 35% experienced in 2019. Hearings that extended over several days for unanticipated reasons, themselves interrupted by scheduling slots that are not contiguous, had the effect of lengthening timeframes from the Notice of Appeal to final hearing dates and decisions.

However, just as significant is the fact that the average length (in days) of a Hearing decreased from the 1.46 days in 2019 to four (4) hours and 53 minutes in 2020, a positive metric for all stakeholders. This decrease reflects specific circumstances with respect to the implementation of electronic hearing events being the norm in the past year as well a concerted effort by Members to expedite Hearings to further reduce the attendance time commitments required of residents.

1. Service Standards

A. Timely Receipt of Appeal File from Date the Appeal is filed to the date it is received by the TLAB

The timeframe from the date the Committee of Adjustment (COA) is made aware of an appeal to the date the appeal file is received by the TLAB, on average, increased from 10.5 days in 2019 to 25 days in 2020. This is an increase of 138% likely due to the cessation of hearings at the COA and the forwarding of

backlogged files to the TLAB following the resumption of operations due to COVID-19.

B. 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 prior to the March 16, 2020 suspension of operations, on average, appeal matters were scheduled for hearings within 11 days of the TLAB receiving the appeal. This represented an increase to 11 days (or 175%) compared to the 4 days in 2019. That number increased to 43 days after the resumption of TLAB operations in late September 2020, again, due to obvious factors.

C. Timely Hearings scheduled (115 calendar days target metric from Notice of Hearing Issue date to Hearing Date)

Of the appeals received, on average, matters were scheduled 178 days from the day a Notice of Hearing was issued. This is an increase of 43% from the 2019 performance of 124 days.

This average does not include Adjournments, Continuations or Withdrawals which also impact scheduling parameters but takes into account an increase in the target metric from 100 to 115 days instituted by the Tribunal in late 2019.

However, it is important again to highlight that the increase was only 6.5% or 131 days pre-COVID-19 and prior to the City-mandated Suspension Period. This represents 7 additional days to schedule a Hearing compared to that experienced in 2019.

D. 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 62 days, a 24% increase over the 2019 average of 50 days. Just as important, there was in fact a decrease of 2% (49 days) in 2020

in the average time taken to issue a decision if the closure period involving the TLAB is excluded.

E. 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 256 days, up 34% from the 2019 average of 191 days. Again, if the closure period is excluded, that increase was 23.5% or 236 days compared to the average in 2019.

I note that the statistics, above cited, are for the most part understandable but not unexpected given the impact of the COVID-19 Emergency, the subsequent suspension of in-person Tribunal Hearings for a portion of 2020, and the cumulative consequences experienced by the TLAB.

A number of procedural, supplementary factors also appear to have contributed to the variability in the statistics as well: hearings that involve multiple sittings with non-contiguous scheduling; decision writing delays arising from less than diligent fulfillment of undertakings by counsels and expert witnesses; and Member time constraints due to primary work commitments (70% of current Members have full-time employment); and Member issues in the delivery of timely decisions due to work/life balance.

The issue of decision writing is perhaps the most important deliverable a TLAB Member has to offer the public, although Hearing management is also a critical component of the appeal process. Not only do decisions complement the body of administrative law established by this Tribunal but they are also the most important contributor to the public perception that their issues and concerns have been heard and addressed.

In modern jurisprudence, the mandate of providing 'reasons' is to not only provide clear and implementable dispositions of the Applications on appeal, but also to communicate to the unsuccessful party or participant just why the presiding Member has arrived at that decision.

The Tribunal's decisions can and do contribute significant value to the City's 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 nor capacity to be carefully prepared result not only in the potential for complaint but also the exercise of the right to make Review Requests under the TLAB's Rules of Practice and Procedure. Parties also have the right to seek judicial leave to appeal a decision to the Divisional Court of the Superior Court of Justice concurrently with the filing of a Review Request with the TLAB.

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 1***, below.

