



2021 Administrative Penalty Tribunal, Chair's Annual Report

Paul Sommerville, Chair

Contact Information

General Inquiries:

Tel: (416) 392-3412

Email: APT@toronto.ca

Court Services, Tribunal Operations

Pauline Chandarpaul, Supervisor Tribunal Operations

Tel: (416) 392-3072

Email: Pauline.chandarpaul@toronto.ca

Address:

40 Orchard View Blvd Suite 253

Toronto, ON M4R 1B9

Table of Contents

Contact Information1

Background3

Chair's Opening Remarks3

Panel Members5

Business Meetings5

Training6

 Adjudication Program - SOAR6

 Technical Training.....6

Mentoring7

The Administrative Penalty Hearing Process.....7

 Hearings.....7

 Hearing Dispositions8

Support Staff9

Challenges9

Practice Directions 11

Strategic Plan for 2022..... 11

Continued Training 11

Background

The Administrative Penalty Tribunal is an independent adjudicative body consisting of 25 public Panel Members referred to as Hearing Officers. Hearing Officers are appointed by City Council and provide a second, independent review and decision for a parking violation dispute. Hearing Officers have the authority to affirm, vary or cancel the decision of a Screening Officer and extend time for payment. In carrying out this mandate, the Tribunal is authorized to conduct pre-hearings and mediations. Decisions of the Hearing Officers are final – there is no further appeal process.

The Administrative Penalty System (APS) assumed its jurisdiction on August 28, 2017. The Tribunal is governed by the Statutory Powers Procedure Act, its own Rules of Practice, Guiding Principles, The Municipal Code of Conduct, and is governed by Chapter 610 of the Toronto Municipal Code.

Chair's Opening Remarks

This Report covers a period from January 1, 2021 to December 31, 2021. The advent of the APS represents a fundamental change of direction in the management of administrative penalties in general, and parking violations in particular.

The former regime, which operated within the Provincial Offenses Act, was widely regarded as less than optimal. Relatively insignificant cases dragged on and on over months without resolution. There was a realization that valuable Court resources were being squandered in simply managing and adjudicating minor administrative penalty matters to uncertain and often unsatisfactory outcomes.

It became apparent to many across the Province that a better way of managing the extremely high volume of municipally generated cases was required. To this end the Province enacted enabling legislation which empowered municipalities to establish Administrative Penalty Tribunals to address these deficiencies, and a number of municipalities, including the City of Toronto, have done so.

The enabling legislation, the City By-Law, and City administration made it clear that the adjudication of administrative penalties needed to accomplish a few critical goals:

- Manage the high volume of cases definitively within proportional time frames;
- Provide finality with respect to outcomes; and
- Respect the rights of litigants under administrative law requirements and norms.

The Administrative Penalty Tribunal plays a key role in the achievement of these goals. It is an expert review body operating in a sophisticated IT environment, with demonstrable adherence to administrative law requirements. It provides timely and definitive outcomes.

Equally important, it does so with sensitivity and respect for the unique characteristics and circumstances of the litigants. This is a core value of the Tribunal, one that gives practical effect to the enabling legislation's inclusion of procedural safeguards and Undue Hardship criteria.

In conducting its work, the Tribunal is mindful that it represents a meaningful intersection between

City administration and citizens. It is our goal to ensure that litigants coming before us leave with a sense that, successful or unsuccessful, they have had a full, fair, and effective opportunity to make their case.

All of this occurs within the current context of parking regulation - a key feature in maintaining the quality of life within the City. We have a keen sense of the importance of effective enforcement of City regulations and exercise our mandate so as to reinforce that principle with expertise and an appropriate measure of sensitivity.

Submitted Respectfully on: March 20, 2022

A handwritten signature in black ink, appearing to read 'Paul', followed by a large, stylized flourish that loops back to the left.

Paul Sommerville

Chair, Administrative Penalty Tribunal

Panel Members

The inaugural Administrative Penalty Tribunal body was appointed to a four-year term of office by City Council on May 26, 2017, based on the recommendations made by the citizen-Member Nominating Panel. The Membership of the Tribunal represents a good cross section of skill sets and experience that reflect the diversity of the community.

