



Administrative Penalty Tribunal 2022 APT Chair's Annual Report Paul Sommerville, Chair

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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, 2022 to December 31, 2022.

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 Offences 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: April 24, 2023

A handwritten signature in black ink, appearing to read 'Paul', followed by a large, stylized loop.

Paul Sommerville

Chair, Administrative Penalty Tribunal

Panel Members

The Administrative Penalty Tribunal members are appointed to a four-year term of office by City Council 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.

Active Members of the Tribunal in 2022:

| | | |
|--------------------------|-------------------|------------------|
| Ayderus Alawi | Jennifer Ansell | Deborah Boudreau |
| Natasha Bronfman | Barbara Cappell | Ben Drory |
| 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 | Kayla Stephenson | Larry Swartz |
| Harold Tan | Shelley Timms | Helen Walsh |
| Paul Sommerville – Chair | | |

Business Meetings

The Administrative Penalty Tribunal's public business meetings are held during each calendar year with the exception of 2020 when no business meetings were held due to the COVID 19 pandemic. The Tribunal meets to receive information and discuss a variety of topics including, but not limited to an APT Overview, Practice Directions, Review of Rules of Procedure, Tribunal Processes and Experience. In 2022, the Tribunal held three business meetings as follows:

- **March 17, 2022:** APT overview, Practice Directions, Review of Rules of Procedures, Tribunal Processes and Experiences.
- **July 15, 2022:** APT overview, Practice Directions, Review of Rules of Procedures, Tribunal Processes and Experiences.
- **December 29, 2022:** APT overview, Practice Directions, Review of Rules of Procedures, Tribunal Processes and Experiences.

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.

Members are also encouraged to enroll in City-provided online training modules that support the APT's mandate, as recommended by the Chair, and approved by City staff.

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 and the relevant ELI modules. 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
- Front Desk - Queuing system for in person attendees
- 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 limit in-person Hearings in favour of electronic proceedings via Webex. At the present time, the vast majority of the Tribunal's Hearings are conducted in this format. In person hearings are scheduled upon request and available for accessibility needs. 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 daily.

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 a Hearing may be completed in written form and left with the Screening office to forward to the Tribunal, Emailed, or it 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, almost 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, extending the filing limitations of 15 days to 30.

Hearings

Court Services staff receive and review the incoming applications, and process, schedule and serve notices of hearing dates for those matters accepted. Totals for 2022 include matters carried over from 2021.

| Hearing Application Activity | 2019 | 2020 | 2021 | 2022 |
|--|-------------|-------------|-------------|-------------|
| Requests for hearing received | 15503 | 16470 | 12905 | 17,239 |
| Requests refused | 948 | 77 | 15 | 98 |
| Accepted | 14567 | 16316 | 11449 | 17,141 |
| Notice of Hearing issued | 16679 | 7696 | 21319 | 19,982 |
| Hearings still to be scheduled | 255 | 6710 | 2436 | 1,248 |
| Requests to change hearing date | 1972 | 155 | 295 | 375 |

Hearing Dispositions

At the present time and throughout all of 2022 almost all 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 Toronto Local Appeal Body. This location remains fully operational for in-person hearings which resumed on a limited basis in May of 2022.

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 | 2022 |
|-------------------------------|-------|-------|-------|-------|
| Prepaid prior to hearing date | 2095 | 639 | 1675 | 1,070 |
| Affirmed | 2434 | 760 | 1436 | 1,355 |
| Affirmed in Absentia | 3303 | 949 | 4562 | 3,872 |
| Varied | 1616 | 1999 | 2898 | 2,345 |
| Varied - hardship | 4757 | 2709 | 5111 | 6,602 |
| Canceled | 2138 | 1080 | 2548 | 2,333 |
| Canceled - hardship | 2421 | 787 | 3002 | 2,073 |
| Adjourned | 1972 | 1876 | 3995 | 1691 |
| Agenda Total | 20736 | 10799 | 25227 | 21341 |

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

| Motion to Set Aside Decisions | 2019 | 2020 | 2021 | 2022 |
|-------------------------------|------|------|------|-------|
| Prepaid prior to hearing date | 943 | 144 | 1192 | 2,498 |

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 the matter 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 approves the scheduling of the matter if the grounds are sound.

In addition to reviews, the Chair also receives and responds to complaints of hearing procedure or conduct in writing Chair Undertakings. The Tribunal is customer focused and conducts its hearings with a high degree of professionalism. The Chair personally reviews disputes or complaints, and each complaint responded to in a timely manner. 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. Complaints received in 2022 are based on the public's misinformation in relation to the City's bylaws and parking provisions, but mostly in relation to missed Hearing dates or Extensions of Time to Pay requests to pay a ticket.

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 and remain current with technology trends to support access for the public.

Challenges

In 2022 the evolution to the electronic format for Hearings creates its own challenges, and 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. To date this has not presented significant issues. The Tribunal does offer in-person Hearings for those requesting that option with dedicated in-person hearing days

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 which include:

- 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 2023

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 supports City Council's decision on February 2, 2022 to authorize City staff to take steps to implement an Administrative Penalty System for the Red Light Camera and Automated Speed Enforcement programs once the enabling regulatory framework is provided by the Province. Consistent with that direction staff will report back to the Infrastructure and Environment Committee with an update and any necessary recommendations to give effect to the operation of Administrative Penalty System for the Red Light Camera and Automated Speed Enforcement programs.

The Tribunal also supports the subsequent passing of Ontario Regulation 355/22 by the Government of Ontario in April 2022 to permit the City of Toronto to use an Administrative Penalty System for offences enforced using an Automated Speed Enforcement system and Red Light Camera system.

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.