



Relationship Framework for the Toronto Licensing Tribunal

In addition to the provisions contained in the Relationship Framework, City Council in June 2005 directed that:

- a) the City Manager be designated the Governance Liaison to the Toronto Licensing Tribunal responsible for issues relating to the Relationship Framework and the part of Toronto Municipal Code dealing with governance of the Tribunal; and
- b) the Deputy City Manager responsible for licensing issues be designated the Program Liaison to the Toronto Licensing Tribunal responsible for coordinating policy and program issues between the Tribunal and City staff, including the review of the Tribunal's Annual Report for onward transmittal to City Council along with any relevant comments from civic officials.

In December 2008, City Council also directed that the Toronto Licensing Tribunal be requested to provide minutes of its business meetings to the Chair and members of the Licensing and Standards Committee for information.

In October 2009, City Council directed the City Manager's Office to amend the relationship framework to allow the Toronto Licensing Tribunal to respond in a timely manner to applications for judicial review (**see bolded text in Section 11 on page 11 for new wording**).

Consolidated Relationship Framework for the Toronto Licensing Tribunal ¹(Amended to reflect Council Decisions made at meetings held at or before October 26 and 27, 2009)

(1) Purpose of this Relationship Framework:

1.1 The purpose of this Relationship Framework is to:

¹ See:

- Clause 2, Report 6 of the Policy and Finance Committee as amended by City Council at its meeting on June 14, 15 and 16, 2005
- Clause 15, Report 7 of the Policy and Finance Committee as adopted by City Council at its meeting held on September 25, 26 and 27, 2006
- Item LS17.1 (Licensing and Standards Committee) as adopted by City Council at its meeting on December 1, 2 and 3, 2008
- Item LS24.3 (Licensing and Standards Committee) as adopted by City Council at its meeting on October 26 and 27, 2009

- (i) inform the Toronto Licensing Tribunal, City staff, and Toronto residents of Council's fundamental principles of governance respecting the Toronto Licensing Tribunal;
 - (ii) clarify the role of the Licensing Tribunal, City staff and City Council in licensing matters to promote adequate support for, and continuous improvement to, the hearing process and the quality of adjudication;
 - (iii) articulate the conditions that promote an effective relationship between the City and the Toronto Licensing Tribunal for the benefit of stakeholders; and
 - (iv) describe the principles of adjudication to ensure that the decision-making independence of the Licensing Tribunal is maintained and respected by other stakeholders while also ensuring that the spirit and intent of Section 545 of the Municipal Code is upheld.
- (2) Legislative Framework for Municipal Licensing:
- 2.1 Part IV of the *Municipal Act* permits municipalities to regulate licensing matters in order to protect the safety and welfare of its citizens, to ensure adequate consumer protection, and to mitigate nuisance.
 - 2.2 In 1956, the former Municipality of Metropolitan Toronto established the Metropolitan Toronto Licensing Commission in accordance with the *Metropolitan Toronto Act* to administer, regulate and adjudicate licensing matters. The Commission had an adjudicative function as a quasi-judicial body, and a regulatory function as a policy making body and manager of licenses.
 - 2.3 The *City of Toronto Act (No. 2) 1997* continued the Commission within the amalgamated City of Toronto and renamed it the Toronto Licensing Commission.
 - 2.4 In 1998, City of Toronto Council established the Municipal Licensing and Standards Division within the core City departmental structure to formulate licensing policy and to administer and regulate licences. Pursuant to By-law 574-2000 and regulation 214/96 of the *Municipal Act*, these functions and the staff support were removed from the mandate of the Toronto Licensing Commission and it was renamed the Toronto Licensing Tribunal, whose sole purpose was to adjudicate licensing disputes (appeals) regarding Section 545 of the Toronto Municipal Code.
 - 2.5 Hearings of the Toronto Licensing Tribunal are conducted in accordance with the *Statutory Powers Procedure Act* and any internal policies such as the Procedure By-law of the Toronto Licensing Tribunal.