Current active Members of the Tribunal are:

Ayderus Alawi	Jennifer Ansell	Deborah Boudreau,
Daniel Boyer	Natasha Bronfman	Barbara Cappell
Joanne Foot	Cheryl Gaster	Suzanne Graves
Jenny Gumbs	Christina Gural	Diane Hall
Mumtaz Jiwan	Randal Montgomery	Shirley Nguyen
Sancia Pinto	Andy Radhakant	Emile Ramlochan
Leslie Ross	Larry Swartz	Harold Tan
Shelley Timms	Helen Walsh	Paul Sommerville - Chair

Business Meetings

- **January 25, 2018:** APT overview, Practice Directions, Review of Rules of Procedures, Tribunal Processes and Experiences.
- **March 22, 2018:** Addressed issues of interest respecting interpretation of the various parking by-laws, the Revenue Services processes, and the processes of the Legal Services division.
- **April 11, 2019:** Addressed issues of interest respecting proposed updates and amendments to Notices, communication to Parking Enforcement Unit and training session to showcase new features on case management program and new Q-SYS application for calling interpreters.
- **November 22, 2019:** Addressed issues of interest respecting additional resources for the public, orientation/refresher sessions led by Public Appointments Office, City Manager's Office and Integrity Commissioner.
- **2020:** No Business Meetings due to the COVID-19 pandemic
- **May 4, 2021:** Addressed issues of the Hearing Officer Appointment Process; Virtual Hearing process, issues, and approaches; and the next business meeting taking place in the Fall of 2021.
- **October 19, 2021:** Addressed issues of the status of remote and in-person hearing plus the impact of the COVID-19 pandemic; and handling of complex cases.

Training

Adjudication Program - SOAR

All new Members are encouraged and supported to complete the Society of Adjudicators and Regulators (SOAR) Certificate in Adjudication Certificate program. This Program is offered in conjunction with Osgoode Hall Law School.

This preparation is considered highly relevant for the Members. The exercise of the Tribunal's mandate takes place within an Administrative Law environment, and ensuring that the requirements of the law are scrupulously observed is key to our success and public confidence in our process. Recognizing the fact that many of the litigants are unrepresented, it is important that Members have a firm grasp of the characteristics of fair hearings, procedural fairness and decision-making.

To this end, the Tribunal has also undertaken significant situation-specific training in addition to the SOAR certification. Since our inception, the Tribunal has achieved a high degree of expertise in discharging our mandate with acuity and sensitivity, and is well prepared to undertake further tasks requiring these skills. This process was aided significantly by the fact that a substantial number of Tribunal Members are already experienced licensed legal practitioners.

Technical Training

This Tribunal is virtually paperless. All case information, notes, and images are contained within the Ad Hoc Presentation Manager System. Hearing Officers are trained in the capabilities of the Software as it has evolved. The Software packages consist of:

- Ad Hoc – used to review case details
- Liberty Recorder: Digital Recordings of the proceedings
- Qmatic - Queuing system to call up the next litigator
- Q-SYS: Soft phone system used to call interpreters and integrated to Liberty for digital recording
- Access to Toronto Municipal code chapter 610 and parking violations

Court Services Staff has produced a reference binder for the use of Members, which includes a collection of resources for Members in the discharge of their responsibilities. The intention is for this to be a "living" document.

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

Mentoring

Technical and substantive support is readily available on an on-going basis from the Chair, support staff and other divisions. The Tribunal has placed an emphasis on hands-on, highly practical training. While the Tribunal is a very modern IT - intense agency, a key part of its work involves a high degree of sensitivity to the unique circumstances of the offences and the litigants who come before us. This aspect of our work requires more than simple technical expertise, but also a dedication to the principle that litigants have personal circumstances and explanations that are important for our thoughtful consideration of their cases. It is important to the Tribunal that litigants leave their hearings with a clear sense that they have been listened to and their circumstances taken into account, within the scope of our authority, as established by Council.

The Administrative Penalty Hearing Process

A person who disputes a parking violation with a Screening Officer and is unsatisfied with the decision, may within 15 days of that decision date, request a review of that decision before an Administrative Penalty Tribunal Hearing Officer.

