

CHAIR'S 2022  
ANNUAL  
REPORT

Toronto Local Appeal Body



Dino Lombardi

Chair, Toronto Local Appeal Body

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## I. Executive Summary

**Mayor and Members of Council**

**July 14, 2023**

**City Manager**

**Court Services**

I was given the honour of being appointed the Chair of the Toronto Local Appeal Body (TLAB) for a four-year term in December 2020. Each year, the TLAB Chair is required to prepare and present an Annual Report which provides a concise overview of the successes and accomplishments of the Toronto Local Appeal Body and its Members during the past operating year.

As in past years, I am pleased to inform City Council of the resilience of our Members and Court Services staff in continuing to deliver timely adjudicative services to the residents of the City of Toronto in 2022.

Members of the Toronto Local Appeal Body have continued to engage their responsibilities with determination and resolve providing for the fair, thorough, and timely resolution of appeals before it – all on proper principles of good community planning.

This is a significant achievement that ensures the Toronto Local Appeal Body's Hearings continue to be conducted expeditiously and effectively.

### **Accomplishments**

Toronto Local Appeal Body Members have accomplished much in the face of the ongoing challenges in 2022 as the Tribunal and the City of Toronto have emerged from the COVID-19 pandemic.

Key accomplishments include:

- Successfully clearing the backlog of outstanding matters due to pandemic shutdowns.

- Rapidly adapting to and perfecting the technological aspects of delivering online adjudication via a 'remote' meeting platform with the continued support of administrative Court Services staff.
- Introducing and advancing continuous Tribunal improvement initiatives in response to public depositions and input from the public.
- Fostering an accessible forum for appeals

Emerging from the difficulties faced during the last two years, the Toronto Local Appeal Body has continued to find ways to meet the needs of the public we serve, while keeping the safety of City staff, its Members and the public top of mind. This, however, has not proven to be easy.

### **Challenges/Issues/Emerging Trends**

As in previous years, the Toronto Local Appeal Body encountered operational issues and challenges in 2022 as it discharged its responsibilities as a local adjudicative land use appeals tribunal serving the residents of Toronto. In doing so, the Tribunal was also able to identify and address emergent trends and successfully implement solutions in its operation as an adjudicative land use appeals tribunal. These include:

- Continued turnover of Members
- Communication challenges with senior City staff.
- Mounting burdens on the TLAB Chair and Vice-Chair to support Members, give direction on policy and procedural matters and address complaints.
- The increasingly complex procedural demands of the appeal process, especially the rise in the number of Motions and Review Requests, and hearing schedules associated with individual hearing events.
- Ongoing constraints in meeting targeted service standards (decisions and hearing schedules) due to the 'part-time' nature of TLAB Members' appointment parameters and workload capacity.

However, the Toronto Local Appeal Body has continued to find ways to find more proficient approaches to addressing the needs of those that come before it, and we

remain committed to working towards further improvements to our service model to make the land-use dispute process more streamlined, effective, and accessible for the public.

## Recommendations

The Toronto Local Appeal Body Chair's 2022 Annual Report advocates three(3) **Recommendations** to support its commitment to improving the services it offers to the public. These can be found at the end of the document in Section 10.

Although some of these recommendations are legacy items put forward by the Chair in previous Annual Reports, others are new. They can be summarized as follows:

- ✓ Enhancements to the Hearing process that provide clarity and consistency for the public.
- ✓ Further modifications to the TLAB's Public Guide as a communication document to assist the public in understanding the appeal process.
- ✓ Recognition of the demands and increased mandate of the Toronto Local Appeal Body's Chair (and Vice-Chair) as a result of an expanded Member complement.
- ✓ Enhancements to the decision-writing template to improve the quality and consistency of decisions issued by the TLAB, and the implementation of a legal search engine to assist the public and practitioners in more easily finding and accessing TLAB decisions.

I hope this Report is informative and its recommendations are considered as a component of future City governance.

Respectfully submitted,

X



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Dino Lombardi  
Chair, Toronto Local Appeal Body  
Signed by: dlombar

## ABOUT THE TORONTO LOCAL APPEAL BODY



### II. About the Toronto Local Appeal Body

#### Background

The Toronto Local Appeal Body (TLAB) is an independent, quasi-judicial tribunal established through the City of Toronto Municipal Code Chapter 142, the *City of Toronto Act (COTA)*, and other provincial legislation. Its genesis can be found in amendments to the *Planning Act*, 2006, which gave municipalities the authority to create such local appeal tribunals.

The TLAB formally commenced operations in February 2017 and plays a vital role in the City of Toronto's land-use planning process providing an independent public forum for the adjudication of land-use disputes related to applications under Sections 45 (variances) and 53 (consents) of the *Planning Act*.

In adjudicating and making determinations on variances and consent appeals, the TLAB has all the powers and duties of the OLT under section 115 of the City of Toronto Act (COTA) and the relevant provisions of the *Planning Act*. It replaces for identical statutory jurisdiction the Ontario Land Tribunal (OLT), formerly known as the Local Planning Appeal Tribunal (LPAT) and the Ontario Municipal Board (OMB) for these purposes, within the corporate limits of the City. The OLT remains responsible for conducting hearings on appeals related to Official Plan and Zoning By-law amendments, site plan applications and decisions related to subdivisions. If there are related appeals with the OLT and the TLAB, the OLT has jurisdiction to hear all matters.

The TLAB is responsible for adjudicating land-use planning appeals of decisions of the four panels of the City's Committees of Adjustment (Toronto & East York, Scarborough, North York, and Etobicoke & York) from intake to closure. Its key mandate is the disposition of appeals in an efficient, effective, open, and fair process to all stakeholders and it is in service to all persons with an interest in an appeal.

The TLAB conducts hearings, hears evidence, and renders decisions on the appeals before it based on the merits of the application of the four 'statutory' tests of the *Planning Act*: that the variance is minor in nature, is appropriate development for the property, meets the general intent and purpose of the Official Plan and meets the general intent and purpose of the Zoning By-law.

The TLAB has adopted its own rules of practice, known as the TLAB's *Rules of Practice and Procedure (Rules)*, which govern hearings under the *Statutory Powers Procedure Act* that, among other matters, reinforces the independence of administrative tribunals.

The TLAB promotes and encourages the early resolution of a multitude of matters using a variety of dispute resolution methods and issues decisions, orders and recommendations arising from pre-hearings and mediations, settlements and if required, a formal hearing.

Through its *Rules*, the TLAB encourages mediation amongst parties and the settlement of some or all of the issues in dispute in an appeal matter. The use of mediation by the Tribunal in land use planning disputes is seen as a basis for shortening timelines and pre-emptively addressing issues thereby reducing overall appeal costs.

### **III. Organizational Structure**

Since its inception, the TLAB has been most closely connected with the City's Court Services Division. Court Services provides a broad range of administrative and support services to the public using the Provincial Offences Courts within the City as well as servicing other relevant City tribunals such as the Administrative Penalty Tribunal, Toronto Licensing Tribunal, and the Toronto Local Appeal Body.

Court Services oversees financial and administrative processes, technology, facilities support, frontline customer services, coordinating and delivering training to TLAB Members related to Tribunal digital processes. It has proven to be a helpful sounding board for issues identification and discussion and its Senior Management has assisted the TLAB Chair with arranging meetings of relevance to the Tribunal involving City interdivisional jurisdictions.

The TLAB Chair routinely engages in direct communications with Court Services, consulting on matters which impact the dimensions of the welfare of the Tribunal itself focussed primarily on existing and emerging administrative matters to ensure the efficient and effective day-to-day operation of the TLAB; and the TLAB's annual budget submissions. However, Court Services has no direct control over issues such as TLAB



Member appointments, the Chair's Annual Report, or the adjudication and rules of procedure of the TLAB.

While the TLAB Chair is in direct communication with Court Services on matters respecting Court Services staff or which go to the dimensions of the welfare of the Tribunal itself, it must be recognized that this expectation of open dialogue is tempered by the fact that Court Services is a City division from which the TLAB must demonstrate and retain autonomy.

### **TLAB Panel Appointments and Member Composition**

The TLAB was originally constituted in 2017 with seven (7) Members including the Chair, appointed in a 'part-time' capacity. The inaugural group of Members was appointed to a four (4) year coterminous term of office by City Council, based on the recommendations made by the citizen-member Tribunal Nominating Panel following an extensive evaluation and interview process.

However, since that time the TLAB has experienced intermittent Member turnover typically through resignations, with corresponding reappointments through City Council.

In July 2018, Council authorized the appointment of a TLAB Vice-Chair with duties that commenced on January 1, 2019. Under its Procedure By-law 1-2017, the TLAB Vice-Chair is elected from its membership for a term of no more than one year, on a rotating basis. The TLAB has seen three Vice-Chairs selected from its Membership. The current Vice-Chair, Ana Bassios, was elected to a one-year term which commenced on January 1, 2022.

More recently, City Council increased the TLAB Membership complement to ten (10) in total. At its meeting on April 6, 2022, City Council adopted a recommendation put forward by the Deputy City Manager, Community and Social Services, in a report dated March 11, 2022, - *Response to City Council's Directions Arising from the Toronto Local Appeal Body Chair's 2020 Annual Report* – increasing the size of the TLAB from ten (10) Members to fourteen (14) Members, including the Chair and Vice-Chair. At the writing of this report, there are currently 12 active Members. There are two member

vacancies and two members continuing their work after the expiry of their terms pending the appointment of replacement members.

However, at the end of 2022, two Panel Members (Christine Kilby and Paula Turtle) resigned from the TLAB, temporarily reducing the Tribunal Member complement to twelve (12). In addition, the Member appointment terms of both John Tassiopoulos and Sean Karmali technically expired in December 2022.

Nonetheless, Council's adopted policy is that TLAB Members' terms are to continue beyond the appointment term's 'end date' until a successor is appointed. This, allows a TLAB Panel Member to maintain the role until Council appoints a new Member. Rule 2.15 of the *TLAB's Rules of Practice and Procedure* addresses situations in which a Member's term expires before an appeal matter on which that Member is seized is completed. The Rule states that:

*“If a term of a Member presiding over a Hearing ends or expires before a decision or determination in a Proceeding is given, the term of that Member shall be deemed to continue, but only for the purpose of participating in the Proceeding to its conclusion and issuing a decision therein in accordance with the Rules and for no other purpose.”*

The TLAB Member appointment process within the City is conducted under the auspices of the Public Appointments Secretariat. Interested candidates are initially processed through that Secretariat and vetted by way of a Tribunals Nominating Panel appointed by City Council.