It is important to underscore that the TLAB encourages Mediation and Settlement in its Rules as a means of resolving some or all the issue sin dispute in a matter. Members utilize this alternative dispute resolution strategy to investigate whether Parties are open to discussing outstanding issues and concerns in a less formal conciliatory construct with the intent of reducing the cost and time associated with the appeal process.

To reflect this approach to dispute resolution, a new metric, TLAB-led Mediation, has been added to the Tables entitled '*Appeal Outcomes*' and '*Application Outcomes*' found in the following pages, under the 3rd set of Summary Statistics for 2020.

In 2020, the TLAB engaged in three (3) successful TLAB-led Mediation processes which resulted directly in Settlement agreements amongst Parties and advanced the disposition of applications through expedited Settlement Hearings. Although not considered a large sample size, this metric is nevertheless indicative of the Tribunal's renewed commitment going forward to encourage Members to utilize Mediation in a more consistent manner as a practical dispute resolution strategy.

2. Performance Metrics

Monthly data points are averages for the month

	A	B	C	D	E
Month appeal is commenced by the Appellant	Date Filed With COA to Date Appeal Package 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 By Month (Does not include: Adjournments, Continuations or withdrawals)	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 decision issued
January	16	2	139	45	183
February	6	4	116	36	212
March	7	4	121	63	242
April	-	3 Teleconference Hearings Chaired		84	326
May		1 Electronic/ Remote Hearing Chaired		96	281
June		9 Electronic/ Remote Hearings Chaired		61	258
July	58	5 Electronic/ Remote Hearings Chaired		90	250
August	10	7 Electronic/ Remote Hearings Chaired		76	382
September	19	13 Electronic/ Remote Hearings Chaired		Insufficient Data	237
October	19	23	261	35	329
November	54	18	284	28	322
December	57	6	293	85	218
2020 Average	25	11 (43) ¹	178	49 (62) ²	236 (256) ³
2019 Average	10.5	4	124	50	191
2019 vs 2020	Increase of 138%	Increase of 175 %	Increase of 39 days compared to the 2019 average of 124 days	Decrease of 2% (Increase of 24% including closure period)	Increase of 23.5% (Increase of 34% including closure period)
Targeted Service standard	N/A	5 business days	115 calendar days	14 business days	135 days

¹ Average screening time excluding the suspension period is 11 days. Average including suspension due to O.Reg 73/20 is 43 days.

² Average time to Decision from final hearing date is 49 days. Average including the closure period is 62 days.

³ Average disposition time from date received by TLAB to final decision is 236 days. Average including the closure/suspension period is 256 days.

Newly filed appeals, regular screening and scheduling paused due to O.Reg 73/20.
Urgent and Settlement Hearings continued.

3. Summary Statistics

Number of TLAB Appeal Files Received	2017	2018	2019	2020	2019 vs. 2020
Total Number of Appeals	314	419	279	227	Decrease of 23%
Total Number of Motions	28	95	70	28	Decrease of 60%
Total Number of Hearings	253	318	361	174	Decrease of 52%
Avg. Hearing Length (Days)	3 hours and 52 Minutes	1.3 days	1.46 days	4 hours and 53 minutes	

Appeal Type	2017	2018	2019	2020	2019 vs. 2020
Variance	267	346	246	194	Decrease of 21%
Consent	54	73	33	33	0%

COA Districts	# of TLAB Appeals Received by COA District 2020	% of TLAB Appeals Received by COA District 2020	Total COA Applications received by COA District in 2020	% of Committee of Adjustment Decisions Appealed to TLAB, by district
Toronto & East York	91	40.1%	2402	4%
North York	75	33.1%	798	9%
Etobicoke York	37	16.3%	636	6%
Scarborough	24	10.5%	461	5%
Totals	227	100	4297	

**Committee of Adjustment (COA) numbers as of March 3, 2021 and does not include cancelled or withdrawn application.

Appeal Outcomes	2019	2020	%
Allowed	124	65	55
Dismissed/Refused	76	45	38.5
Settlement Hearing	17	4	3.4
Mediation	No Data	3	2.6
Total	217	117	100

