



July 4, 2022

Planning and Housing Committee  
City Hall, East Tower  
100 Queen St. W, 12th Floor  
Toronto, ON M5H 2N2  
Attention: Nancy Martins  
Via email: [phc@toronto.ca](mailto:phc@toronto.ca)

Dear Deputy Mayor Ana Bailão, Chair, and Members, Planning and Housing Committee

**RE: PH35.8: Toronto Local Appeal Body - Chair's 2021 Annual Report**

FoNTRA commends the work that the TLAB has done to improve public education, including the Chair's Annual Report, the Open Business Meetings, and the enhanced Public Guide. FoNTRA always looks forward to the TLAB Chair's Annual Report, and we are pleased to provide feedback and recommendations on the 2021 Report.

Our detailed comments are provided in the Attachment, and our recommendations are as follows:

**#1: ESTABLISH NAVIGATOR STAFF ROLE TO ASSIST PUBLIC (see attached Comment #15)**

The TLAB Annual Report recommends the introduction of a new TLAB administrative staff role, that of a 'Navigator':

- FoNTRA enthusiastically supports the creation of the new Navigator staffing role as it will provide a much-needed public service.
- The creation of this new service will help to reduce the substantial barriers that exist today for self-represented parties at TLAB. As residents are assisted to gain a better understanding of the process, we anticipate that public engagement will increase in a positive way.

**#2: PREPARE HANDBOOK FOR SELF-REPRESENTED PARTIES (see attached Comment #8)**

The TLAB Annual Report also recommends the preparation of a handbook for self-represented parties and a draft list of frequently asked questions:

- We believe that the handbook for self-represented parties and an online list of frequently asked questions will assist many new parties at TLAB hearings.
- The TLAB should include these items in the work plan for 2022.

### **#3: POST CLOSED CASES ON OPEN DATA PORTAL (see attached Comment #14)**

The TLAB Annual Report has introduced detailed summary statistics on cases handled and the disposition of these cases. The source data behind these statistics could reveal valuable additional information of public interest. We recommend that:

- TLAB provide a summary spreadsheet of all closed TLAB applications at the end of the calendar year. These spreadsheets should be made available through the City's Open Data Portal.

We note that the TLAB's Annual Report is an important exercise and demonstrates openness and accountability from an important administrative tribunal. We strongly suggest that the Committee of Adjustment should follow this same model and provide annually a similar report to the PHC Committee.

Yours truly,

Geoff Kettel  
Co-Chair, FoNTRA

Cathie Macdonald  
Co-Chair, FoNTRA

Attachment: FoNTRA Comments and Recommendations

Cc: Gregg Lintern, Chief Planner & Executive Director, City Planning  
Kyle Knoeck, Director, Zoning and Secretary-Treasurer, City Planning  
FoSTRA  
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**The Federation of North Toronto Residents' Associations (FoNTRA)** is a non-profit, volunteer organization comprised of over 30 member organizations. Its members, all residents' associations, include at least 170,000 Toronto residents within their boundaries. The residents' associations that make up FoNTRA believe that Ontario and Toronto can and should achieve better development. Its central issue is not *whether* Toronto will grow, but *how*. FoNTRA believes that sustainable urban regions are characterized by environmental balance, fiscal viability, infrastructure investment and social renewal.

# TLAB Chair's 2021 Annual Report

## FoNTRA Comments and Recommendations

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This attachment provides feedback on the recently released 2021 Annual Report prepared by the Chair of TLAB. We have provided feedback on 15 items in the report shown as “quoted text” and have made recommendations related to three specific items.

### 1. Fairness Principles (pg.17)

The TLAB's mandate as set by City Council includes several broad objectives including to “Ensure the application of key fairness principles that the public could recognize and rely on.”