The Tribunal Nominating Panel conducts interviews and forwards a list of recommended TLAB Panel Members appointees for consideration and adoption. Typically, this process is conducted expeditiously and new appointments to the TLAB occur within months of a term ending or a resignation, depending on the schedule for City Council meetings.

However, a general municipal election occurred in 2022, which legislatively brought an end to the terms of members of some City Panels and Boards, including the Nominating

Panel for the TLAB. With a new term of Council, the City is required to conduct the recruitment for the Tribunal Nominating Panel, which conducts the selection and interview process. Unfortunately, this did not occur until 2023.

As a result, at the time of publication of this Annual Report, City Council had yet to appoint four (4) new TLAB Members to a four-year term, to replace the Members whose terms had expired or who had resigned, as cited above.

Therefore, although Members Tassiopoulos and Karmali continued in their roles into 2023, the TLAB Panel Member complement was reduced by two to twelve (12) Members due to the above-referenced resignations.

## **1. TLAB Chair & Vice Chair**

### **Chair**

The TLAB Chair is responsible for maintaining reputational integrity, Member discipline, liaison with all City Court Services staff and Tribunal external legal counsel and is tasked with reporting annually to Council via an Annual Report, among other duties. In addition to the general responsibilities as a Member of the TLAB, such as presiding over Hearings and drafting and issuing decisions and orders, the Chair has a Council approved mandate and continues to ensure:

The consistent application of the TLAB Rules, and the conduct of all Business Meetings per the City Procedures By-law applicable to the *TLAB and 'Roberts Rules for the Conduct of Meetings'*;

- Bringing interim and final decisions on Tribunal Policy to Business Meetings of the Tribunal for consideration and where necessary, ratification.
- Setting Business Meeting Agendas and final approval to the scheduling and content of Business Meetings.
- The delegation of responsibilities between Members, including ensuring a proportionate allocation of assignment opportunities, extra-services requests, the

distribution, and timely quality review of draft decisions (along with the Vice-Chair), and ensuring Member performance.

- The timely and accurate approval and publication of *Rules* updates, updates to Practice Directions, the sharing of procedural practices and reminders, the consultation on the update of the Public Guide, and the presentation and accuracy of the Tribunal's webpage and resource materials.
- Chair prioritizes training and education for Tribunal Members
- The sole liaison with the TLAB's external legal counsel and reviews and recommends all invoiced accounts of legal counsel.
- Administers the election of a Vice-Chair, annually, at the last Business Meeting of the year and, if the Tribunal's election process reveals no candidates, chooses an ensuing Vice-Chair.

It is important to note that while the TLAB Chair's appointment is also '**part-time**', the Chair is required to be accessible during normal business hours.

## Biography

### **Dino Lombardi, Chair (effective December 14, 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 and is a Full Member of the Ontario Professional Planners Institute (OPPI) and the Canadian Institute of Planners (CIP). He continues to be actively involved with both organizations, most recently having been appointed to OPPI's Discipline Committee.

Dino is also a Member of Lambda Alpha International, a worldwide, honorary land economics society, as well as having been the Editor of the Ontario Municipal Tribunals Report. He has an Advanced Certificate in Adjudication for Administrative Agencies, Boards and Tribunals from the Society of Ontario Adjudicators and Regulators (SOAR).

Dino was also honoured to have been elected the first TLAB Vice-Chair in 2019 and re-elected as Vice-Chair in 2020.

## Vice Chair

The Vice-Chair is the Chair's 'designate' and may be delegated authority and duties normally associated with the Chair, in the Chair's absence or upon assignment. These duties include:

- Chairing the Business Meeting in the absence of the Chair
- Performing any duties of the operation of Business Meetings assigned to the Chair upon delegation
- Other duties as assigned by the Chair.

## Biography

### **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.

Ana was elected TLAB Vice-Chair for a one-year term at the December 10, 2021, Business Meeting.

## Panel Members' Biographies

### **Sabnavis Gopikrishna (Re-appointed December 20, 2020)**

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 (Re-appointed December 20, 2020)**

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 (Re-appointed December 20, 2020)**

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.

**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).

**Christine Kilby (Appointed December 14, 2020) <sup>1</sup>**

Christine Kilby is a lawyer and accredited mediator with ten years of 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.

**Carissa Wong (Appointed March 9, 2022)**

Carissa Wong is a second-generation Torontonians, lawyer, and accredited mediator who is passionate about community, planning and the environment. She has published extensively on diverse participation in environmental decision-making and has assisted multi-party discussions on natural resource governance with First Nations in the Canadian north. She holds a Master of Environmental Management from Duke University and a certificate in Advanced Mediation from Harvard's Negotiation Institute.

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<sup>1</sup> Member Kilby resigned as of December 31, 2022.

**Gerald Swinkin (Appointed March 9, 2022)**

Gerald Swinkin obtained his LL.B. from Osgoode Hall Law School. He was called to the Ontario Bar in 1979. After commencing his legal career as a staff lawyer in the Legal Department of the City of Mississauga, he moved into the private sector, ultimately becoming a partner with the national law firm Blake, Cassels and Graydon LLP, specializing in municipal/planning law. After retirement from practice, Gerald was appointed in August 2016 to the Ontario Municipal Board (now the Ontario Land Tribunal) and served 5 years.

**Paula Turtle (Appointed July 22, 2022)<sup>2</sup>**

Paula Turtle holds an undergraduate degree from Ryerson University and an LLB from Osgoode Hall Law School. After working for many years as a labour lawyer, she was a Vice-Chair at the Ontario Labour Relations Board from 2015 to 2020. She has served on the Board of WoodGreen Community Services and as a member of the Advocacy Committee of Cycle Toronto. She has a private practice as a mediator-arbitrator.

**Ron Kanter (Appointed July 9, 2022)**

Ron Kanter obtained an LL.B from U of T Law School, and an LL.M from Osgoode Hall. He served as a Toronto City Councillor and MPP, where he directed a provincial study balancing development and environmental protection. Ron subsequently practiced municipal and planning law at several Toronto law firms for more than 30 years, representing applicants, objectors, public entities, and community groups. He has also trained and practiced as a mediator, adjudicator, and arbitrator.

**Trevor Kezwer (Appointed July 9, 2022)**

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<sup>2</sup>Member Turtle resigned effective December 21, 2022.

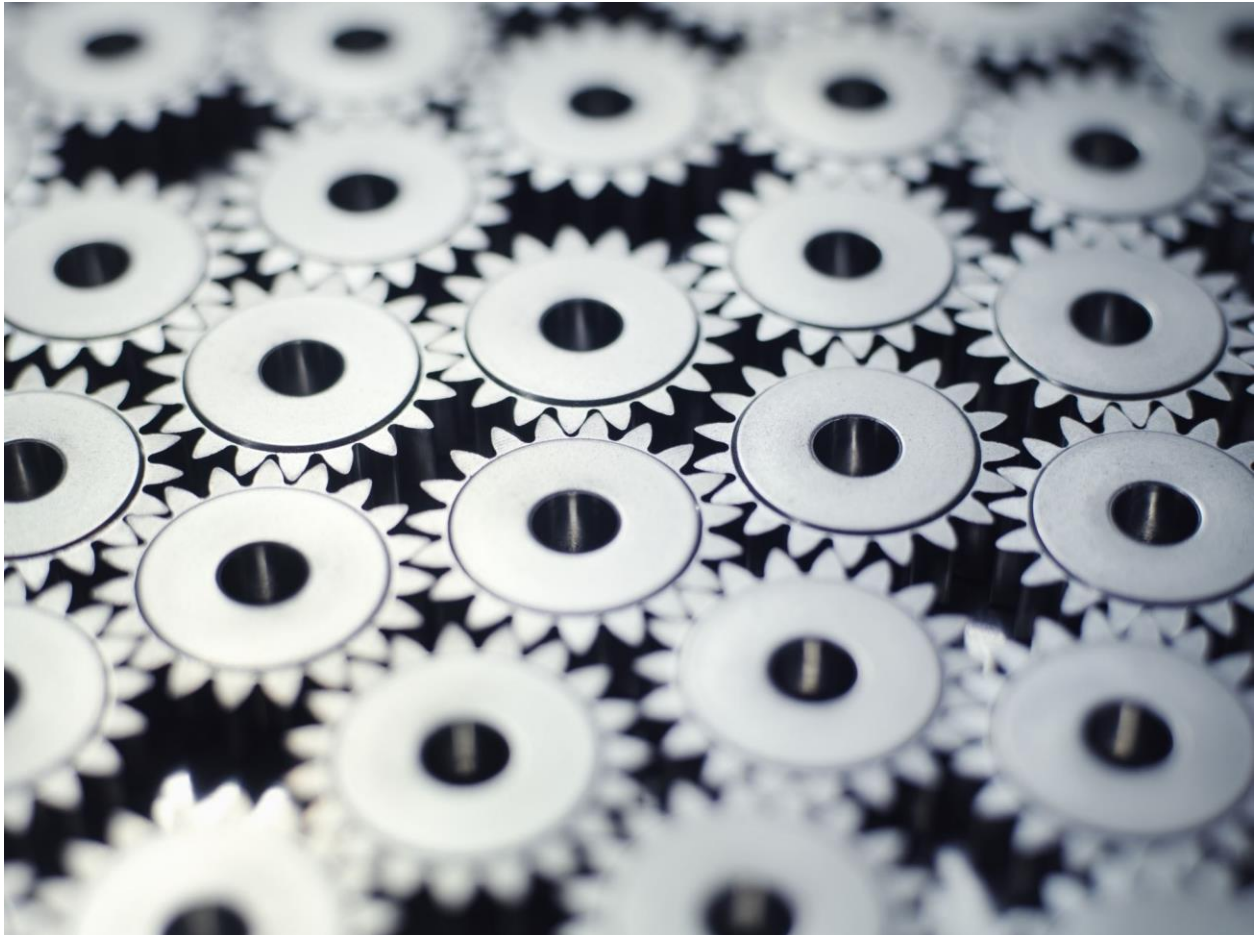


Trevor Kezwer obtained his law degree from the University of Windsor. In addition, Trevor holds a Master's Degree in International Relations from McMaster University. Trevor has experience working for a municipality, including working with planning staff, and preparing for hearings before the Ontario Municipal Board (now known as the Ontario Land Tribunal). As a resident of Toronto, Trevor appreciates the impact that planning decisions have on local neighbourhoods.