Application Outcomes	2019	%	2020	%
Adjudicative Dismissal	1	0.5	0	0
Withdrawn	26	12	23	22
Approved	20	9	16	13.5
Approved with conditions	117	54	47	40
Approved with Varied Variances	6	3	8	7
TLAB Initiated Mediation	0	0	3	2.5
Party initiated settlement	10	4.5	4	3
Variances refused	37	17	16	13
Total	217	100	117	100

Month	Number of Review Requests by Month initiated	
	2019	2020
January	4	2
February	3	2
March	1	1
April	0	0
May	3	0
June	2	1
July	1	0
August	1	0
September	1	1
October	3	0
November	4	0
December	0	0
Total	23	7

2020 Decisions		
Decision Type	Count of Decision Type	%
Final	95	44%
Interim	29	13%
Mediation	2	1%
Motion	20	9%
Order	17	8%
Review	11	5%
Revision	14	6%
Withdrawal	29	13%
Grand Total	217	100%

Review Request Disposition	2019	2020	% Difference
Review Request Dismissed - Decision Confirmed	15	7	Decrease of 53%
Granted - New Hearing	3	3	No change
Decision Suspended	2	0	Decrease of 100%
Decision Varied	2	0	Decrease of 100%
Review Request Suspended	1	0	Decrease of 100%
Totals	23	10	

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 between 2017 and 2020 that continue are:

No. 1: Standard Consent Conditions (Approved February 25, 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 11, 2017)

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 Pending)

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

No. 4: Video Evidence (Approved October 11, 2017)

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

No. 5: Service of Physical Documents (Approved October 11, 2017)

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

No. 6: Expert Witnesses (Approved May 26th, 2020)

Stipulates who can be categorized as an Expert Witness in a Hearing and the basis for qualifying such witnesses as well as their duties when appearing before the TLAB. Furthermore, this practice Direction introduces a 'Local Knowledge Expert' as a new category of expert and be qualified as such in appropriate circumstances.

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.

A component to the revisions to the TLAB's Rules in 2019, was an extensive modification of Rule 31 – Review of Final Decision or Final Order that incorporated several phases to the adjudicative process in undertaking a review of a Member's decision. However, following a transitory exposure to the new Rule 31, it became apparent to Members that this modified review process had become unduly onerous, lengthy, cumulatively inefficient, and impractical for all.

As a result, the TLAB formed a working group consisting of four volunteer Tribunal Members to assess the practicality of the revised Review Request process with a mandate to draft and recommend further alterations. Following input from the public, the group finalized a revision of Rule 31 premised on the primary goal of simplifying the review process to achieve greater consistency and cohesiveness.

An amended Rule 31 was considered by the TLAB at its Q4 2020 Business Meeting and unanimously adopted by its Members on December 2, 2020.

As the new Chair, I have continued discussions with the Members and Court Services regarding several other Tribunal structural matters warranting further attention.

The discussions were instructive to record on-going 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, several issues identified in preceding Chair's Annual Reports have been resolved but some issues remain.

Below, I highlight issues/recommendations raised in the 2019 Chair's Annual Report which are resolved and submit recommendations for the Tribunal that remain and

require action for Council's consideration going forward. These latter aspects result in a series of ***Recommendations***.

These include the following:

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. Since 2017, the Tribunal has benefited from information and support from Court Services. In 2020, the regular Court Services Operations Meetings with the Chair and Vice Chair have provided a vehicle for the identification and resolution of issues.

As well, additional meetings and on-going communication between Court Services and the Chair assisted the Tribunal in taking timely responsive action during the COVID-19 emergency.

Since 2017, under the City's Guiding Principles, the TLAB has benefited from information and support from other City staff who have, by invitation, attended regular business meetings and Court Services Operations meetings. Other City staff have also engaged in direct communications with the Chair.

This proactive approach to fostering open and direct dialogue, operational support planning, educational opportunities and issue problem solving is important to the Tribunal. In 2020, this framework was instrumental in assisting the TLAB in taking the timely action and responsive planning necessary during the COVID-19 Emergency.