(3) The Structure of Licensing Activities:

- 3.1 The City of Toronto licenses activities in order to protect public safety, provide consumer protection and mitigate nuisance.
- 3.2 City Council from time to time makes policies concerning which activities to license, the conditions under which licences may be issued and retained, the fees charged, and methods of regulating, in order to meet the objectives in Section 3.1. These policies are embodied in Chapter 545 of the Municipal Code.
- 3.3 Municipal Licensing and Standards (MLS) staff, under the direction of the Executive Director, are responsible for the review of license applications, the issuance of licenses, inspections, the prosecution of violations, the formulation of new licensing policies for City Council consideration, and implementation of approved policies.
- 3.4 The Toronto Licensing Tribunal conducts hearing to review cases where staff have denied an application for a new license or renewal, or requested changes to existing licenses.
- 3.5 The Tribunal Administrator and other support staff are employees of Court Services. The Administrator is responsible for providing all administrative support to the Licensing Tribunal and making all necessary arrangements for hearings. The Administrator also provides advice and assistance to the Chair and Tribunal Members on procedural policies and practices, but is not a party to the hearing.
- 3.6 Support staff to the Licensing Tribunal work co-operatively with the Tribunal, but are not managed by the Tribunal.

Council approved the following additional recommendations contained in the report dated June 13, 2005 from the City Manager:

The part of the motion [which was made at the Policy & Finance Committee meeting and referred to the City Manager] recommending the provision of an additional Administrative Assistant to the Chair of the Tribunal not be adopted since there is already sufficient staffing to provide these services, but that staff ensure that the existing staff provide adequate service to the Chair to carry out his duties as directed by Council.

Members of the Tribunal be provided with sufficient workspace, office equipment and supplies to enable them to fulfill their obligations as Tribunal members and the independence of the Tribunal be reinforced through the use of its own letterhead and other identification and for clarity, pre-printed stationery is not required because electronic templates of letterheads can be used.

3.7 The members of the Toronto Licensing Tribunal are citizen appointees, appointed by City Council and are not City employees.

(4) Mandate of the Toronto Licensing Tribunal:

4.1 The Tribunal is an independent, quasi-judicial body that conducts hearings and renders decisions on the refusal, granting, suspension or imposition of conditions on licenses where an applicant or licensee appeals a staff decision or MLS staff seek enforcement of the requirements of a license.

4.2 The Licensing Tribunal's mandate is not to make public policy through its decisions, but rather to uphold the spirit and intent of Section 545 of the Toronto Municipal Code in order to protect the public interest.

4.3 The Licensing Tribunal interprets individual circumstances to determine the extent to which an applicant or licensee has met the requirements of Section 545 of the Toronto Municipal Code.

4.4 The Licensing Tribunal makes its hearing decisions in an unfettered manner, independent of City staff and City Council based on evidence presented at its hearings.

4.5 The Licensing Tribunal also holds business meetings to develop, review and monitor its procedural policies in respect to the hearing process.

4.6 The Licensing Tribunal is accountable to Council for upholding the Licensing By-Law and conducting its administrative affairs in accordance with City policies and procedures.

(5) Operating Principles for the Toronto Licensing Tribunal:

5.1 Access to Hearings and Due Process:

5.1.1 The Toronto Licensing Tribunal shall:

- (i) provide decisions in a timely manner;
- (ii) develop, refine and implement a Practice Direction, Procedure By-law, and Code of Conduct and ensure these policies are readily available to the public to make the hearing process more understandable and efficient for the participants from the general public and City staff;
- (iii) develop, refine and implement alternative dispute settlement mechanisms, if deemed appropriate; and

- (iv) establish benchmarks to monitor wait times for hearings and decisions, and to take appropriate corrective action where necessary.

5.1.2 Staff who support the Licensing Tribunal shall:

- (i) in consultation with Tribunal Members, schedule hearings to ensure timely access;
- (ii) adhere to business processes that ensure public availability of all relevant information and materials such as hearing application forms, hearing procedures, and decisions;
- (iii) develop on-line resources as appropriate such as downloadable application forms, description of hearing and dispute resolutions processes, and Tribunal decisions; and
- (iv) develop a referral list of non-profit groups who appellants can approach for assistance with their appeal.

5.2 Transparency:

5.2.1 Hearings and business meetings of the Licensing Tribunal shall be held in public in accordance with municipal requirements.

5.2.2 Agendas shall be made available to the public in advance and hearing decisions and minutes shall be available to the public at no more than the nominal cost of providing the decision.