**Blair Martin (Appointed July 9, 2022)**

Blair Martin is an accomplished real estate executive and city planner. During his professional career, he has appeared before appeal tribunals as an appellant, a defendant, as a public official, as a witness giving expert testimony and as a private landowner. He has both past and current not-for-profit Board of Director experience, as well as experience with local government ad-hoc committees. Blair is a past member of the Canadian Institute of Planners (MCIP), and a former Registered Professional Planner (RPP) in the Province of Ontario.

## OPERATIONAL HIGHLIGHTS



### III. Operational Highlights

#### *The TLAB's Jurisdictional Authority*

Since its inception in 2017, the TLAB has sat as the appellate jurisdiction of Committee of Adjustment decisions on minor variance and consent decisions.

Included in the appeal 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, and at times must be expedited. Review Requests continued to be filed in 2022 in the order of approximately one every month. All require decisions and several can result in ordering new Hearings which must be added to the Members’ schedules.

Based on the performance metrics prepared by Court Services staff and included in this Report, a consistent and stable Panel Member complement has served the TLAB well in addressing the workload of Committee of Adjustment appeals to the TLAB.

The passage of *Bill 23 – The More Homes Built Faster Act, 2022*, in October of 2022 may impact the appeal volumes of TLAB. The *Bill*, which received Royal assent on November 28, 2022, eliminated ‘third party’ appeals of Committee of Adjustment decisions, directly resulting in fewer parties in a matter being able to appeal Committee of Adjustment decisions to the TLAB.

### ***Bill 23 – More Homes Built Faster Act, 2022***

On October 25, 2022, the Honourable Steve Clark, Minister of Municipal Affairs and Housing introduced *Bill 23, More Homes Built Faster Act, 2022*, after a brief period of public consultation, the Bill received Royal assent on November 28, 2022.

The *Bill* resulted in changes to the policy-led planning and development system under which municipalities in Ontario work and represents the single most significant transformation of Ontario’s planning system.

*Bill 23* resulted in a series of amendments to the *Planning Act (Act)* including the removal of previous entitlements in subsection 45(12) of the *Act* for ‘third parties’ to

initiate appeals of proceedings before the TLAB from municipal decisions of the Committee of Adjustment regarding consents and variances.

In this regard, the Bill included retroactive provisions that automatically dismissed appeals that had not already been scheduled for a hearing as of October 25, 2022, by the TLAB.

There are other provisions of the *Bill* that, while still vague in the legislation, will also be of interest, as the Government of Ontario provides further information and details. These provisions include increasing tribunals' powers to award costs against a party who loses a hearing, dismissing appeals based on undue delay, introducing service standards, delivery timelines for the issuance of decisions and orders, and priority criteria for tribunal scheduling.

The TLAB will continue to monitor the impacts of *Bill 23* on the Tribunal's operations, which will be more clearly understood in 2023. However, it is safe to conclude that the TLAB will be directly affected by the amendments to the *Planning Act* in the Bill, and these will undoubtedly become more evident in the coming years.

### ***The TLAB's Mandate***

The TLAB has several broad but important objectives that the Tribunal has attempted to maintain and enhance:

- a) *City residents should be given the assurance that their views would be conscientiously considered in a reasonable period, on 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 and, along with a set of core *Tribunal Rules Principles* (see Attachment 1), these goals assure the public that the Tribunal's statutory mandate of a complete and first instance (*de novo*) consideration of the appeals before it is maintained.

The TLAB's mandate, as an independent, quasi-judicial adjudicative body dealing with land use planning appeals of decisions from the Committee of Adjustment, is to dispose of those appeals in an efficient, timely, effective, transparent, and fair process.

While the consequences associated with the COVID-19 pandemic in early 2020 tested this mandate, it is important to highlight that the TLAB was able to adapt quickly and proficiently to that unprecedented foundational challenge. Although this challenge has continued into 2022, the TLAB has never waived from efficiently fulfilling its mandate.

As highlighted in previous Annual Reports, the public health emergency resulting from this global pandemic necessitated the TLAB to take drastic actions concerning its operations. The TLAB has successfully converted all of its Hearings from 'in-person' hearing events at its three Hearing Rooms at 40 Orchard View Blvd. offices, to 'remote' hearings using the WebEx virtual meeting platform and has continued to do so in 2022.

In doing so, the TLAB was able to fulfill its mandate of hearing and disposing of appeal matters before it. The TLAB's rapid and effective adaptability to working remotely was due entirely to the structural processes put in place at the same time as the Tribunal's creation whereby its Rules require all materials to be filed electronically in a 'paperless' environment.

While the TLAB had hoped to return to 'in-person' Hearing events or at least transition into a 'hybrid' Hearing event model by 2022. The various emergency directives from the Province and the City, generally, prevented the TLAB's ability to resume in its entirety its normal practices of accommodating 'in-person' Hearings at its 40 Orchard View Blvd. offices. TLAB hearing rooms were ready for in-person hearing resumption after the lifting of the emergency orders in 2022.

As a result, TLAB Members have continued to undertake the majority of Hearing assignments primarily from their homes further burdening and challenging their technological capabilities and skills.

To assist Members in the 'new normal' required of the remote Hearings environment, Court Services staff undertook supplemental training sessions guiding 'virtual' Hearings using the City's WebEx platform and provided City issued laptops with required software to support TLAB members in adjudication of Appeals.

Therefore, 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.

The Tribunal, its Members and Court Services staff are to be commended for overcoming these unanticipated impediments and time commitments which have allowed the TLAB to maintain hearing appeals during a particularly challenging and unprecedented period, as the City emerges from the pandemic.

The TLAB is, again, 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 and harmonized Zoning By-law.

Consistency in approach for the respect, reinforcement, and gradual evolution of City neighbourhoods worthy of preservation and protection, following the policy priorities set by Council, remains an essential element of City building that TLAB Members take very seriously in fulfilling their appointed duties.

The time commitment and dedication of TLAB Members in executing their responsibilities are exemplary and reflect each Member's accepted understanding that, as citizens of Toronto appointed by Council, they take pride in fulfilling their 'civic duty'.

## IV. Business Meetings Highlights

### 1. Key Business Meeting Initiatives

The TLAB regularly convenes Business Meetings to discuss items of interest and to advance the business of the Tribunal. The TLAB's Business Meetings are open to all members of the public and they are encouraged to attend.

The TLAB is required to hold a minimum of two (2) Business Meetings annually, led by the Tribunal's Chair. The rules governing the Business Meetings are outlined in Section C (TLAB Business Meeting), Rule 8 in its Procedure By-law 1-2017. Notice of Business Meetings, together with the Agenda, are published on the TLAB website ([www.toronto.ca/tlab](http://www.toronto.ca/tlab)) in accordance with City disclosure practices as well as Rule 8 (3) (a) & (b) of Procedure By-law 1-2017.

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.

In 2022, the TLAB Chair scheduled and held six Public Meetings on the following dates, with the assistance of Court Services staff:

- 1. Business Meeting 1- March 4<sup>th</sup>**
- 2. Business Meeting 2 - May 4<sup>th</sup> (Special Meeting)**
- 3. Business Meeting 3- June 15<sup>th</sup>**
- 4. Business Meeting 4- October 19<sup>th</sup>**
- 5. Business Meeting 5- November 30<sup>th</sup> (Member Professional Development)**
- 6. Business Meeting 6- December 16<sup>th</sup>**

The Business Meeting 5 on November 30<sup>th</sup> was scheduled as a half-day professional development session, with the purpose of providing Members with relevant and

essential annual training and education in various topics identified by the TLAB, as permitted by Rule 11 (1)(f) of Procedure By-law 1-2017.

The six Business Meetings held in 2022 represent an increase of one additional meeting than in 2021 and an increase of two from previous years and since the commencement of TLAB's operations in 2017. A seventh Business Meeting scheduled for September 16, 2022, was cancelled due to Member availability.

The following are highlights from those 2022 Business Meetings:

## **Public Accessibility to the TLAB**

### ***The TLAB's Public Guide***

The TLAB believes that public input into the operation of the Tribunal and, correspondingly, the land use appeals process is fundamental to its function and legitimacy. The TLAB encourages such input and feedback and considers this a means of assisting it in keeping the Tribunal accessible to all.

In this regard, it is important to reiterate that all TLAB Hearings, as well as its Business Meetings, are open to the public. As a result, the Tribunal routinely receives deputations, both written and oral, from the public on various matters germane to the Tribunal at its Business Meetings and not related to any specific appeal matter before the TLAB. This public interest continued in 2022.

Continual focus on revisions made to the Public Guide is considered by both the Tribunal and the public as an important and influential contribution to educating the public about the appeal hearing process.

The Guide is especially invaluable to self-represented Parties and Participants engaged in an appeal before the Tribunal and to persons appearing before the TLAB for the first time.

In late 2021, the TLAB received and considered correspondence from the Federation of North Toronto Residents Association (FoNTRA), which provided the Tribunal with



cogent and relevant feedback from the public's perspective as to how to improve the practicality of the Guide.

The TLAB Members adopted three Motions at that Business Meeting, including receiving FoNTRA's and recommended Court Services staff bring forward a revision of the Public Guide for consideration at its next Business Meeting. The revised Public Guide draft was considered at the TLAB's Business Meeting 1 on March 4, 2022, at which the Members adopted a Motion recommending that Court Services staff revised the document to incorporate public input as well as comments from TLAB Members.

As a result, Court Services staff brought forward a revised version of the draft final Public Guide at the June 15, 2022, Business Meeting 3 at which the TLAB formally adopted the Public Guide, and the revised Guide was posted on the TLAB website.

### **Public Input Regarding Elimination of Rule 31 – *Request to Review Final Decisions***

TLAB Members discussed the question of whether to eliminate Rule 31 at its October 19, 2022, Business Meeting 4 and adopted a Motion to defer the item to its next Business Meeting. Additionally, the Motion recommended that Court Services staff post a Notice/Advisory on the TLAB's website and directly contact various stakeholders/interested parties to elicit public comment in this regard.

At its December 16, 2022, Business Meeting 6, the TLAB received correspondence from the Long Branch Neighbourhood Association (LBNA) in response to Agenda Item 40.3, the consideration by the TLAB of the elimination of Rule 31 (Review of Final Decision and Final Order) of its Rules of Practice and Procedure.

TLAB Members decided to retain Rule 31.