That Request for review may be completed in written form and left with the Screening office to forward to the Tribunal, Emailed or may be completed and filed on-line. As otherwise noted in this Report, a consequence of the COVID Emergency and at the time of filing this Report, all of the Hearings of the Tribunal hearings are conducted electronically, and not in person.

In addition, the COVID Emergency has caused the Tribunal to provide relief from these deadlines, according to direction from the City and the principle of fairness.

Hearings

Court Services staff receive and review the incoming applications, and process, schedule and serve notices of hearing date for those matters accepted.

Hearing Application Activity	2019		2020		2021	
Requests for hearing received	15503		16470		12905	
Requests refused	948	6%	77	1%	15	0.12%
Accepted	14567	94%	16316	99%	11449	89%
Notice of Hearing issued	16679		7696	47%	21319	80%
Hearings still to be scheduled	255		6710	41%	2436	
Requests to change hearing date	1972		155		295	

*The above numbers represent ongoing matters carried over from 2021 and new matters for 2022.

Hearing Dispositions

At the present time and throughout all of 2021 Hearings were held using an electronic methodology, Webex Platform. This format accommodates the key elements of fair and effective hearings, including the ability to share evidence, including enforcement photographs, the receipt of Owner evidence, the Affirmation of testimony, and the retention of a digital record of the proceeding, which is accessible to the public upon request for a small fee.

Prior to the COVID Emergency, in-person Hearings were conducted at 40 Orchard View Blvd, a location that is shared with the TLAB. This location is fully outfitted for return to in-person hearings; I am currently reviewing dates to determine when it is appropriate to begin scheduling.

All information relating to the cases is electronic, and may include applications, supporting documentation, photographs, and decisions. This information is accessible to the Hearing Officer at the time of review. All hearings are recorded.

Hearing Dispositions	2019		2020		2021	
Prepaid prior to hearing date	2095	10%	639	6%	1675	7%
Affirmed	2434	12%	760	7%	1436	6%
Affirmed in Absentia	3303	16%	949	9%	4562	18%
Varied	1616	8%	1999	19%	2898	11%
Varied - hardship	4757	23%	2709	25%	5111	20%
Canceled	2138	10%	1080	10%	2548	10%
Canceled - hardship	2421	12%	787	7%	3002	12%
Adjourned	1972	10%	1876	17%	3995	16%
Agenda Total	20736		10799		25227	

NOTE: All Variances are attributable to Hardship, similarly Cancellations Chair Undertakings

The Chair reviews and makes decisions on exceptional processes. In the case of Motions to Set Aside a decision, the applicant has failed to attend the hearing and was automatically affirmed with an additional fee added as required by Chapter 610 of the Municipal Code. The Chair reviews a Motion to Restore application and approve the scheduling of the matter, if the grounds are sound.

Motion to Set Aside Decision	2019	2020	2021
Reviewed	943	144	1192

In addition to reviews, the Chair also receives and responds to complaints of hearing procedure or conduct in writing. The Tribunal is customer focused and conducts our hearings with a high degree of professionalism. I personally review disputes or complaints received and each complaint is responded to in a timely manner. I am happy to report that there has been a steady decline in the number of complaints received with: 26 in 2019, 11 in 2020 and a nominal number in 2021.

The role of the Chair requires a sound background in Administrative Law, and extensive experience in managing hearings. Subject matter- specific training and mentoring is a key component of the position, activities that are ongoing and build on extensive exposure and experience with Administrative Law processes, and the confident application of statute and case law. The Tribunal has faced and is likely to face further issues that require all the above background knowledge and experience and the role also requires a great deal of time, thought and judgement.

Support Staff

The Tribunal Administration office is managed by Court Services staff and is located at 40 Orchard View Blvd. Court Services is responsible for, but not limited to: processing and scheduling hearing applications, notification of hearing schedules, responding to complaints of process and inquiries, payroll reconciliation, ensuring the posting agenda & materials on the Web site, providing technical support in the operation of Digital Recordings, Queuing Systems, Case management system and Records management. In addition, the City designate performs the duties of Secretary at business meetings, which includes securing appropriate facilities, arranging for equipment, records, transcribes minutes and is knowledgeable of the rules of procedure and relationship framework.