5.2.3 The Toronto Licensing Tribunal shall develop a Procedure By-law, including a protocol for hearing panel deliberations and a procedure for presenting dissenting opinions that ensures clear communication of the majority decision.

5.2.4 The Toronto Licensing Tribunal shall conduct hearings in a manner that is easily understandable to stakeholders such as participants and the general public.

5.2.5 The Toronto Licensing Tribunal shall document decisions on contested matters in writing in a form that restates the salient evidence given at the hearing, provides a clear rationale for the decision, and references the By-law articles applied.

The requirement for written decisions on uncontested matters and settlement decisions where all the parties agree shall be met through the summary of decisions prepared by the Administrator after each hearing.

5.3 Consistency of Outcomes:

5.3.1 The Toronto Licensing Tribunal shall have regard for the desirability of consistent decision-making among cases with similar facts.

5.3.2 The Toronto Licensing Tribunal shall hold business meetings from time to time to generally review past decisions made for consistent interpretation and application of the relevant provisions of the Toronto Municipal Code.

5.4 Courtesy and Ethics:

5.4.1 The *Municipal Conflict of Interest Act* applies to the Licensing Tribunal.

5.4.2 The Toronto Licensing Tribunal shall develop a Conflict of Interest Policy, which includes a policy on perceived conflicts, using the Code of Conduct for City Council as a reference.

5.4.3 Conflicts of Interest shall be declared prior to discussion at any hearing or meeting of the situation where there is a conflict, in accordance with the policy developed and implemented by the Toronto Licensing Tribunal.

5.4.4 Toronto Licensing Tribunal shall develop a Code of Conduct that requires members to treat colleagues, City staff, parties to the hearings, and the general public with courtesy and respect.

(6) Governance Structure:

6.1 The Toronto Licensing Tribunal is composed of 7 citizen members appointed by Council. The membership of the Toronto Licensing Tribunal be restricted so that Councillors who are currently sitting, or have been a Member of Council in the last three years, be prohibited from sitting on the Tribunal.

6.2 City Council shall designate the Chair.

6.3 Members of all Agencies, Boards, Commissions and Corporations of the City, including the Licensing Tribunal, serve at the pleasure of City Council.

6.4 Members are appointed for a term of 3 years, coincident with the term of Council, or until their successors are appointed.

6.5 No person shall serve on the Toronto Licensing Tribunal for more than two consecutive terms of City Council. Where an appointment takes effect after 18 months following an election, the balance of the term shall not count as a term toward this maximum.

6.6 The Chair shall notify the City Manager as soon as possible after a vacancy occurs for any reason.

- 6.7 City Council may permit the Toronto Licensing Tribunal to operate without a full compliment of members, provided it does not unduly impact its business operations.
- 6.8 Appointments to the Toronto Licensing Tribunal are contingent on the member successfully completing a training program on the adjudicative process within 6 months of appointment. This requirement shall be met if the member completed such training prior to being appointed to the Tribunal.
- Should the City register and pay for a member to attend training and such member does not successfully complete the program, the Chair or Administrator of the Tribunal shall notify the nominating panel that recommended the appointment for any action deemed necessary.
- 6.9 In its Procedure By-law, the Licensing Tribunal shall set rules for the size and composition of the hearing panels.
- 6.10 The Tribunal Administrator shall assign members to hearing panels to provide for a constant rotation of members. The Chair shall review the assignment of panels periodically to ensure fair distribution of workload and adequate rotation.
- 6.11 Each panel shall have a designated Chair for the hearing.

(7) The Role of the Chair of the Licensing Tribunal:

- 7.1 The Chair of the Licensing Tribunal is in a key leadership and mentoring role and is entrusted with the responsibility of ensuring that the Toronto Licensing Tribunal operates with a high level of integrity, credibility and professionalism.
- 7.2 The key duties of the Chair are outlined below and include:
- (a) consulting with the Administrator of the Licensing Tribunal to ensure the efficient and effective day to day operation of the Tribunal;
 - (b) ensuring that all members attend the prescribed training program and seeking training opportunities for members to foster their adjudicative skills on an ongoing basis;
 - (c) presenting the Annual Report to City Council;
 - (d) liaising with City Councillors, the Mayor, the public, and the media from time to time as necessary;
 - (e) leading the preparation, review or update of the following documents, using any relevant city-wide policy as a reference point:
 - (i) a Code of Conduct, including a Conflict of Interest Policy;