### **Public Input Regarding Bill 23 – *More Homes Built Faster Act, 2022***

The TLAB also received a deputation from the Co-Chair of FoNTRA, Geoff Kettel, at its December 16, 2022, Business Meeting 6 regarding Agenda Item 40.4 (Bill 23 – *More Homes Built Faster Act 2022*). Mr. Kettel spoke on behalf FoNTRA's member

associations and requested clarification as to whether the public could continue to elect status, either as a Party or Participant, at an appeal hearing before the TLAB.

In response, the TLAB adopted a Motion, put forward by the Chair, to schedule a Special Business Meeting in early 2023 to consider the impacts of Bill 23 on the TLAB's Rules or procedures. That Business Meeting intended to determine if Bill 23 would necessitate amendments to any of the Tribunal's Rules or procedures and then to communicate those changes to the public.

### **Formal Adoption of the Chair's 2021 Annual Report**

Finally, the Chair considered the TLAB's 2021 Annual Report at the Tribunal's October 19, 2022, Business Meeting 4. The Annual Report was brought forward by the Chair in response to input from the public that the document be received for information by TLAB Members at a Business Meeting after it had been reported to the City's Planning and Housing Committee and received for information by Council.

The TLAB continues to view input from the public as essential to its core principles to keep its operations open and transparent. It is important to highlight that over the last number of years, The TLAB has implemented many improvements related to procedural complexity, perceived lack of natural justice and procedural fairness, and expanded opportunities for public engagement, including the introduction of a 'Local Knowledge Expert' in the appeal hearing process.

Furthermore, the TLAB has also introduced a strict protocol for hearing day extensions, reinforcement, and increased usage by the Tribunal of TLAB-led mediation, practice directions, etc.

The TLAB is committed to reviewing its Rules of Practice and Procedure and its Business Meeting protocols on an ongoing basis so that these practices continue to be effective mechanisms for residents to provide input to the Tribunal. 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.

## **The Virtual Environment/Access to Natural Justice**

In 2022, the TLAB continued the practice of conducting its affairs remotely in a ‘virtual’ environment. In doing so, the TLAB held as paramount the safeguard of the health and well-being of Tribunal Members, Court Services staff who support the TLAB, stakeholders in the appeals process, and the general public. Tribunal appeals have continued to be heard by way of the WebEx video conference platform.

Most of Members continued to conduct hearings remotely in 2022. The TLAB’s office space and Hearing Rooms were made available for in-person Hearings if requested by a Member.

The TLAB’s goal continues to be to ensure minimal service disruptions to those who participate in its hearing process while at the same time keeping the public safe. To date, I can report that the Tribunal has received very few complaints regarding this ‘virtual’ working model and no Hearings were cancelled or rescheduled due to issues related to technology.

As an organization, the TLAB considers procedural fairness and natural justice as essential to its ‘*ethos*’. The COVID-19 pandemic has accelerated the pace at which the public is harnessing technology, and the TLAB strives to provide those who appear before the Tribunal with appropriate supports to allow active participation in the appeals process.

In this regard, the Tribunal has recommended improvements on the City’s TLAB webpages and online presence to help better communicate, prepare, and guide participants in advance of hearing events.

## **Continuous Service Improvements**

In 2022, the TLAB continued its work to improve the service standards it provides to the public. In this regard, it adopted initiatives that harmonized and enhanced the Tribunal’s conventions, policies and protocols thereby resulting in more efficient Hearings,

Business Meetings and consulted with Court Services, the administrator of the TLAB, to ensure efficient and effective day to day operations of the TLAB.

***a. TLAB Subcommittees***

At its October 19, 2022, Business Meeting 4, the TLAB addressed a proposed revision to its Procedure By-law 1-2017 to allow the creation of ‘subcommittees’ as a means to augment its continuous service improvement initiatives considered last year.

For historical context, Tribunal Members at the Business Meeting 1 in 2020 initially identified and discussed an initiative to evaluate some elements of its performance using a feedback instrument such as a survey. That focus was expanded due to the input received by the Members from stakeholders who 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.

As a result, and after receiving deputations from the public and residents’ associations, the TLAB adopted a Motion at its December 2, 2020, Business Meeting to formally constitute an “Evaluation Subcommittee.” The Motion directed that the Subcommittee would consist of four (4) Tribunal Members and the group was to establish the purpose, methodology and design of a template for the evaluation of hearing events.

The Subcommittee met several times in 2021 to consider resident/stakeholder input and perspectives provided by way of written and oral deputations received in 2020 and provided updates to the Membership at each Business Meeting in 2021.

At the TLAB’s May 7, 2021, Business Meeting, the Subcommittee presented TLAB Members with a Memorandum recommending a ‘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.

At its September 24, 2021, Business Meeting, the TLAB adopted a Motion related to the CSI initiative with the following action items for the Subcommittee:

- a. Create an outline for the mini handbook for Self-Represented Parties

- b. Develop a draft list of frequently asked questions.
- c. Continue to study how mediation can be encouraged, how it is best practiced, and what opportunities exist to become effective mediators.

Furthermore, the Subcommittee was also directed to continue to analyze the feedback and input received from the public regarding the Draft initiative.

Finally, the Subcommittee was directed to prepare a draft continuous service improvement work program, including an implementation plan and timeframe, and bring that forward to the second TLAB Business Meeting in 2022 for consideration by the Members.

In the interim, however, City staff advised the TLAB that the creation of subcommittees at the TLAB and, by association, the work to be undertaken by such subcommittees had been determined to be outside the public appointment mandate of Tribunal Members, even though the TLAB had struck two previous Subcommittees in the past with the knowledge of the City.

The first Subcommittee was established in August 2020 to review Rule 31 (Review Requests) of the TLAB's Rules of Practice and Procedure, while the second was the Continuous Service Improvement Subcommittee constituted in December 2020, referenced above.

The contemporary concerns regarding Subcommittees highlighted by Court Services staff relate primarily to the issue of open meetings as expressed in the Report for Action that accompanied the TLAB Chair's 2021 Annual Report, authored by the Director of Court Services. In that document, the author wrote the following on page 6:

*"...the TLAB may establish subcommittees provided they are done in accordance with its rules of practice and procedure, adhere to all legislation the TLAB must function in accordance with and abide by, and operate within the Tribunal mandated roles, duties and responsibilities of TLAB Members. Any subcommittee created by*

*the TLAB is subject to open meeting provisions of the Municipal Act, 2001, Section 239 and the SPPA, Section 9.”<sup>3</sup>*

It is important to note that TLAB business is conducted by way of its Business Meetings, a minimum of four (4) Meetings are scheduled annually by the Chair and represent the only opportunity for Members to conduct the business of the TLAB. These meetings are advertised, minuted with an agenda, and provide opportunities for the public to engage directly with the Tribunal through deputations, either oral or written or both.

TLAB Members understand that the Tribunal must adhere to and function within the parameters of the abiding legislation and that the moving and adoption of Motions must be conducted in a public meeting forum. This has been and continues to be how the TLAB conducts its business.

However, in light of the concerns highlighted by City Court Services staff regarding the enactment of Subcommittees, TLAB Members adopted a Motion in 2021 deferring indefinitely the continuous service improvement initiatives identified in late 2020.

The question of the validity and legitimacy of adjudicative tribunals such as the TLAB to accommodate informal meetings and subcommittee work has been and continues to be a subject of debate. The TLAB sought and received a legal opinion from its external legal counsel in this regard. This opinion confirmed that subcommittees could be constituted with certain restrictions and limitations, the most important being that subcommittees could not advance the business of the TLAB through the moving or adoption of Motions.

As a result, at its October 19, 2022, Business Meeting 4, the TLAB considered and adopted a Motion revising its Procedure By-law 1-2017, through the introduction of the term ‘Subcommittee’ and subcommittee work. These revisions responded to the matters highlighted by City Court Services staff regarding the creation of subcommittees by the TLAB and were adopted to enhance the Tribunal’s operation and function as an efficient and effective independent adjudicative body. The TLAB also adopted the revisions to

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<sup>3</sup> Report for Action, Director of Court Services, dated June 20, 2022, p. 6.

facilitate and continue the work of its Members to undertake the continuous service improvement initiatives that were deferred in 2021.

***b) Harmonization of the TLAB's Conventions/Policies/Protocols***

The TLAB addressed a number of its policies and protocols in 2022, mostly associated with providing clarity and transparency for the public regarding its rules and the appeal process.

**I. Rule Revisions - The TLAB's Rules of Practice and Procedure**

The TLAB adopted Motions related to various technical revisions to its Rules of Practice and Procedure. At its Business Meeting 4 on October 19, 2022, the Members approved new Rule 12.2.1, which clarified that an Appellant in a hearing matter before the TLAB is also a Party, despite Rule 12.2. Additionally, the TLAB recommended Court Services staff to amend the wording in its Public Guide accordingly to further clarify the automatic Party status for Appellants participating before the Tribunal.

At the same Meeting, the TLAB addressed the wording of Rule 24.3 (Objections to Electronic Hearings) which does not envision the election of Party or Participant status. The existing language of the Rule requires a Party to file a Motion before Party or Participant status is elected, which means that most persons intending to elect such status will not be aware of a Motion. As well, the TLAB Member tasked with addressing the Motion will not have had the benefit of full participation and response from interested Parties, which is procedurally unfair.

As a result, Rule 24.3 was amended to align with the language of Rule 17.1 (Motions), which requires a Motion to be filed after the election of status has passed.

Finally, the TLAB also adopted technical amendments to the wording in two of Form 4 (Notice of Intention (Election) to be a Party or Participant and Form 12 (Responding Expert Witness Statement, respectively,

At its December 16, 2022, Business Meeting 6, the TLAB addressed a matter first raised at a Business Meeting in 2021, regarding the MP4 or visual component of the DAR recording of a TLAB Hearing. Members highlighted concerns relating to matters of

privacy and permission with the release and use by the public of recorded TLAB ‘virtual’ Hearings.

As a result, the TLAB approved amendments to Rules 3.8 (Copies of TLAB Documents and Digital Recordings) and 31.8 (Transcripts), respectively, to further clarify the rules regarding the request for an ‘audio copy’ of the DAR recording of a TLAB Hearing.

## **II. Revisions to Procedure By-law 1-2017**

The TLAB, upon its inception, adopted By-law 1-2017, being a comprehensive 29-paragraph compilation of procedural directions and Tribunal obligations. This is the location, applicable to Business meetings primarily, where the duties, rights, privileges, obligations and powers of the Members are specified.

The By-law provides direction for the conduct of and voting at Business Meetings that supplement *Roberts Rules* and makes formal provisions and procedures for public input.