Support from Court Services staff has been exemplary. From management through to hands-on support, Court Services has been able to provide expert assistance to the Chair and the Members. This is a complex and demanding environment and Court Services has been there every step of the way to facilitate the relatively seamless transition we have had.

Challenges

- On March 14, 2020, the APT Chair provided direction to Court Services to issue Notices of Postponement for all in person hearings scheduled between March 16, 2020 and April 3, 2020. The decision was based on Court Services' recommendation and the completion of a risk assessment based on a list of considerations provided by the Government of Canada.
- On March 20, 2020, the Government of Ontario passed an emergency order (O. Reg. 73/20) under the Emergency Management and Civil Protection Act.
- On March 23, 2020, the Ontario Court of Justice issued an order and extended its period of postponement for all Provincial Offences Act matters scheduled up to and including May 29, 2020. Further, Mayor John Tory declared an emergency in the City of Toronto.

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

On April 28, 2020, based on Court Services' recommendations, APT Chair approved electronic hearings for high volume charges, which resulted in efficiencies in case management for matters postponed between March 16, 2020 and May 29, 2020.

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

Various additional measures have been implemented throughout the course of 2021 in response to the Covid Emergency. This evolution also involved extensive training in the new processes for Members. The transition to the electronic format has enabled the Tribunal to continue to serve the public according to its mandate. The Tribunal has been addressing a backlog of cases and this backlog has now been cleared.

Over this same period, Court Services Staff, with the active support of City Health and Safety resources, and the Joint Health and Safety Committee, transformed our in-person Hearing space at 40 Orchard View Boulevard into a safe and protective environment. This was done in contemplation of the eventual return to the in-person Hearing format at Tribunal facilities.

This was a major effort involving extensive renovation of the space, ensuring that physical distancing, ventilation and cleaning standards were met or exceeded. This was confirmed by City of Toronto Health and Safety resources who pronounced the space ready for the resumption of in-person Hearings at such time as the City directs.

Office Preparations included:

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

The COVID Emergency has also had an impact on the content of our Decisions. While each Member is independent, and not subject to direction per se, we have established common practices which recognize the special challenges Owners face in this difficult time.

These practices include heightened sensitivity to the financial consequences of the Emergency for Owners, relaxation of deadlines, and extended periods of time-to-pay. 2021 presented many challenges for many people in Toronto. Our response has been directed to confidently continuing to provide service according to our mandate. To be sure, the evolution to the electronic format for Hearings creates its own challenges, we are concerned that many Owners who wish to appeal the disposition of their parking violation notices may be inhibited or impaired in doing so because of technical resources or competency.

We are confident that our processes meet a high standard of care, and are as intuitive and as easy to access as possible. We will continue to evolve to meet the needs of Owners, consistent with our mandate.

- The Tribunal faced some challenges related to the availability and quality of interpreter services. Staff continue to work on ensuring that this service is available to the public in as seamless a manner as possible.

Practice Directions

There have been additional Practice Directions (PDs) and Practice Notes issued:

- A PD requiring Members to ensure that litigants are treated invariably with respect
- A PD requiring Members to review the respective case files prior to the appearance of the litigant at the hearing window
- A PD respecting the Introduction of the Hearing to the Owners
- A PD respecting Interpretive guidance respecting Chapter 610 of the Municipal Code

Strategic Plan for 2022

Continued Training

It is our goal to create a highly effective and expert body capable of discharging our mandate efficiently and effectively in every case. This includes continuous improvement of technical expertise respecting the broad range of parking regulations. In addition, we are committed to the thoughtful and consistent application of well-informed and sensitive approaches to the wide variety of special circumstances presented by litigants.

Further, the Tribunal fully supports the motion adopted by City Council July 2019 to request the Province to develop and make amendments to the appropriate regulations to permit the City of Toronto to use an Administrative Penalty System for offences enforced using an Automatic Speed Enforcement system and Red Light Camera system (IE6.9). It is also our goal to ensure that the Tribunal has an overall skill set capable of administering an even wider range of Administrative Penalty subject matters seamlessly and confidently, should our mandate evolve. This requires ongoing training and mentoring which will be undertaken throughout the year.