- (ii) a Practice Direction indicating how a hearing is to be conducted, including how evidence is shared amongst participants and presented at a hearing;
 - (iii) a revised Procedure By-law that governs conduct of business meetings;
 - (iv) a Media Communications Policy and Lobbyist Disclosure Policy;
 - (v) an Alternative Dispute Settlement Process, if appropriate;
 - (vi) one or more templates for written decisions;
 - (vii) a roster of non-profit groups who are interested in providing legal counsel or other services to assist appellants; and
 - (viii) any other policy needed to ensure a professional hearing process;
- (f) developing statistical performance measure of Tribunal operation;
 - (g) participating in hearings where other members are unavailable, or in hearings of a complex, highly controversial or lengthy nature;
 - (h) from time to time, retaining outside legal advice regarding issues that arise in conjunction with specific hearings or other consultants to assist with the preparation of administrative policies or other business related matters;
 - (i) from time to time and at least twice a year, convening and chairing a business meeting of the Toronto Licensing Tribunal to review the decision-making approach of the Toronto Licensing Tribunal in respect to consistency with applicable law, clarity and rationale;
 - (j) ensuring that Council policies and procedures for procurement are followed;
 - (k) liaising with staff on the administration of the hearing process; and
 - (l) investigating complaints against members and consulting with the City Manager.

(8) The Role of Members:

- 8.1 The primary duty of Members shall be the adjudication of licensing hearings in accordance with the relevant legislation and internal policies such as the Practice Direction, the Procedure By-law and other relevant policies.
- 8.2 The Panel Chair is responsible for ensuring that written decisions are provided, but Members may share in their preparation.
- 8.3 Members may be assigned to act individually as mediators to ascertain facts in a case and facilitate a resolution through a mediation process, as permitted in the Procedure By-law.

8.4 Members shall participate in all business meetings called by the Chair or advise the Chair of the reason for their absence.

8.5 Members may provide advice and/or assistance to the Chair in developing internal policies for the Licensing Tribunal.

(9) Eligibility and Qualifications for Membership:

9.1 Membership in the Toronto Licensing Tribunal requires that the Chair and the members meet City Council's general eligibility requirements and any specific eligibility requirements as set out from time to time in the approved Public Appointments Policy governing appointments to City Agencies, Boards, Commissions and Corporations.

9.2 The general eligibility requirements for appointment to the Toronto Licensing Tribunal are that the appointees must be:

- (a) residents of Toronto, and
- (b) at least 18 years of age (the age of majority in Ontario).

In addition, an applicant is ineligible for an appointment to the Licensing Tribunal if they have been a City of Toronto Councillor in the last three years.

9.3 From time to time City Council may amend the general eligibility requirements for Public Appointments to Agencies, Boards, Commissions and Corporations, including the Toronto Licensing Tribunal, including ineligibility due to conflicts of interest resulting from direct or indirect pecuniary interests.

9.4 Qualifications for Members and the Chair of the Toronto Licensing Tribunal are:

- (i) a good understanding of the mandate of the Toronto Licensing Tribunal;
- (ii) a good understanding of the Licensing By-law and the *Statutory Powers Procedure Act*;
- (iii) understanding of a field related to business licensing and sensitivity to the various interests and issues;
- (iv) familiarity with the concepts of natural justice/fairness;
- (v) excellent listening skills, open-mindedness, sound judgement, and tact;
- (vi) ability to mediate;
- (vii) ability to organize and analyze written and oral evidence;
- (viii) a demonstrated ability to write a clear, well-reasoned decision that takes into account the evidence, the submissions, the applicable law and policy;
- (ix) a commitment to public service and to uphold a high standard of ethics;
- (x) good interpersonal skills, including the ability to work in a team;
- (xi) the ability to work under time pressures;
- (xii) a flexible work schedule; and

(xiii) willing and available to attend training programs once appointed.

9.5 In addition to the qualifications listed above, the qualifications for the Chair include:

- (i) previous experience in an adjudicative role;
- (ii) the administrative skills to organize, schedule and arrange appropriate support for hearings;
- (iii) excellent communications skills, both oral and written, to articulate issues and decisions to staff, Committees of Council, the press, and the public; and
- (iv) a willingness and ability to represent the Tribunal publicly and perform speaking engagements.