In addition to the revisions to the Procedure By-law that the TLAB adopted relating to Subcommittees, the Members also approved technical amendments to its By-law at its October 19, 2022, Business Meeting. This included wording revisions to accommodate the participation of Members and to be counted towards quorum in Business Meetings electronically, to recognize the ‘virtual’ forum in which TLAB meetings are being conducted.

These technical amendments were further augmented by additional amendments addressed by Members at the December 16, 2022, Business Meeting 6. At that Meeting, the Members further clarified that the TLAB could hold a Business Meeting where some or all Members participate electronically, and no physical meeting is held. Members also adopted revisions to the Procedure By-law related to how an item can be introduced to the agenda and voting rights.

The Members also adopted amending language that reduced the timeline from at least five (5) business days prior to a Business Meeting to two (2) business days, to register



public depositions by written submission. This was adopted to recognize the additional time required by the public prior to the publication of the Business Meeting agenda to comfortably submit a deputation regarding an item on that agenda.

### **III. Practice Directions**

The TLAB periodically issues Practice Directions that provide consistent guidance to Panel Members, the public and Court Service staff on matters of procedure. Practice Directions can offer a roadmap to the professions and the public as to how to approach and deal with a particular subject matter.

In 2022, the TLAB adopted Practice Direction Nos. 3 (Document Referencing) and 7 (Procedure for Late Document Filing), although the adoption of the former was simply an oversight from a Business Meeting.

Practice Direction No. 3 introduced the concept of a Common Document Book (CDB) to streamline and make more efficient the submission to the TLAB of large digital files representing documents that are commonly used and referred to by Parties in Hearings. The adoption of this Practice Direction at the March 4, 2022, Business Meeting 1 was intended to formally acknowledge the existence of this repository with the TLAB for the benefit of stakeholders and establish a specific protocol for its use.

Practice Direction No. 7 is intended to provide formal direction for Members and administrative Court Services staff in dealing with a procedure for the late filing of documents and submissions past the required filing due date as outlined in a Notice of Hearing (Form 2).

The TLAB has experienced situations in which prior to a Hearing but after the exchange dates for documents have elapsed, new documents appear. This is discouraged by the TLAB for reasons of procedural fairness and bias to Parties who have abided by the TLAB's Rules. Late filings are also discouraged by the TLAB as a basis for an adjournment request.

In this regard, Members have requested on numerous occasions advice from the TLAB Chair on an 'ad hoc' case-by-case basis which is an inefficient approach to providing

interlocutory procedural direction. Hence, the requirement for Practice Direction No. 7, which the TLAB adopted at its March 4<sup>th</sup> Business Meeting.

#### **IV. Revisions to the TLAB's Decision Writing Template**

The work product of a TLAB Member is the decision that each produces and that the Tribunal then issues. This jurisprudence 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. Decisions of the TLAB are reported in Thompson Reuters publication: Ontario Municipal Tribunal Reports, a subscription reporter series compiling OLT, ARB and TLAB decisions chosen for significance. Select decisions are also often contained in the *Novae Re Urbis* (NRU) weekly publication.

Since its inception, the TLAB has established a generalized decision-writing template that Members are directed to use. Although it is recognized that each Member is entitled to and has their own writing style, the Tribunal has encouraged adherence to this template to protect and enhance the quality and consistency of its decisions.

TLAB decisions are required to be drafted with sufficient particularity that its findings and reasoning chain reflect an evidentiary, or other support base, for the conclusion and disposition of the matter.

In 2021, TLAB Members engaged professional development training in effective decision writing led by an instructor associated with the Society of Adjudicators and Regulators for Boards and Tribunals (SOAR). This training focused on the mechanics of adjudicative decision writing to improve Members' skills in this area. It also resulted in Members considering a recalibration of the decision template.

As a consequence, the TLAB recommended Court Services staff review of the current decision-writing template in 2022 to determine whether modifications or improvements to that template were necessary or warranted. At the March 4<sup>th</sup> Business Meeting, the Chair brought forward a draft of a proposed revised template resulting from historical comments from the public to gauge the Members' interest in recalibrating the template.

The goal of a revised, refreshed template was to assist Members in writing more concise, consistent, and easier-to-read decisions.

At its June 15<sup>th</sup> Business Meeting, the TLAB adopted, after consideration by the Members, the final draft revised template brought forward by the Chair and developed in consultation with the Vice-Chair and the TLAB's external legal counsel. The draft template reflected the key goals for effective decision writing - decisions that are issue-driven, point-first, and use plain language – in a uniform framework that could be read and understood by both the public and experienced practitioners.

#### **V. TLAB Administrative/Operations Meetings**

TLAB Chair's consultation meetings with Court Services staff continued in 2022, quarterly, with four (4) meetings conducted on February 17<sup>th</sup> (Meeting 1), June 29<sup>th</sup> (Meeting 2), October 7<sup>th</sup> (Meeting 3), and December 20<sup>th</sup> (Meeting 4).

It should be noted that Administrative/Operations Meetings can be a source of new assignment obligations to the TLAB Chair and Vice-Chair, having the effect of adding additional burdens to an already burgeoning workload for those two members.

However, these meetings are seen as essential to addressing evolving Tribunal issues and ensuring continual effective and efficient day to day operations of the TLAB.

### **Making TLAB Decisions More Accessible**

In adopting revisions to its decision writing template at its June 15, 2022, Business Meeting, TLAB Members also discussed the possibility of making its decisions available via a public legal search engine such as the Canadian Legal Information Institute (CanLII). The Tribunal adopted a Motion recommending the Manager of Court Operations – Tribunals, in consultation with the Chair and Vice-Chair, to investigate this possibility.

This initiative was seen as materially advantageous to the TLAB and the public because decisions could be searched by way of various forms, all in advancing and constructing a body of administrative law.

As a result, the TLAB received an update from the Chair and Court Services staff at its October 19<sup>th</sup> Business Meeting, confirming that TLAB decisions could be made available on the CanLII website, searchable through various search inputs and that those decisions would be made available on the CanLII website as of January 1, 2023, for decisions dated January 1<sup>st</sup> and beyond, in addition to the City's online Application Information Centre (AIC).

It is anticipated that once launched that the public will welcome the convenience of accessing TLAB decisions through the CanLII search engine as well as the City's AIC website.

## **Decision Writing Timelines and Member Accountability**

TLAB Members continue to appreciate that timely decision reporting is not just a service to the public as expected of the TLAB by City Council, but also serves to avoid the potential for 'decision backlog building' that can overwhelm and compromise the individual Member as well as the TLAB.

The TLAB's reputation has been premised on a fundamental goal of timely service to the public. TLAB is committed to responsiveness of the Members' decision process, but also the demeanour of conduct of hearings and the incisiveness and descriptive engagement by Members in the facts and appreciation of the evidence as demonstrated in thorough, well-written, and cogent decisions.

Nevertheless, the TLAB has seen a measurable increase over the last few years in the number of, and the delay in, issuing decisions regarding appeal matters. This increase in the number of pending Members' decisions that continue to be delayed beyond the service level threshold considered acceptable to the TLAB has contributed to a troubling trend, particularly since 2019.

A delay in the issuance of final decisions and/or final orders keeps interested Parties and Participants in regrettable suspension as to their future course of action and, in turn, impacts the established integrity of the TLAB.

Decision writing is the essential 'end product' of the appellant process, forms the basis of communication with the public and constitutes the body of administrative law and jurisprudence that is regularly accessed by legal and planning practitioners. TLAB Members understand their obligation to produce detailed, cogent, and concise decisions and orders that provide parties, participants, and the public with reasons for the outcome of an appeal matter.

Detailed final decisions and orders are prepared by Members following hours of consideration including access to online records and often requiring the Member to listen to significant portions of the Digital Audio Recording (DAR) of the Hearing and extensive editing of text, document assembly, and consultative syntax review by the Chair.

This is an extremely important matter to the Members as decision writing is the most intensive and time-consuming component of the appeal adjudicative process.

The TLAB's targeted service standard for the disposition of an appeal matter, from the date an appeal is received to the issuance of a final decision, is 145 calendar days. In 2022, the TLAB is falling short of that standard. While there are obvious exceptions for complex appeals, appeals with multiple parties, appeal events engaging multiple days, instances of intervening holidays, review request delays, availability for accessibility reviews, signatures, dating and issuance, the matter of decisions that continue to be delayed beyond 1-2 months after the completion of a hearing was, again, a problematic trend this year.

In response to input from Panel Members, the TLAB undertook a review of its processes and procedures to understand and assess whether improvements could be incorporated into its operations in this regard. The results of this review determined that the complexity of the appeal process coupled with the acknowledgement that TLAB Members are appointed in a 'part-time' capacity, suggested that Member service

standards needed to be re-aligned to more accurately reflect the reality and responsibilities facing Members in drafting multiple decisions concurrently often in quick order.

The TLAB also formally supported a prescriptive remedy available to the TLAB Chair to encourage and foster appropriate conduct where a Member's 'backlog' of pending decisions reaches the dimension of risk at an unacceptable level. This remedy does not apply to delays that occur in decision issuance arising from complexity, multiple Party scenarios, intervening absences, schedules, or other reasonable circumstances, whether foreseeable or unforeseeable.

In 2022, the Chair was required to remind TLAB Members of their responsibilities to issue decisions and orders in a timely manner and within the targeted service standards established by the Tribunal. This included identifying, monitoring, and engaging with Members and engaging the actionable remedies, to address a number of pending/outstanding decisions and orders.

However, there is nothing in the constitution of the TLAB that provides the Chair with any special tools to either set additional standards of conduct or, in practice, enforce existing or perceived standards. As a consequence, the Chair, with the support of the Vice-Chair, must navigate between the personalities of the Members and, where necessary, seek to establish the commonality of group expectations articulated by consensus.

It is the job of the Chair to Ensure that hearing practices of the TLAB are fair and effective and ensure quality and consistency of TLAB decisions and through their qualification to provide leadership to the Tribunal and its members. Encouraging the maintenance of high standard especially in respect of hearing preparation and decision writing is key to the success of the tribunal.

The timely issuance by Members of pending or outstanding decisions beyond the targeted service standard established by the TLAB will continue to be an issue of concern for the Chair. Despite the actions available to the Chair, recited above, to foster appropriate Member conduct regarding a 'backlog' of decisions, the Chair is left to

choose to pull or push on the levers connected to performance, depending on the circumstances. Pulling Members to a consensus is more effective than attempting to push them in a direction for which there are no enforcement sanctions.