#### Comments:

- The principles of fairness are important to FoNTRA and its members. Fairness is often described using the Fairness triangle that considers the fairness of the hearing, the fairness of the decision and the fairness of the service.
- FoNTRA recently submitted a survey of the Committee of Adjustment using the Fairness triangle methodology
- Here is a link to the [Executive Summary – COA Survey – Report Card](#)

### 2. Consistent Interpretation (pg. 19)

“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 Council's policies and goals as expressed in its Official Plan.”

#### Comments

- As our residents head off to their TLAB hearing, they often say ‘I hope that I get a good hearing officer today.’
- ‘Good’ has many definitions but usually means open and attentive to their submissions, displaying active listening skills.
- ‘Good’ also means writing decisions based on the data and opinions provided in evidence aligned with the Official Plan and the other planning tests.

### 3. ‘De Novo’ Approach (pg. 19)

“This ‘de novo’ approach to 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, and prescribed statutory tests, as well as the decision of the initial consideration.”

## Comments

- The statement quoted above will create some confusion with our lay residents.
- The definition of a ‘hearing de novo’ is well understood for Canadian tribunals and it generally means that the decision of the initial consideration (aka the Committee of Adjustment) is given little or no weight.
- The reasons are clear as the standard for evidence at the Committee of Adjustment is quite low and evidence is not provided under oath and is not subject to cross-examination.

## 4. TLAB Constituent Education (pg. 21 and pg. 37)

“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.”

## Comments

- FoNTRA is pleased to hear about this outreach initiative and will advise our members and partner organizations of this initiative.

## 5. Simplification of Rules and Procedures (pg. 23)

“The TLAB continues to review its rules and procedures to make them less complex and simpler in wording thereby removing major barriers to effective public participation.”

## Comments

- FoNTRA applauds this initiative as we receive many complaints from our residents about the complexity of the procedures, specifically as it relates to forms.
- The introduction of the new Navigator role would greatly assist self-represented parties and participants to ‘navigate’ the myriad ocean of forms.

## 6. Consistent Anchored Decision-Making (pg. 25)

“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.”

## Comments

- We have observed over many hearings that there is often a great disconnect between the factual evidence provided by expert witnesses and the opinion evidence that summarizes this evidence.
- Opinion evidence should be anchored in the factual evidence. If the factual evidence shows that there are few exemplars in the study area, the expert witness should not say that there are many examples.

- Anchored decision-making should be derived from findings based on anchored evidence.

## 7. Cogent and Clear Information to the General Public (pg. 25)

The report states that the “Continuous Service Improvement (CSI) initiative including ways to make the hearing process easier to understand, providing more cogent and clearer information about the TLAB to the general public, and fostering an environment that aims at consistency in decisions.”

### Comments

- FoNTRA lauds the goals of the CSI initiative particularly where it improves the accessibility of the hearing process to lay persons.
- ‘Consistency exists where like facts produce like results’ as referenced in the article from Bryan Findlay of WeirFoulds with this link [Consistency in Tribunal Decision-Making](#).
- Mr. Findlay also writes in this article that ideally decisions should be organized, searchable and indexed.
- The TLAB should explore the feasibility of extending the Application Information Centre or the Open Data Portal to support indexing and searching of TLAB decisions.

## 8. Handbook for Self-Represented Parties (pg. 26)

The reports states that “the Membership adopted by Motion the following action items related to the CSI initiative:”

- a) Create an outline for the mini-handbook for Self-Represented Parties
- b) Develop a draft list of frequently asked questions (FAQ) ...

### Comments

- FoNTRA has identified the problems and issues related to self-represented parties at the tribunal for many years, and we support this CSI initiative.
- Many tribunals across the country provide guides to assist self-represented parties. Here is a link to a sample [Guide to how to represent yourself at a hearing \(RECO\)](#)

### FoNTRA Recommendation (see #2)

- We believe that the handbook for self-represented parties and a list of frequently asked questions will assist many new parties at TLAB hearings.
- The list of frequently asked questions (FAQs) should be published online in order to encourage feedback and extension of this list.
- The TLAB should include these items in the work plan for 2022.