However, as earlier described in this Report, there are instances where that mandate and the 'Guiding Principles' related to the TLAB are not fully sufficient. While an Annual Report is a vehicle to raise general performance issues, it also can be unsuited for timely action and response planning. A review of the Guiding Principles may enable the TLAB to broaden its ability to communicate pressing issues arising from the operations of a tribunal that is four years into its mandate.

Again in 2020, like in the previous year, instances existed where the channel of communications from the Tribunal through Court Services were undefined or

diffused. Responses of direct communications with the executive branch to the Controller and the City Manager, copied to the Mayor, which were undertaken by the Chair on the Tribunal's behalf in 2019 remain outstanding, partly attributable to the 2020 COVID 19 crisis.

Recommendation 1:

Council request that the City Manager's Office review the Guiding Principles 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 Manager's Office, the Comptroller, Court Services and the Tribunal Chair and Vice-Chair.

2. Timely Appointment Considerations

Since the 2018 Council's increase of the TLAB compliment to ten (10) ***part-time*** Members, the TLAB compliment has stabilized. The appointment process has resulted in timely Council appointments to the TLAB, and the Tribunal has benefited from offsetting appointment terms as well as continuity of Members.

Clear administrative processes are in place to address 'end of term' replacements and the replacement of Members who resign from service. Nevertheless, meetings are ongoing with the Chair, Court Services staff, and Public Appointment Secretariate staff to ensure the process and timeliness of future appointments meet the current standards.

During the last four (4) years there have been several disruptions of service levels. The disruption caused by the COVID-19 Emergency in 2020 was quickly addressed and successfully mitigated by the transition to remote Hearings with the administrative support of City staff.

The retention of Members and Member recruitment is paramount to the successful operation of the Tribunal and contributes directly to the achievement of performance service thresholds that it strives to provide to the public.

Representations made by the City in the selection of new TLAB Members warrants oversight, consideration, and input by the Tribunal. The criteria for selection of a new Member are under constant review. The Chair is best placed to identify Tribunal needs and criteria relevant to the TLAB and communicating that through Court Services to the Public Appointment Secretariate.

Ongoing and continued dialogue between the Tribunal Chair and the Public Appointment Secretariate is essential to understanding the type of candidates best suited to succeed as TLAB Panel Members given the demands placed on each through the acceptance of a 4-year term appointment. These meetings will allow the Chair to monitor the appointment renewal process to ensure that it is engaged in a timely fashion. Such meetings will also facilitate transparent discussions regarding the TLAB Member complement to assist the Secretariate in achieving and maintaining a full and functioning panel of Members representing the highest quality of appointments.

Recommendation 2:

The TLAB Chair, Court Services, and the Public Appointment Secretariate schedule, at minimum, two (2) regular meetings throughout the year, or as deemed necessary by the Chair. Such meetings will facilitate ongoing discussions intended to assist the Public Appointments Office in understanding the Tribunal's Panel Member complement needs and the types of candidates best suited to succeed as TLAB Members to maintain a full and well-functioning Member Panel.

3. Compensation for Decision Writing

Decision writing is the essential ‘end product’ of the appellate process, forms the basis of communications to the public and constitutes the body of administrative law and jurisprudence that is regularly accessed by legal and planning practitioners and the public.

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

Detailed final Decisions and Orders are prepared by each Member over many hours without clerical assistance, requiring access to on-line data records and often requiring the Member to listen to significant portions of the Digital Audio Recordings of the Hearing. Furthermore, the actual end product typically requires extensive drafting and editing of text, conditions and directions, consultative syntax review by either the Chair or Vice-Chair, ‘accessibility’ review by Court Services administrative staff, document assembly, digital signature exchanges, and associated communications.

At issue is how that is valued.

In the 2019 Chair’s Annual Report, staff reported that “*the ‘average’ decision of a Member of the TLAB was between ten to fifteen (15) text pages, single spaced...and fully 22% are fifteen (15) pages or more.*” While these inchoate metrics were of assistance in understanding the outcome of the efforts Members put forward in producing their Decisions, a more detailed comparative breakdown of those metrics, by type and whether interlocutory, was undertaken in previous Annual Reports.