Nevertheless, TLAB Members generally have proven to be conscientious as they routinely have been prepared to invest the time, energy, and effort to attend on site investigations, prepare filing synopses and deliver significantly detailed decisions.

## **Member Professional Development**

One of the key responsibilities of the Chair is the coordination of continuing education for Members as well as identifying Membership education and training opportunities. The professional development of Members is an integral part of the organization. The training of Members ensures ongoing knowledge and support to meet mandated responsibilities, and the most relevant knowledge in legislation and operational functions.

At the beginning of each new term of Members at the TLAB, the Chair is obligated to coordinate new Panel Member onboarding and tribunal-specific training sessions, which since 2020 have been conducted virtually. This training is done collaboratively with the assistance of various City departments.

As in previous years, specialized training was retained from the Society of Ontario Adjudicators and Regulators (SOAR). In 2022, the TLAB, contacted representatives of SOAR to tailor a professional development session regarding the topic of 'Mediation'. That training and education session was conducted at the TLAB's November 30, 2022, Business Meeting 5.

The Statutory Powers and Procedure Act (SPPA) permits tribunals to implement Alternative Dispute Resolution (ADR) processes to resolve an appeal proceeding or any issue arising in the proceeding. An ADR mechanism includes mediation, conciliation, negotiation, or any other means of facilitating the resolution of issues in dispute.

Additionally, the TLAB encourages mediation and the settlement of some or all the issues in dispute in an appeal matter through its Rules of Practice and Procedure, specifically Rules 19 (Settlement) and 20 (Mediation). TLAB-led mediation is conducted where the Tribunal is satisfied that there is good reason to believe one or more of the issues in dispute may be resolved through confidential, non-binding mediation.

In TLAB-led mediation, the customary role of the presiding Panel Member is to assist the affected parties, and especially lay citizens, in understanding and defining the matters in issue and the benefits of engaging in mediation.

One of the qualifications required, among others, of a Member appointed to the TLAB is a skillset or experience in mediation. As well, some current Tribunal Members expressed an interest in receiving additional training in this regard. As a result, the TLAB conducted a half-day training and education session on November 30<sup>th</sup> led by Shannon Moldaver, the principal of Shannon Moldaver Dispute Resolution Inc.

## V. TLAB Milestones

March 4, 2022:	Toronto Local Appeal Body adopts amended wording to Condition 7 of the Standard Consent Conditions of Practice Direction 1.
March 4, 2022:	Toronto Local Appeal Body formally adopts Practice Direction No. 3 (Document Referencing) and corresponding revisions to the Notice of Hearing (Form 2).
June 15, 2022:	Toronto Local Appeal Body adopts revisions to the current version of its Public Guide.
June 15, 2022:	Toronto Local Appeal Body adopts revisions to its decision-writing template.
June 15, 2022:	Toronto Local Appeal Body adopts Practice Direction No. 7 (Late Filings), outlining the protocol for interlocutory relief for the late filing of disclosure documents.



- October 19, 2022: Toronto Local Appeal Body adopts amendments to its Procedure By-law 1-2017 to introduce the definition and recognition of the ability to form Subcommittees as part of its continuous service improvements initiative. Revisions were also adopted to allow Members to attend and cast votes at business meetings electronically.
- October 19, 2022: Toronto Local Appeal Body adopts technical revisions to its Rules of Practice and Procedure to address elected status (Rule 12.2.1) at hearings and the timeframe to object to electronic hearings.
- October 19, 2022: Toronto Local Appeal Body adopts clarifying revisions to Forms 4 (Notice of Intention to be a Party or Participant) and 12 (Responding to Expert Witness Statements).
- November 30, 2022: Toronto Local Appeal Body conducts a half-day Professional Development educational session on 'Mediation' for Members.
- December 16, 2022: Toronto Local Appeal Body adopts various amendments to both its Procedure By-law 1-2017 and Rules of Practice and Procedure to make the appeal process more efficient and more effective.
- December 16, 2022: Toronto Local Appeal Body considers the proposed elimination of Rule 31 (Review of Final Decision and Final Order) from its Rules of Practice and Procedure.
- December 16, 2022: Toronto Local Appeal Body elects a new Vice-Chair for a one-year term for 2023.
- December 16, 2022: Toronto Local Appeal Body receives an update from the Chair regarding the Government of Ontario's Bill 23 – *More Homes Built Faster Act, 2022*, and schedules a Special Business Meeting in early 2023 to discuss the impact of this legislation on the Tribunal.

See: Article IV for 2022 Business Meetings and Summary Statistics Schedule (Article IX) for performance metrics.

## VI. Key Principles of the TLAB

The TLAB has established the following key set of 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 with 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 the 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.



**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 documentary 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.

## VIII. Adopted Practice Directions

The following Practice Direction was adopted in 2022:

### **No. 7: Procedure for Late Document Filing (Approved June 15, 2022)**

Stipulates the procedure for the filing of late documents after the filing dates as required by the TLAB's Rules of Practice and Procedure have passed.

## PERFORMANCE METRICS & SUMMARY STATISTICS



### IX. Performance Metrics & Summary Statistics

The TLAB has continued to review and reassess its internal operation on an ongoing 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 improvements and/or refinements can be implemented.

An aggregate statistical measurement for each year has been published in each of the Chair's Annual Reports underscoring and highlighting overall Tribunal performance. These statistics are a helpful reference point to TLAB Members in supporting the fundamental principle that the issuance of timely decisions is the essence of public service. These statistics are analyzed annually by the TLAB to not only understand but also gauge whether the appeals process is adhering to a set of self-imposed, targeted timing and service standards.

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

From time to time, these service standards require reconsideration to determine whether they remain realistic and practical both from a Members' and participants' point of view and the data are used by the TLAB to gauge whether re-calibration of service level standards is required.

The efficacy of the TLAB rests in part on its ability to deliver its Decisions and Orders in a timely fashion. Improvements to the TLAB 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, effective, open, and fair process to all stakeholders.

Delayed decisions and decisions that involve postponements and adjournments adversely affect this statistical measure.

From the TLAB's perspective, a key performance metric remains the number of additional Hearing days required in an appeal matter. 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 concerning 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 repeatedly in deputations at its Business Meetings from a resident's perspective regarding the issue of Hearing extensions beyond the



timeframes established by the TLAB, which has become a concern for both residents and the TLAB.

The TLAB has continued to 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 has proven to be satisfactory to dispose of an appeal.

However, this standard is not always achievable due to various factors including the complexity of the issues in dispute (e.g., planning, heritage, the natural environment, architecture, etc.), how many parties and participants have elected status in a matter, and the calling and cross-examination of numerous witnesses, both expert and Party/Participant.

I am delighted to report that in 2022 the TLAB experienced a 22% decrease in average Hearing length, which represents a continued trend of significant decreases in the average length of Hearings. This decrease reflects, among other things, the continued refinement and acceptance of electronic hearing events at the TLAB as well as a concerted effort by Members to expedite Hearings to further reduce the attendance time commitments and cost requirements for residents.

This is a positive metric for all stakeholders.

## **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, saw a slight increase of 6%, on average, between 2021 and 2022, from thirty-four (34) days to thirty-six (36). While informative, it must be noted that the TLAB has not established a targeted service standard for this component of the appeal process

because the ‘flow through’ of appeal packages from the Committee of Adjustment to the TLAB is the responsibility of the Committee’s Secretary-Treasurer.

Although Column A in the Performance Metrics Chart on page 53 reflects monthly totals ranging from 58 days in February to 15 days in December, the overall average is 36 days which is considered an acceptable timeframe.

**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)**

The average time from the time Court Services staff received an appeal package from the Committee of Adjustment (COA) to the date a Notice of Hearing (NoH) is issued was thirty-three (33) days, which represents a 58% increase from the 2021 average of fourteen (14) days, and a 55% increase from the targeted service standard of fifteen (15) business days.

However, an analysis of this metric at a more granular level highlights differences in processing times between the first half of 2022 and the second half of the year. For example, on average, it took more than forty-six (46) days in the early part of 2022 to issue an NoH whereas that number was reduced on average to less than 20 days in the last six months of the year. This can be attributed to the number of files forwarded by the COA to the TLAB as well as fluctuations in the administrative staffing complement supporting the TLAB.

Furthermore, the ‘Screening Time’ service standard was recalibrated in 2022 to fifteen (15) from the previously targeted standard of five (5) business days, to more accurately reflect the time required by the TLAB to ensure that the appeal package received from the COA includes all relevant documents and then to schedule a Hearing in the matter.

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

Of the files received, appeal matters were scheduled by the TLAB, on average, ninety-nine (99) days from the day a Notice of Hearing was issued, which represents a slight decrease of 3% from the 2021 standard of 102 days. The TLAB's typical service standard was previously reported as 110-115 calendar days. However, that metric has now been updated to 100-105 days to reflect a more appropriate reality. This average does not include Adjournments, Continuations or Withdrawals which also impact scheduling parameters.

Since 2019, the TLAB's service standard in this regard has continued to steadily improve, with average scheduling times having decreased by 25 days to 99 days in 2022.

**D. Timely issuance of Decisions (21 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 in 2022 was 90 business days, an increase of 43% over the 2021 average of 63 days. However, like 2021, the 2022 service standard average is skewed significantly higher by the decision 'turnaround' times in three particular months, those being January (135), March (188), and May (134), and by a small subset of pending decisions.

If the three months cited above are not included in the calculus, then the average time for the TLAB to issue a decision in 2022 was 60 days, which is significantly lower than the 90 day average.

Unlike the previous TLAB Chair's Annual Reports, the 2022 Annual Report now includes two different measurements for decision turnaround times: median and average, to better reflect actual turnaround time and to account for the small subset of pending decisions referenced above. The 'median' time it takes from the

completion of a Hearing to the date when the TLAB issues a decision is 34 calendar days, which is nearing the targeted service standard of 30 calendar days (21 business days) recently adopted by the TLAB.

The metrics support that TLAB continues to improve its service standard for turning around decisions.

**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 dispose of matters from the date the appeal file is received by the TLAB to the time a decision was issued was 326 days, which represents a slight increase of 7% from the 2021 average of 305 days. This average is approximately 181 days more than the targeted service standard of 145 days established by the TLAB for disposing of appeal matters, which is a troubling metric that the TLAB had hoped to reduce in 2022.