## 9. Length of Hearings (pg. 28)

The report describes an initiative to reduce “the length of Hearings through the implementation of a strict Chair’s protocol for Hearing Day extensions.”

### Comments

- A common tactic for experienced Parties at the TLAB is drag on proceedings to create the situation called ‘trial by attrition’. If a hearing is stretched to additional days, the time and effort to participate can quickly mount.
- We believe that a new protocol is required to cure this behavior. The protocol should not give advantage to any party in the proceedings.

## 10. Publication of Complaint Procedure (pg. 33)

The report describes the “liaison with a representative of both the Office of the Integrity Commissioner and City Ombudsman which has led to the improved publication of complaint procedures.”

### Comments

- Complaints are an important way for the management of TLAB to be accountable to the public, as well as providing valuable prompts to review organizational performance

## 11. Concise and Uncomplicated Decisions (pg. 39)

“It has also resulted in the TLAB’s consideration of best practices to assist Members in drafting more concise and uncomplicated decisions.”

### Comments

- The TLAB should simplify the content and language of their forms and decisions by cutting down on legalese by using plain language.

## 12. Application Disclosure (pg. 44)

“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.”

### Comments

- Applicants’ Disclosure is a required process that is frequently bypassed and the key changes are subsequently identified in the Document Disclosure. Opposing witness statements are filed without knowledge of the revised application proposal.
- Inevitably the late filing of essential disclosure is explained away as minor changes or the delay is necessary to resolve some zoning difficulties.
- Full Applicants’ Disclosure is necessary for a fair hearing.

### 13. TLAB Guiding Principles (pg. 44)

The TLAB Guiding Principles provides 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.”

#### Comments

- The adversarial nature of the TLAB hearing often result in aggressive cross-examination of residents appearing in opposition to the proposed development.
- The aggressive tone of the cross-examination cannot be described as courteous nor respectful.
- All attendees at TLAB proceedings should be advised of the TLAB Guiding Principles.

### 14. Summary Statistics (pgs. 62 and 63)

The report provides three pages of summary information on closed applications for five years with details on outcomes for the years of 2020 and 2021. This information provided in the Annual Report provides a useful summary of the volume of work and the nature of outcomes.

#### Comments

- FoNTRA has not been able to reconcile the summary data with information provided through the Application Information Centre. FoNTRA has gathered and stored all of the TLAB decision/orders filed by TLAB since 2017.
- We note that TLAB’s Scheduled Hearings and Decisions is no longer updated and cannot be relied upon to access decisions.
- The City currently provides a summary spreadsheet of all closed COA applications each year and these spreadsheets are available on the City’s Open Data Portal. This COA dataset provides a standardized source of reference data that can be used for a variety of public and private purposes.
- There is no similar source of data for closed TLAB applications.

#### FoNTRA Recommendation (see #3)

- TLAB provide a summary spreadsheet of all closed TLAB applications at the end of the calendar year. These spreadsheets should be made available through the City’s Open Data Portal.

### 15. Navigator Staff Role to Assist Public (pg. 79)

“In addition to the resource materials already on the TLAB website, the ‘Navigator’ would be available to further respond to the request from the public and residents’ associations in deputations and correspondence to the TLAB and work cooperatively with TLAB Membership to introduce ‘tools’ to remove barriers to resident participation and engagement, and generally ‘de-mystify’ the appeals process.”

## Comments

- The TLAB proposes to provide a staff member who would handle requests for information and tools to assist the public in participating in the TLAB process.
- This is a much-needed role that is performed in a limited way by some residents' associations in certain parts of the city.

## FoNTRA Recommendations (see #1)

- FoNTRA enthusiastically supports the creation of the new Navigator staffing role as it will provide a much-needed public service.
- The creation of this new service will help to reduce the substantial barriers that exist today for self-represented parties at TLAB. As residents gain a better understanding of the process, we anticipate that public engagement will increase in a positive way.