9.6 City Council may, from time to time, set additional or alternative policies of general applicability to public nominations to all or most Agencies, Boards, Commissions and Corporations that also impact the eligibility and qualifications for appointment to the Toronto Licensing Tribunal.

9.7 City Council sets the remuneration for the Chair and members and may from time to time amend the remuneration as part of the City Manager's ongoing review of remuneration for citizen appointees to the City of Toronto's Agencies, Boards, Commissions and Corporations.

(10) Training:

10.1 Training of Toronto Licensing Tribunal members in the best available adjudicative practices and skills is considered a key requirement.

10.2 At the outset of a new term of the Toronto Licensing Tribunal, the Chair, in conjunction with the Administrator, shall co-ordinate professional learning and professional development opportunities for members to ensure the quality of the hearing process and the decisions rendered by the Tribunal, such training to include:

- (i) Skill development in adjudication (including matters such as the principles of adjudication, how to hold a hearing and the writing of decisions) by a recognized professional body such as the Society of Ontario Adjudicators and Regulators or a similar body;
- (ii) Orientation by the City Solicitor and Municipal Licensing Staff on the City's Licensing process and the staff role in it;
- (iii) Orientation by the City Manager's Office in governance including the terms of this Relationship Framework; and

(iv) Other training development opportunities which arise from time to time.

10.4 The training of members shall occur as soon as possible after appointment and if members of the Licensing Tribunal do not participate in the training program they may be removed from the Tribunal at the discretion of City Council.

(11) Business Meetings:

11.1 The Chair of the Toronto Licensing Tribunal shall convene a Business meeting of all members at least twice per year to review the operation of the Tribunal in conjunction with the Tribunal Administrator, to make decisions on administrative matters and procedural policies and the content of the Annual Report, to discuss emerging issues relating to Tribunal hearings, and any other matter pertinent to the effective operation of the Tribunal.

11.2 The business meeting shall be conducted in accordance with the Procedure By-Law and a quorum shall be 4 members.

11.3 Public notice of the business meeting shall be given at least 10 days in advance and the agenda distributed to the City Clerk, staff of Municipal Licensing and Standards, the City Manager, and any member of the public requesting the agenda. The agenda should be posted on the Tribunal's web page.

11.3 All business meetings are open to the public except as permitted by law and any member of the public may address the Tribunal on matters on the agenda.

11.4 City staff and members of the Tribunal may submit reports for consideration at business meetings.

11.5 Minutes of the business meeting shall be made available to the public or City staff upon request.

11.6 The Tribunal may delegate matters of a time sensitive nature to the Chair (such as determining whether the Tribunal should respond when named in a judicial review application), providing:

(i) the Chair advises the members of the Tribunal of any planned actions, and

(ii) the action is ratified at the next business meeting.

(12) Reporting to the City:

12.1 The Annual Report:

12.1.1 The Annual Report from the Toronto Licensing Tribunal to City Council shall be the primary means of communication with City Council. The Annual Report shall discuss matters such as the:

- (i) activities of the Tribunal during the past year;
- (ii) performance statistics for the past year;
- (iii) improvements made to the hearing process, including new procedural policies implemented;
- (iv) identification of improvements to the hearing process desired for the upcoming year;
- (v) any new training initiatives proposed for members;
- (vi) emerging licensing regulatory policy issues that should be considered and reported on by City Staff; and
- (vii) any other matters pertinent to the effective functioning of the Licensing Tribunal.

City Council in December 2008 amended the Relationship Framework so that the Tribunal is encouraged to identify improvements to the Licensing By-laws and make recommendations to the Licensing and Standards Committee, subject to those recommendations being first reviewed by the Executive Director, Municipal Licensing and Standards, for comment.

12.1.2 The Chair, in preparing recommendations in the Annual Report regarding improvements to the hearing process, shall consult with the Administrator on the proposed improvements, including in respect to the potential impacts on the work processes and resource requirements of the City support staff. The Chair shall take the comments into account when recommending changes to the hearing process.

12.1.3 The Annual Report shall be submitted to the Deputy City Manager for transmittal to Council along with any comments from City staff.