Again, as in the section above, the 'Median' has been incorporated in the Performance Metrics Chart in this Report. The Median time it takes to dispose of an appeal matter at the TLAB in 2022 was 224 calendar days. While still a considerable difference from the targeted service delivery standard of 145 days, the 2022 Median number confirms that the TLAB is continuing to improve on its service standards.

In 2022, the TLAB processed 260 appeal files received from the City's four Committee of Adjustment panels, which is an increase of 6% from the previous year (246).

Of the 260 appeals filed with the TLAB, 224 (86%) of the applications requested approval for variances while 36 (24%) included a request to sever a property and associated variance, representing increases of 3% and 24%, respectively, from 2021.

The total number of Hearings in 2022 also contributed to a corresponding 21% increase in application outcomes at the TLAB. A total of 376 decisions were issued by Members in 2022, an increase of 64 decisions from 2021, with 48% (179) being Final Decisions and Orders (a 24% increase from 2021).

Of the application outcomes before the TLAB, 74% of the applications were approved while 25% were refused. This ratio has been fairly consistent since the TLAB's inception in 2017, with approvals ranging between 70 to 75% over those six years.

Although pre-COVID-19, requests to review a Member's final decision and order engaged a significant amount of the Chair's and Vice-Chair's workload, that number decreased sharply to fifteen (15) in 2021. That number further decreased marginally in 2022, as the Tribunal received thirteen (13) requests for review. The TLAB projects that the number of review requests will likely remain at the 2022 level or be slightly lower in 2023.

It is important to underscore that the TLAB encourages Mediation and Settlement in its Rules as a means of resolving some or all the issues in 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. In 2022, there were a total of three (3) decisions stemming from two (2) mediations and one (1) settlement.

Mediation, whether directed by the TLAB or brought forward by Parties following private negotiations, advances the disposition of applications through expedited Settlement Hearings thereby reducing the length and time required to complete hearing matters.

Although mediation and settlements are not reflective of a large sample size within the performance metrics in this Report, the TLAB nevertheless continues to encourage Parties to explore mediation as a practical dispute resolution strategy.

## 2. Performance Metrics

Monthly data points are averages (or median where identified) for the month. (Notice of Hearing (NOH))

Month Appeal is commenced by the Appellant	A	B	C	D		E	
	Appeal Package Filing Time Date Filed with COA to Date Received By TLAB	Screening Time Date Appeal is Received by TLAB to Date a NOH is Issued	Scheduling Time NOH Issuance Date to First Scheduled Hearing Date	Decision Time Hearing/Final Submission Date to Decision Issued		Disposition Time TLAB In-Date to Date Final Decision is Issued	
				Avg.	Median	Avg.	Median
January <sup>4</sup>	30	61	100	135	71	478	253
February	58	60	97	59	24	233	237
March	31	58	93	188	221	521	417
April	29	46	100	63	29	284	177
May	21	37	95	134	40	478	292
June	37	11	96	68	19	313	248
July	50	21	99	110	39	348	210
August	50	16	99	83	44	231	202
September	41	16	106	51	41	293	217
October	52	20	102	95	22	245	158
November	20	27	98	62	41	295	277
December	15	17	98	99	25	250	178
<b>2021 Average</b>	<b>34</b>	<b>14</b>	<b>102</b>	<b>63</b>		<b>305</b>	
<b>2022 Average</b>	<b>36</b>	<b>33</b>	<b>99</b>	<b>90<sup>5</sup></b>	<b>34</b>	<b>326</b>	<b>224</b>
2021 vs 2022	Increase of 6%	Increase of 136 %	3% Decrease	Increase of 43%		Increase of 7%	
Targeted Service standard	N/A	15 business days	105 calendar days	21 business days		145 calendar days	

<sup>4</sup> The numbers in rows 4 to 17 (i.e., January to 2022 Average) are calendar days.

<sup>5</sup> Adjusted to account for a 3-business day turnaround time by administration\*

### 3. Summary Statistics

Number of TLAB Appeal Files Received	2017	2018	2019	2020	2021	2022	2021 vs. 2022
Total Number of Appeals	314	419	279	227	246	260	Increase of 6%
Total Number of Motions	28	95	70	28	41	42	Increase of 2%
Total Number of Hearings	253	318	361	174	328	321	Decrease of 2%

Average Hearing Length (hours)		
2021	2022	2021 vs. 2022
3.73	2.92	Decrease of 22%

Appeal Type	2017	2018	2019	2020	2021	2022	2021 vs. 2022
Variance	267	346	246	194	217	224	Increase of 3%
Consent & Variances	54	73	33	33	29	36	Increase of 24%

Appeal Outcomes	2021	2022	%
Allowed	114	110	49%
Dismissed	75	115	51%
<b>Total</b>	<b>189</b>	<b>225</b>	<b>100%</b>

\*Includes Withdrawals; Counts Multi-Part Appeal Files as One Outcomes

Application Outcomes	2021	2022
Approved	140	166
Refused	49	59
<b>Total</b>	<b>189</b>	<b>225</b>

\*Referring to the outcome of the planning application

<b>Review Request Disposition</b>	<b>2021</b>	<b>2022</b>	<b>% Difference</b>
Review Request Dismissed - Decision Confirmed	11	9	
Granted - New Hearing	3	3	
Decision Varied	1	1	
<b>Totals</b>	<b>15</b>	<b>13</b>	<b>Decrease of 2%</b>

<b>Decision Page Count - Average</b>			
<b>Type</b>	<b>2020</b>	<b>2021</b>	<b>2022</b>
Final	11.6	11.7	10.8
Review Request	13.4	15	13.8

<b>Decision Type</b>	<b>2021</b>	<b>% of Total</b>	<b>2022</b>	<b>% of Total</b>	<b>2021 vs. 2022</b>
Final	145	46%	179	48%	Increase of 22%
Interim	37	12%	60	16%	Increase of 62%
Mediation	4	1%	2	0.5%	Decrease of 50%
Motion	41	13%	42	11%	Increase of 2%
Order	11	4%	27	7%	Increase of 145%
Review	15	5%	13	3%	Decrease of 13%
Revision	17	5%	8	2%	Decrease of 53%
Settlement	5	2%	1	0.3%	Decrease of 80%
Withdrawal	37	12%	44	12%	Increase of 19%
<b>Total</b>	<b>312</b>	<b>100%</b>	<b>376</b>	<b>100%</b>	<b>100%</b>

\*This counts decisions issued. If a three-part file had a single decision issued, it is counted as a single decision, not three decisions.

## **EMERGING TRENDS, ISSUES AND RECOMMENDATIONS**





## **X. Going Forward: Emerging Trends, Issues, and Recommendations**

Although the Toronto Local Appeal Body has operated continually since early 2017, it is still a relatively new body to other quasi-judicial tribunals in Ontario in comparative terms. As such, annual reviews of activities by the Membership are necessary and integral to identify, investigate and address emerging issues, trends and problems requiring consideration by the Tribunal.

Since being appointed Chair in December 2020, I have continued to highlight ongoing Tribunal operational issues warranting further attention and consideration in my Annual Reports. On-going discussions with TLAB Members and Court Services Tribunal staff have been instructive in recording emerging and ongoing concerns and identifying methodologies to address the items highlighted.

As time passes and experience is gained, several issues previously identified in the preceding Chair's Annual Reports have been resolved and addressed constructively within the limitations of Court Services Staff advisors and budget guidelines applicable to the TLAB.

However, others have remained and reflect legacy recommendations from the TLAB Chair's previous Annual Reports, which I propose continue to require redress and reconsideration.

The remaining recommendation(s) listed below are issues that should be given due consideration.

I believe that all the recommendations submitted align with the governance structure outlined for the TLAB by the City which supports the independence and arms-length nature of the Tribunal, and I submit that they are critical for the TLAB to carry out its established mandate.

## RECOMMENDATION

### 1. Implementation Fee for Review Requests of a TLAB Decision

This is a continuing legacy request made by the Tribunal.

An important service offering of the TLAB is the right of a Party who is felt to have been aggrieved by a Final Decision and Order, to request its review and reconsideration by the TLAB. This is a right offered under provincial enabling legislation and the TLAB has incorporated it within its *Rules of Practice and Procedure*, specifically Rule 31 – Review of Final Decision or Final Order.

A Review Request under Rule 31 engages a process for a full review of the original TLAB Decision and Order.

Increasingly, the right to access a Request for Review at the TLAB is being employed despite express criteria and limitations that it is not an attempt simply to reargue a case for a second or different decision. The purpose of a Review Request is to identify any errors, omissions of fact, law or natural justice that might have resulted in a different decision. The opportunity to question a TLAB Member's decision is governed only by the language of Rule 31.

A Review Request typically engages all the resources of the TLAB in processing: a site inspection; multiple considerations and voluminous submissions; and a possible Motion or Hearing. It requires the Chair or designate, to draft 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, external legal counsel, and Court Services staff in formulating a Rule 31 that best accommodates this mandate. This effort has engaged several modifications of the Rule with the TLAB adopting the most current version in December 2020.

Currently, Council has no fee for invoking a Review Request pursuant to the guidelines in Rule 31. The lack of a required fee undermines the seriousness associated with filing a request to review a Member's Final Decision and Order and the Membership believes that it is ineffective in discouraging the filing of requests that may lack merit.

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

I note that in previous Annual Reports beginning in 2018, the TLAB Chair has brought forward the recommendation to implement a Review Request filing fee to be incorporated within the City's Charges, Fees and Levies By-law for Council's consideration. To date, City staff have not supported this recommendation, nor has Council adopted the Chair's recommendation to add a fee for this process.

In a City staff report considered by the Planning and Housing Committee on May 20, 2021, staff wrote the following:

*"The addition of a new fee is not recommended at this time despite the potential reduction in the number of reviews requested. The TLAB was created to make appeals more accessible, and a new fee would negatively affect access to this process. Staff will monitor trends associated with review requests and consider whether a fee should be added in the future."*

The TLAB believes that City Council should seriously reconsider implementing a Review Request filing fee given the time and effort required to undertake such an exercise including the diversion of Member capacity away from pending appeal cases, the cost to the City and Parties of the Review Request process, the speculative nature of the preponderance of requests, and the significant delay the process causes to the final resolution and disposition of cases before the TLAB.

TLAB Members do not believe that implementing such a fee would make the TLAB appeal process less accessible to the public given that the vast majority of Review Requests are filed by proponents.

***Recommendation 1:***

***Council amend its Fees, Licenses and Charges By-law to incorporate a 'Review Request Fee' for the institution of a cost for a Review Request under Rule 31 of the Rules of Practice and Procedure of the Toronto Local Appeal Body.***

## **2. Site Plan Approval Delegation**

This is a continuing legacy request made by the Tribunal.