However, for the 2020 Annual Report, staff was directed to produce comprehensive statistics for TLAB Decisions to capture various measured data points including ‘type of decision’, the ‘average’ Decision page count (both with and without Appendices), and page counts for ‘Final’ and ‘Interim or Interlocutory’ Decisions and Orders.

By admeasurement, Decisions in 2020, except for consent dismissals, abandonments, Mediation Summaries, and simple Orders, ***always exceeded five (5) type written text pages, single spaced*** (excluding Appendices).

Furthermore, of the 217 total Decisions issued by the Tribunal in 2020, ninety-five (95), or 44%, indicated as Final Decision and Order averaged ***11.6 written pages*** in length

and 19.2 pages, with included Appendices. Of the total Decisions issued in 2020, 14% were recorded at **21 comparative manuscript pages or more, single spaced** (excluding Appendices).

I suggest that this Decision page length analysis is not to be considered gratuitous but rather is necessary to understand the effort Members exercise to produce a fulsome analysis of the issues involved in appeal matters and to support their reasons and findings in the Decision.

This needs more context.

The Decision page length metrics, above recited, reflect an on-going and concerted effort by TLAB Members to produce concisely written decisions reflecting a 'plain language' approach to decision writing. The decision writing metrics also suggest that in certain appeal matters such as consent and variance appeals, which typically involve multiple policy issues, numerous participants and expert witnesses and several sittings, the presiding Member is required to engage in a more comprehensive decision writing exercise.

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

Tribunal Members understand their obligation to produce detailed Decisions that provide Parties and the public with reasons for the outcome of an appeal matter. The TLAB is also committed to issuing Decisions that are cogent, refined, and straightforward. However, any attempted determination made from an analysis of the above statistics should not be perceived as a diminution of the time demands required of Members who are subjected to public scrutiny and accountability and long hours while at the same time removing them from elements of society, family, and other work endeavours.

Request for Review Decisions, which are just as complex, uniformly exceed the average decision lengths, above cited. In 2020, the average page count for a Request for Review Decision was 13.4 written pages although, because of the subject matter, some of these types of Decisions easily exceed 20 pages in length.

Decisions constitute the distillation of witness evidence in a prescribed, required format involving recitations included in the following sections: *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 current Member stipend for the above, inclusive of preparing, writing, and issuing a Decision and Order involving all 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 simply not commensurate with the role and responsibilities owing and reflected in TLAB Member decision writing.

The previous Chair, in both the 2018 and 2019 Annual Reports, raised this matter and correspondence directed to City Administration requesting a deliberative review of the remuneration for written decisions; a response continues to be pending. Consequently, executive direction is still warranted.

If not addressed in a formal manner, this issue will continue to adversely impact Member retention and Tribunal recruitment efforts which Court Services alone is unable to address.

I note that Council, in 2019, afforded Members (excluding the Chair and Vice-Chair) additional compensation of \$1,500/year as a 'catch-all' for out-of-pocket expenses such as site visits, Business Meeting and Hearing attendances, home offices, office equipment and supplies. Decision writing is not captured in this supplementary stipend.

Therefore, I must repeat the Recommendation on this subject contained in previous iterations of the Chair's Annual Report – 2017 (Recommendation #3), 2018 (Recommendation #2), and 2019 (Recommendation #2):

Recommendation 3:

Decision writing of the TLAB be accorded a Member stipend at a rate of \$400, with listed consent and administrative exceptions to be defined at the current rate.

4. Request for Review Decision Fee

This is a continuing request made by the Tribunal.

An important service offering of the TLAB is a right to 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 (Rule 31). It engages a process for the full review of a TLAB Member's original Final Decision and Order.

Increasingly, the right to access a Request for Review is being employed despite expressed 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.

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 and in terms of Hearing dispositions, resources and consideration demands, is materially significant.