12.2 The Budget:

12.2.1 The budget for the Tribunal is prepared and submitted for Council approval by Court Services, on the understanding that the Tribunal's costs will continue to be recovered through the municipal licensing fees. City staff shall consult the Chair of the Licensing Tribunal during the preparation of the annual budget to ensure the Licensing Tribunal is given adequate resources to operate effectively.

12.2.2 A Delegation of Signing Authority document shall be prepared by support staff and shall be implemented.

12.3 Policies to be Developed

12.3.1 The Licensing Tribunal has the discretion of developing procedural policies for the hearings process that support the principles of the adjudicative process and municipal requirements.

12.3.2 The Licensing Tribunal's administrative practices and procedures for the conduct of business meetings must comply with City directives.

12.3.3 The Toronto Licensing Tribunal shall create, implement and from time to time review and, if appropriate, amend a Practice Direction, Procedure By-law, Code of Conduct, Conflict of Interest Policy, a Media Communications Policy, and a Lobbyist Disclosure Policy.

12.3.4 These policies shall be submitted as part of the Annual Report of the Licensing Tribunal.

12.4 ²Breach of Code of Conduct or Conflict of Interest:

12.4.1 Where a member has possibly breached the Code of Conduct or Conflict of Interest policy, the Chair of the Licensing Tribunal shall report in writing to the City Manager for action.

12.4.2 Where the Chair has possibly breached the Code of Conduct or Conflict of Interest Policy at least one member of the Licensing Tribunal shall report it in writing to the City Manager.

12.4.3 A confidential investigation will be conducted by the City Manager, in consultation with the City Solicitor.

12.4.4 If there is sufficient evidence to indicate that the Code of Conduct or Conflict of Interest Policy has been breached, the City Manager shall

² The provisions of the Code of Conduct for members of adjudicative boards (which was adopted by City Council at its meeting on July 15 and 16, 2008) apply to the members of the Licensing Tribunal – See Item EX22.6 (2008)

submit a report to City Council recommending appropriate action be taken, up to and including the removal of the Chair or the member.

12.5 Written Decisions on Thresholds:

12.5.1 After each hearing, a summary of licences issued, refused, suspended, revoked or having conditions placed on them by the Tribunal shall be posted to the Tribunal's web page on the City's web site.

The Tribunal Administrator shall regularly forward the Tribunal's written reasons for decisions to ML&S and City Legal Services, on the understanding that such written decisions will continue to be made available to any interested Member of Council and the public upon request.

(13) Support to the Tribunal:

13.1 The Chair of the Toronto Licensing Tribunal may seek the advice of the City Solicitor, the Tribunal Administrator and the City Manager when procedural policies are developed.

13.2 The Chair may retain the appropriate counsel or consultant to advise, from time to time as needed, on:

- (i) legal matters relating to specific hearings;
- (ii) the development of internal operational policies such as a Practice Direction or Code of Conduct; or
- (iii) the preparation of communications materials

if the funds required to pay the consultant are available to the Licensing Tribunal, and the consultant be paid from funds designated for the Licensing Tribunal that have been budgeted for that purpose;

13.3 The selection process for external counsel or consultants shall conform to City policies and practices regarding the procurement of professional consultants.

(14) Accountability:

14.1 The Toronto Licensing Tribunal and its members are accountable for upholding the spirit and intent of Chapter 545 of the Municipal Code as amended from time to time by City Council.

14.2 Accountability helps to create credibility and respect for the Toronto Licensing Tribunal its decision-making process, its decisions and the City's licensing process as a whole.

14.3 Toronto Licensing Tribunal members are accountable for:

- (i) acting within their defined legal jurisdiction;
- (ii) maintaining a regular and constructive reporting relationship with City Council through the Annual Report;
- (iii) maintaining good relations with city staff and the public;
- (iv) ensuring their written decisions, including the reasons, are clear and easy to understand by the general public;
- (v) developing or refining as needed, and abiding with, the applicable procedural policies such as a Code of Conduct, a Conflict of Interest Policy, a Media Communications Policy and a Procedure By-law; and
- (vi) adhering to this Relationship Framework.

(15) Amendments:

From time to time, after consultation with the Tribunal, City Council may implement changes to this Relationship Framework and, as part of the Annual Reporting to City Council on the operations of the Tribunal, the Chair of the Licensing Tribunal may request that City Council consider changes to this Framework.