



Reply to the Attention of Annik Forristal
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E-MAIL (TLAB@toronto.ca)

Toronto Local Appeal Body
40 Orchard View Boulevard
Second Floor, Suite 211
Toronto, ON M4R 1B9

Attention: Mr. Ian Lord, Chair of the Toronto Local Appeal Body

Dear Mr. Lord:

Re: Submissions at Toronto Local Appeal Body (“TLAB”) Proceedings

In the coming months McMillan LLP will be appearing before the TLAB on behalf of numerous applicants and appellants. The first of such hearings was held on Friday, September 8th, 2017. In preparation for these hearings before the new TLAB, I attended the first TLAB hearing held on August 31, 2017. At this hearing, persons in attendance were invited to complete a “speaker information” form (attached) if they wished to make submissions and, at the introduction of the hearing, were further advised by the Panel Member that any person interested in speaking would be permitted to do so.

While we appreciate the open and public nature of hearings before the TLAB and acknowledge the fundamental right of any person to attend and observe, we are concerned that permitting any persons in attendance at a TLAB hearing to make submissions seriously undermines the certainty and fairness of the TLAB’s process as established by the TLAB’s detailed Rules of Practice and Procedure (the “**Rules**”). In particular, Rules 12 and 13 require any person interested in being a party or participant to the hearing to disclose this intention no later than 20 days after service of a Notice of Hearing. The right to make submissions or an oral statement to the TLAB are expressly set out as rights granted to parties or participants in Rules 12.6 and 13.7. Further, pursuant to Rules 16.4 and 16.5, both parties and participants are required to file witness statements or participant statements outlining their intended evidence.

Accordingly, the Rules make it clear that entitlement to participate in a hearing is predicated upon compliance with the TLAB’s Rules, including those related to filing notices of intention to participate and witness/participant statements.

In this way, the Rules establish certainty regarding the case to be met by the parties and issues to be addressed at the hearing. In our respectful submission, exceptions to these requirements should only be granted in extraordinary circumstances where no prejudice to the parties will result, otherwise these principles of certainty and procedural fairness are significantly undermined. In our respectful opinion, as a general principle, persons who have not complied with the Rules should not be automatically entitled to similar rights as those who have complied with the Rules.

Consequently, unless extraordinary circumstances and no prejudice to the parties can be established, we strongly object to the making of submissions by any persons who have not complied with the Rules at TLAB hearings where we appear on behalf of our clients. In our respectful submission, should the TLAB wish to consider requests to make submissions by persons who have not complied with the Rules, at the very least, the person making such a request should be required to provide an explanation for their failure to comply with the Rules and all other parties to the hearing must be given an opportunity to make submissions in response to such request. Further, any opportunity granted to make submissions without compliance with the Rules should be more appropriately characterized as an exception as opposed to an entitlement.

We sincerely thank you for your consideration of our concerns as detailed above. Should you have any questions, please do not hesitate to contact us.

Yours truly,



Annik Forristal

/jl

CC: Mary Flynn-Guglietti, McMillan LLP
Kailey Sutton, McMillan LLP