The TLAB has expended considerable time and resources of its Members, legal counsel, and staff in formulating a Rule 31 that best accommodates this mandate. As noted previously in this Report, this had engaged several modifications of Rule 31 with the Tribunal recently adopting a revised Rule in 2020.

In 2020, the TLAB received a total of 7 Review Requests, which represents a significant reduction in the total of 23 received in 2019. The magnitude of the total number of Review Requests received in 2020 was undoubtedly impacted by the cessation of the Tribunal's operations for a substantial portion of the year due to COVID-19. While this reduction is an encouraging development, I can advise that that total is expected to increase in 2021 as the TLAB deals with the inordinate backlog of appeals from the Committee of Adjustment as well as new applications.

Currently, Council has no fee for invoking a Review Request under Rule 31 of the TLAB. The lack of a requisite fee undermines the 'gravitas' associated with filing a request to review a Member's 'Final Decision' and is ineffective in discouraging the filing of a Review Request based solely on the fact that a Party does not 'like' the decision issued.

It is the Tribunal's position that the imposition of a fee would act to cause Parties to 'pause' and give serious thought before considering whether a Review Request is appropriate and justifiable in the circumstances.

Recommendation 4:

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

5. **Review Decision Compensation for the Chair and Vice-Chair**

As a corollary to the above **Recommendation**, the compensation afforded the TLAB Chair and Vice-Chair in accepting Review Request assignments is limited only to a stipend for the decision and order issued in the matter. However, regular Members who accept Review assignments as delegated by the Chair are compensated for hearing time as well.

I note that when the TLAB remuneration was originally set by Council in 2017, the Tribunal had not yet adopted Rules providing for Review Requests. Consequently, the element of compensation for Review Requests undertaken by the Chair (or later, the Vice-Chair) was not an element in the consideration establishing an annual Chair stipend. Nor was it by definition incorporated in the more recent role and responsibilities of a Vice-Chair.

Compensation for TLAB Members is generally an ongoing problem, especially the 'piece-meal' approach to determining and addressing added value and arbitrary elements; in addition, distinctions such as a stipend for Review Request warrant being revisited.

There is no basis to distinguish between Members who receive all stipends, and the recognition owing in compensation for the additional effort required by Reviews, now arbitrarily received only by some.

This distinction also has the effect of being a latent disincentive to the Chair and Vice-Chair to assume responsibilities for undertaking Review Requests on a regular basis. This acts to the disadvantage and disbenefit of the Review process, the Tribunal, and the public. In essence, it can remove two persons from contributing to the Tribunal jurisprudence who are, arguably, the more conversant Members with the conventions, practices, and oversight by, and for the Tribunal.

Recommendation 5:

Council consider extending compensation to the Chair and Vice-Chair for hearing time in Review Requests as is currently afforded to TLAB Members.

6. TLAB Budgeting

It is understandable that the TLAB should have a budget for City accounting purposes; however, the setting of a TLAB operating budget is the responsibility, ostensibly, of Court Services with no provision for input from the Chair. Court Services has been

supportive of expenditures by the Tribunal on legal services and has been amenable to discussion of TLAB needs but has generally limited this to matters such as 'continuing Member education'.

A more fulsome exploration of and discussion with Court Services regarding the annual Tribunal budget would be a productive and transparent exercise and would allow the Chair/Vice-Chair to be more sensitive to decisions regarding oversight issues such as number of Hearings, Hearing days, the cost of legal services, the cost of additional Business Meetings, etc.

Recommendation 6:

The Tribunal and its Chair be represented and included in the preparation and submission of the annual TLAB budget by Court Services.

ALL OF WHICH IS RESPECTFULLY SUBMITTED

April 22, 2021

XI. Contact Information

General Inquiries:

Email: tlab@toronto.ca

Tel: (416) 392-4697

Fax: (416) 696-4307

TLAB A/Manager:

Gary Clarke

Email: Gary.Clarke@toronto.ca

Tel: (416) 392-5546

Address:

40 Orchard View Boulevard

Second Floor, Suite 211

Toronto, ON

M4R 1B9

