

City of Toronto Property Standards Committee

Legal Services Presentation
June 30, 2021

Legal Services Presentation

- WHAT the PSC does
- HOW PSC exercises its power
- WHAT to consider in hearing matters
- HOW to seek legal advice from Legal Services

Legal Services Presentation

- WHAT the PSC does

What the PSC does

- Property Standards Hearings
 - Building Code Act 1992
 - Municipalities can pass by-laws prescribing standards for the maintenance and occupancy of property within the city and require properties to conform.
 - Where there is non-conformity, the municipality can issue orders requiring the property be brought into compliance with the by-law.

What the PSC does

- Property Standards Hearings
 - The City's by-law is Municipal Code Chapter 629, Property Standards
 - Many provisions with different standards. Standards exist for things such as:
 - Landscaping
 - Retaining walls
 - Stairs, guards and handrails
 - Pest control

What the PSC does

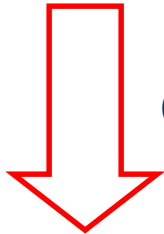
- Property Standards Hearings
 - Building Code Act 1992
 - A person served with an order can appeal these orders to the PSC within 14 days of being served. (section 15.3)
 - On appeal, PSC has "all the powers and functions of the officer who made the order" and may do any of the following provided that action complies with the intent of the by-law, Official Plan or policy statement:
 - Confirm the order
 - Modify the order
 - Rescind the order
 - Extend the time for complying with the order

What the PSC does

- Property Standards Hearings
 - Final decisions of the Property Standards Committee may be appealed to the Superior Court of Justice within 14 days after of the decision is sent to the parties.

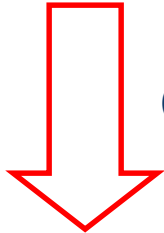
Delegation

Provincial Government



(Building Code Act, 1992, Statutory Powers Procedure Act)

City Council



(Chapter 629, Property Standards by-law)

Property Standards Committee

Legal Services Presentation

- HOW PSC exercises its power

How PSC exercises that power

- Building Code Act 1992
 - Section 15.6 states that the Committee may adopt its own rules of procedure.
- The Committee today will consider rules and adopt rules that will govern hearings.

PSC Rules – key provisions

- Rule 3 – rules silent
 - If the rules do not deal with something that arises, the Panel may do whatever is necessary to effectively and completely adjudicate on the matter before it
 - In considering this – we will talk about procedural fairness in a moment.

PSC Rules – key provisions

- Rule 11 – panel, quorum
 - Four members will be appointed to each panel, with quorum for a hearing being three members.
 - Despite quorum – those who will decide the matter must hear all the evidence unless the parties agree otherwise. This is an element of procedural fairness.

PSC Rules – key provisions

- Rule 12 – hearing procedures
 - A general procedure for hearings is laid out
 - The property standards officer will first present the order to comply
 - Property standards officer will present the order and any evidence or witnesses they care to call
 - Appellant will get to cross examine either through their representative/lawyer or through the panel
 - Panel can ask questions

PSC Rules – key provisions

- Rule 12 – hearing procedures
 - The appellant will then get to present their case
 - Present evidence and witnesses
 - Property standards officer gets to cross examine.
 - Panel can cross examine

PSC Rules – key provisions

- Rule 12 – hearing procedures
 - Property standards officer gets to call or present reply evidence – that which responds to new things raised by the appellant in their case.
 - Closing statements may be allowed
 - Same order – PSO – Appellant – PSO reply

PSC Rules – key provisions

- Rule 12 – hearing procedures
 - Panel decision
 - Panel can make its decision orally or reserve
 - A decision in writing will follow.

PSC Rules – key provisions

- Rule 13 – exceptions to rules
 - Panel can provide exceptions to rules – but keep in mind procedural fairness.

PSC Rules – key provisions

- Rule 14 – voting
 - All members, including the Committee Chair, vote on questions before it.
 - In the case of a tie vote – the motion or question will fail
 - If all motions to modify the order, confirm the order, rescind the order or extend the time to comply with the order are lost or fail, the order is deemed to be confirmed.

How PSC exercises that power

- Statutory Powers and Procedures Act
 - If there's a question on procedures, you may always elect to fall back to the SPPA, the provincial act that applies to all tribunals like the PSC exercising a statutory power of decision, which provides general guidance and procedures that may be of assistance.