Consent and variance applications frequently if not routinely involve the review and approval of project Site Plans, elevations, massing, shadows and other features, functions and conditions of approval including subjects germane to the disputes with neighbours, residents associations, City Divisions (Heritage Services, Parks, Forestry, and Recreation, Transportation Services, and Engineering and Construction Services) and other interest groups.

The TLAB has made enhanced usage of the consent and variance 'conditions' power to achieve Official Plan goals of consistency, design, area character and site development objectives, based on local considerations.

Additionally, the passage by the Province of Bill 23 – More Homes Built Faster Act in November 2022, will have impacts on the operation of the TLAB. The elimination of 'Third Party' appeals will result in only the applicant, the Minister of Municipal Affairs and Housing, specified persons and public bodies (as those terms are defined in the Planning Act) including the City of Toronto, having the ability to appeal a decision of the Committee of Adjustment to the TLAB. Although the implications of this aspect of the

Bill on the TLAB require monitoring and its repercussions will become more evident in 2023, this may present City Council with an opportunity to consider delegating site plan approval jurisdiction to the TLAB.

***Recommendation 2:***

***Council consideration be given to the delegation of site plan approval jurisdiction to the Toronto Local Appeal Body independent of whether or not severance, consent or variance jurisdictions are involved.***

**3. Request for an Increase to the TLAB Chair’s Annual Stipend**

This is a continuing legacy request made by the Tribunal.

The Chair is ‘the glue that serves to hold the TLAB together’. In addition to the numerous duties and responsibilities outlined at the beginning of this Report, the City of Toronto requires the TLAB Chair to exhibit the following additional qualifications and skills (as outlined on the City’s Public appointments page webpage @

<https://secure.toronto.ca/pa/decisionBody/381.do>

- Demonstrated leadership and administrative skills;
- Highly developed chairing and facilitation skills;
- Demonstrated ability to work effectively with others;
- Knowledge of access to information and privacy legislation; and
- The ability to effectively represent the TLAB and communicate with City Council, City committees, the media and the general public.

Additionally, the Chair is the Information and Privacy Head, holds responsibility for dealing with Member and public complaints, and is responsible for engaging with and providing instructions to the TLAB’s external legal counsel on matters related to the Tribunal’s operation.

The Chair acts as a resource for Members including the allowance of seeking legal counsel advice directly, on an issue of concern and where circumstances warrant, and ensures Member performance, respect and discipline, which are perhaps the most intangible of all aspects of the Chair's responsibilities to the TLAB.

The Chair is also responsible for the coordination of Member training and professional development, with the assistance of the Vice-Chair.

If there is a single obligation that warrants a greater appreciation for the TLAB Chair's responsibility to the Tribunal, it is cultivating Member respect and discipline. The TLAB and its Members gain respect from three sources: Hearing conduct; decision writing; and all Members' performances.

It is the job of the Chair, with the assistance of the Vice-Chair, to encourage its Members to maintain high standards of the TLAB's work, to discourage aberrations in decisions and hearing processes, and to continually seek to set additional standards of conduct or, in practice, to enforce existing or perceived standards. Consequently, the Chair must navigate between the personalities of the Members and, where necessary, seek to establish the commonality of group expectations articulated by consensus.

The administrative and operational responsibilities associated with the TLAB Chair's role, coupled with a full workload of assigned Hearings, can and often does result in a forty (40) hour work week, including weekend hours.

However, this has become more complicated and laborious with an ever-increasing complement of Panel Members.

As noted earlier in this Report, City Council increased the TLAB complement by an additional four (4) Members, to a total of fourteen (14) at its meeting in April 2022, which represents a doubling of the number of Members originally appointed in 2017.

At that time, Council calculated the Chair's annual stipend as part of the foundational discussions undertaken when the TLAB was first constituted. That annual stipend was

based primarily on the role and responsibilities of the Chair associated with a total Panel Member complement of seven (including the Chair).

However, in the six (6) years since the TLAB's inception in 2017, Council has increased the Member complement twice. First, in 2019, the number of Members increased from 7 to 10 Members, which included the introduction of the Vice-Chair, representing an increase of 43%. The second time was 2022 when the membership was increased again to a total of fourteen (14).

Although the total Panel Member complement of the TLAB has doubled since 2017, representing an increase of 100%, the Chair's annual remuneration has not increased correspondingly. Therefore, I submit to City Council that an increase in the panel complement must include a reconsideration of the TLAB Chair's annual stipend as well as that of the Vice-Chair.

To do otherwise would be unfair to the Chair and Vice-Chair, who are tasked with and work diligently to preserve the reputational integrity of the TLAB. Increasing the Chair's annual remuneration is critical to acknowledge the significant responsibilities of that role and the importance of succession planning for the TLAB, and also necessary to incentivize current and future TLAB Members to consider putting their names forward for consideration by City Council to assume this role.

***Recommendation 3:***

***Council considers as part of the 2023 budget process retroactively increasing the annual stipend of the Toronto Local Appeal Body Chair, and that of the Vice-Chair, to reflect the corresponding expansion in the role and responsibilities associated with the increase in the number of TLAB Panel Member appointments since 2017.***



#### **4. Panel Member Appointments**

The appointment of qualified TLAB Panel Members is most important to guarantee that the Tribunal meets its mandate of issuing jurisprudence in a cost-effective and timely manner. Furthermore, the retention of Members and Member recruitment contribute directly to the achievement of the performance and service threshold levels that it strives to provide to the public.

Council has established clear administrative processes to address 'end of term' replacements, the replacement of Members who resign from service, and succession considerations. Council has assigned the responsibility of recommending candidates to the Nominating Panel – Toronto Local Appeal Body, and that Panel's vetting of potential candidates for appointment is crucial to maintaining the integrity and adjudicative skillset of the Tribunal.

At its inception, the TLAB Panel Member complement was composed of seven (7) Members including the Chair. This initial Member complement seemed to function well but following several resignations and a recommendation from the TLAB Chair (Ian Lord) in 2018, City Council increased the Membership to 10 'part-time' Members.

In early 2022, Council, again, increased the TLAB Member complement by an additional four (4) Members to a total of fourteen (14), including the Chair and Vice-Chair, on the recommendation of the Deputy City Manager.

However, two Members advised the TLAB of their intentions to resign from their current Tribunal appointments in November of 2022, effective immediately. Both Members were early into their four-year terms, with one Member having only been appointed in July 2022. Additionally, the terms of two other Members came to an end in December 2022. It is understood that the process for appointments to replace those Members is anticipated to occur sometime in 2023.

The passage of *Bill 23* will impact the recommendation to increase the TLAB Panel Member complement approved by Council in early 2022. Although the impacts of *Bill 23*

on the TLAB are yet to be fully understood and may not be fully apparent until possibly 2024, nevertheless, the elimination of ‘third party’ appeals may potentially reduce the number of appeals that are heard by the TLAB. In turn, this may result in a reduction in the overall workload of the current Panel Member complement.

Therefore, in light of *Bill 23*, it may be prudent for Council to pause the TLAB Member nomination and appointments process at this time. Doing so would allow Council to step back and re-assess the overall TLAB Member size complement required to facilitate the TLAB’s successful operation. Of course, resignations and Members’ terms ending are components that must also be considered in this calculus.

***Recommendation 4:***

***Council consider pausing the appointment in 2023 of new Panel Members to the Toronto Local Appeal Body until the City can undertake an impact analysis of recently passed Provincial legislation on the operation of the Toronto Local Appeal Body.***

***Alternatively, that Council consider filling only the vacancies of the two (2) Members whose appointment terms ended in 2022, to bring the total Toronto Local Appeal Body Panel Complement in 2023 to twelve (12) Members.***

## **5. Decision Writing Remuneration**

The drafters of the TLAB remuneration structure did an admirable job in anticipating some of the expectations of Council and Members. It anticipated a public appointments process wherein considerable weight is attributable to an applicant’s desire to contribute to the public service. In reality, however, this element is and should be weighed no differently than general applications to join the public service.

The TLAB job function is equivalent to adjudication by public bodies such as the Provincial Court system, the Ontario Land Tribunal (OLT), and other tribunals of the

Environmental cluster. As such, both selection and compensation packages should be adjusted to reflect the reality of experience.

Through the 2022 City budget process, Council approved a variable decision rate structure with a maximum of \$400 for Members who issue 'final decisions'.<sup>6</sup> In the *Report For Action – Response to City Council's Directions Arising from the Toronto Local Appeal Body Chair's 2020 Annual Report*, dated March 11, 2022, to the Planning and Housing Committee, the Deputy City Manager wrote the following in support of the proposed varied decision rate remuneration, comparing the TLAB specifically to the Ontario Land Tribunal (OLT):

*"...This structure reflects the level of effort required to produce decisions. The remuneration rates...align with provincial comparators,"<sup>7</sup>.*

Currently, the OLT compensates its Members for issuing final decisions based on the number of hearing days required to complete that appeal matter and not a prescribed standard 'one size fits all' rate. For example, the base compensation rate is \$400 per day at the OLT and if a hearing matter requires five (5) hearing days, the Member's remuneration for the 'final decision' is \$2,000. This comprehensive rate reflects the magnitude and complexity of hearing an appeal matter that requires multiple days and one that likely includes numerous Parties, Participants, legal representatives and expert witnesses.

While it is acknowledged that since its inception, multiple minor adjustments have been made by Council to recognize eligible expenses, disbursement qualifications, etc., related to the Toronto Local Appeal Body, the remuneration to reflect the time demand responsibilities on Members in performing the expected level of service owing to the public in the form of decision writing requires further recognition and should 'align with its provincial comparators'.

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<sup>6</sup> Deputy City Manager's Report For Action – Toronto Local Appeal Body Variable Decision Rates, dated January 7, 2022.

<sup>7</sup> Deputy City Manager's Report For Action – Response to City Council's Directions Arising from the Toronto Local Appeal Body Chair's 2020 Annual Report, p. 5.

**Recommendation 5:**

***That Council amend the Toronto Local Appeal Body Variable Decision Rates for a 'Final Decision' to reflect a remuneration rate based on the number of Hearing Days in an appeal matter. The 'Final Decision' remuneration rate recommended is \$400 per Hearing Day to a maximum of five (5) Hearing Days.***

ALL OF WHICH IS RESPECTFULLY SUBMITTED

July 14, 2023

## XI. Contact Information

### General Inquiries:

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