Legal Services Presentation

- WHAT to consider when hearing matters

Legal Framework

1. Common Law

- Natural justice
- Fairness

2. Statute Law

- *Building Code Act, 1992* (BCA)
- *Statutory Powers Procedure Act* (SPPA)
- *Municipal Conflict of Interest Act* (MCIA)

3. Other

- Code of Conduct for Members of Adjudicative Boards
- Rules of Procedure for Property Standards Committee

1. Common Law

Two vital principles of common law:

- A. Natural justice
- B. Fairness

Two Basic Rights of Natural Justice

- i. Right to a hearing
- ii. Right to decision by unbiased decision maker

i) Right to a Hearing

- Required by *Building Code Act, 1992* and *Statutory Powers Procedure Act*
 - Mandatory duty to hold hearing and make a decision within a specified time
- “Hearing” includes:
 - Presentation of both parties’ entire case
 - Submissions both in support and opposed
 - Allowing parties to respond

ii) Unbiased Decision Maker

"Justice should not only be done but should manifestly and undoubtedly be seen to be done."

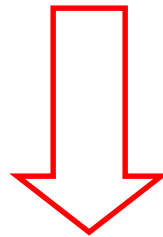
- Reasonable Person Test:
 - As a reasonable person, would I perceive that it is more likely than not that the decision maker would, consciously or unconsciously, not decide fairly?

Three Types of Bias

- **Pecuniary**
 - Do I stand to gain or lose financially based on the outcome of the decision?
 - Be mindful of the Municipal Conflict of Interest Act
- **Personal**
 - Do my family or friends stand to benefit from the outcome of the decision?
 - Do my foes stand to lose depending on the outcome of the decision?
 - Could the decision better my relationship with colleagues or business contacts?
 - Am I prejudiced against any particular group who will be affected by the outcome of the decision?
- **Institutional**
 - Am I prepared to hear both sides?
 - Am I coming to the hearing undecided?
 - Am I confident that I have not been influenced by any outside party?

B. Principles of Fairness

- i. Reasonable notice
- ii. Fair hearing
- iii. Opportunity to be heard
- iv. Representation
- v. Written decision with reasons



PROTECT INDIVIDUALS' RIGHT TO BE HEARD

Transparency in Decision Making

- Must **act** with impartiality and independence.
- Must **be seen to act** with impartiality and independence by public.
- How?
 - By following procedures to promote **TRANSPARENCY**

1) Keeping Things Public

- General Rule:
 - **All** meetings open to public
- Exceptions include:
 - Deliberation on reserved decisions between members only – minutes taken, minimum one staff present
 - Section 9 of the *Statutory Powers Procedure Act* provides that a hearing may be closed to the public if:
 - (1) a matter involving public security may be disclosed or
 - (2) intimate financial or personal matters or other matters may be disclosed at the hearing of such a nature, having regard to the circumstances, that the desirability of avoiding disclosure thereof in the interest of any person affected or in the public interest outweighs the desirability of adhering to the principle that hearings be open to the public.

2) Formality & Clarity

- When does meeting begin? End?
- All matters clearly tabled, considered and voted on
- Clear outcome: approved, refused, reserved or deferred
- Notice of decision
- Minutes

Standard of proof

- In tribunal proceedings, the standard of proof is the balance of probabilities.
- This requires that the decision-maker be more convinced of the existence of a fact than not.
- The onus of meeting this standard of proof is on the appellant owner/occupant.

Evidence

- Administrative tribunals have more latitude with respect to evidence that can be received and considered
- The fundamental test with respect to admissibility is relevance to the issues involved in the hearing
- Though direct sworn evidence is the norm, Hearsay and unsworn evidence can be received

Evidence

- When confronted with an objection about receiving evidence, the Committee should generally receive evidence...
- ...But consider the weight to assign any piece of evidence
 - Hearsay or unreliable evidence should be given less weight
 - Unreliability could be considered on factors such as:
 - Ability to recall
 - Internal consistency
 - Probability/reasonableness

Decisions with reasons

- Under the rules – decision can be made orally or the panel can reserve
- Panel can reserve and deliberate in private without the parties or members of the public present.
- Oral decision should be accompanied by a written decision shortly thereafter

Decisions with reasons

- The final decision should summarize the facts and arguments presented by the parties, the findings of fact made by the Property Standards Committee and its decision with reasons.
- The jurisprudence indicates that reasons must be more than “merely a recital of allegations followed by bald conclusions.” The Committee’s decision must explain the relationship between the evidence and its conclusions, including why evidence was rejected or given little credibility.

Legal Services Presentation

- HOW to receive legal advice

Legal advice

- City Solicitor's Office does not usually attend Panel meetings
- If a Panel is in need of legal advice, a resolution should be passed by the Panel detailing the issue
- The Panel Administrator will inform City Solicitor's Office
- City Solicitor's Office will attend or provide a written response

Legal advice

- Advice to Panel/Committee as a whole, not individual members
- **Advice should be of a general nature and not specific to a particular matter before the Tribunal. Legal cannot assist the Tribunal in weighing evidence or reaching a decision.**

Questions and Answers
