

# **THE TORONTO LICENSING TRIBUNAL**

## **BY-LAW NO. 1 (as amended January 16, 2014)**

### **RULES OF PROCEDURE**

To Govern the Proceedings of the  
Toronto Licensing Tribunal

### **DEFINITIONS**

1. In these Rules, unless the context requires otherwise,
  - a. "applicant" means a person applying for a licence or a renewal thereof pursuant to the Code;
  - b. "Code" means Chapter 545 of the City of Toronto's Municipal Code, as amended;
  - c. "hearing" means a hearing in any proceeding;
  - d. "in person proceeding" means an oral hearing at which the parties or their counsel or agents attend in person before the Toronto Licensing Tribunal;
  - e. "licensee" means the holder of a licence issued pursuant to the provisions of the Code;
  - f. "motion" means an application for an order or decision of the Toronto Licensing Tribunal made in the course of a proceeding;
  - g. "Municipal Licensing and Standards Division" means the Municipal Licensing and Standards Division of the City of Toronto;
  - h. "proceeding" means a matter brought before the Toronto Licensing Tribunal under the provisions of the Code;
  - i. "Tribunal Administrator" means the Tribunal Administrator for the Toronto Licensing Tribunal.

### **INTERPRETATION**

2. (1) These Rules shall receive such fair and liberal interpretation as will best ensure the most expeditious, just and least expensive determination of every proceeding on its merits.

- (2) Where matters are not provided for in these Rules, the practice shall be determined by the panel hearing the proceeding.

### **APPLICATION**

3. (1) These Rules apply to all the proceedings of the Toronto Licensing Tribunal in the exercise of its statutory power of decision, as defined in the Statutory Powers Procedure Act, R.S.O. 1990, c.S.22, as amended.
- (2) These Rules do not apply if a statute or the Code provides for a different procedure to govern proceedings of the Toronto Licensing Tribunal in the exercise of its statutory powers of decision.
- (3) These Rules apply to a proceeding of the Toronto Licensing Tribunal whether commenced before or after the enactment of this By-law.

### **PROCEDURAL ORDERS**

4. (1) In any proceeding, the Toronto Licensing Tribunal may issue procedural orders which shall govern the conduct of the proceeding.
- (2) The Toronto Licensing Tribunal may, at any time during a proceeding, amend any procedural order.
- (3) The Toronto Licensing Tribunal may, where it is satisfied that the special circumstances of the proceedings so require, vary or waive compliance with all or part of any Rule at any time by making a procedural order.
- (4) A procedural order shall prevail over any provision of these Rules that is inconsistent with the procedural order.
- (5) Subject to any procedural order issued by the Toronto Licensing Tribunal, the parties to a proceeding may, on consent, waive any of the provisions of these Rules.
- (6) A party seeking waiver of any of the provisions of these Rules shall do so on a timely basis.

### **FAILURE TO COMPLY**

5. (1) Where a party to a proceeding has not complied in full with any Rule or procedural order, the Toronto Licensing Tribunal may,
  - (a) adjourn the proceeding until it is satisfied that such Rule or order has been complied with; or
  - (b) take such other steps as it considers just and reasonable

- (2) No proceeding is invalid by reason only of a defect or other irregularity in form.

### **TIME**

6. (1) In the computation of time under these Rules or a procedural order, except where a contrary intention appears,
- (a) where there is a reference to a number of days between two events, they shall be counted by excluding the day on which the first event happens and including the day on which the second event happens
  - (b) where the time for doing an act under these Rules or under an order expires on a holiday, the act may be done on the next day that is not a holiday; and
  - (c) service of a document made after 4:00 p.m. or at any time on a holiday shall be deemed to have been made on the next day that is not a holiday.
- (2) Where a time of day is mentioned in these Rules or in any document or order in a proceeding, the time referred to shall be the time observed locally.
- (3) The Toronto Licensing Tribunal may extend or abridge any time prescribed in these Rules or established by a procedural order during a proceeding, on such terms as are just.
- (4) Under these Rules, holiday means:
- (a) any Saturday or Sunday;
  - (b) New Year's Day;
  - (c) Family Day;
  - (d) Good Friday;
  - (e) Easter Monday;
  - (f) Victoria Day;
  - (g) Canada Day;
  - (h) Civic Holiday;
  - (i) Labour Day;
  - (j) Thanksgiving Day;
  - (k) Remembrance Day;
  - (l) Christmas Day;
  - (m) Boxing Day; and
  - (n) Any day on which the staff offices of the Toronto Licensing Tribunal or Municipal Licensing and Standards Division are closed.

### **SERVICE OF DOCUMENTS**

7. (1) The Toronto Licensing Tribunal may require any party to a hearing or the Tribunal Administrator to serve any document to any party to the hearing in any of the following ways, or any combination thereof:
- (a) by personal service by delivering the document to the person;

- (b) by regular or registered mail to the person's last known address;
  - (c) by courier to the person's last known address;
  - (d) by facsimile transmission at the person's last known facsimile transmission number;
  - (e) by e-mail at the person's last known e-mail address; and
  - (f) as directed by the panel.
- (2) Documents delivered by personal service or by courier are served on the day that they are delivered.
  - (3) If a document is delivered by regular or registered mail, it is deemed to be served five (5) days after mailing.
  - (4) A document cannot be served by facsimile transmission or by e-mail without the consent of the party being served. If a document is delivered by facsimile transmission or e-mail after 5:00 p.m., it is deemed served on the next day that is not a holiday.
  - (5) The Tribunal may direct the Tribunal Administrator or any other party to take steps to confirm that service has effectively been made on a person.

#### **FILING**

- 8. (1) Filing of any document by any party to a hearing may be effected by personal delivery, by ordinary or registered mail, by facsimile transmission, by courier or otherwise as the Toronto Licensing Tribunal may order.
- (2) No part may file more than ten pages by way of facsimile transmission without the prior express permission of the Tribunal Administrator.
- (3) Where a document is filed, the date of the receipt stamp on the document shall be deemed to be the date of the filing, unless the Toronto Licensing Tribunal orders otherwise.
- (4) Where the Toronto Licensing Tribunal or the Municipal Licensing and Standards Division has no record of the receipt of a document alleged to have been filed, the documents shall be deemed not to have been filed, unless the Toronto Licensing Tribunal orders otherwise.

#### **EXHIBITS**

- 9. (1) All parties to a hearing shall, at least ten days before the hearing date, file with the Toronto Licensing Tribunal copies of all documents, including photos and electronic materials, to be entered as evidence.

- (2) The Toronto Licensing Tribunal may, in its discretion, refuse to allow into evidence any document, including photos and electronic materials, not filed in accordance with sub-rule (1).
- (3) When a party files documents, including photos and electronic materials, with the Toronto Licensing Tribunal pursuant to sub-rule (1), the Toronto Licensing Tribunal shall make same available forthwith on request to all other parties or, alternatively, may serve same on all other parties.

### **FORM OF DOCUMENTS**

10. Every written document in a proceeding shall be on either letter or metric sized paper and the text shall be printed, typed, written or reproduced legibly (where practicable on both sides of each page) with double spaces between the lines.

### **REQUEST FOR HEARING**

11. (1) Where an applicant or licensee requests a hearing before the Toronto Licensing Tribunal the request for hearing shall be in writing and shall include:
  - (a) an identification of the applicant and any other party;
  - (b) the addresses, telephone numbers and, where available, facsimile number for each person identified in clause (a), and their agents, if any;
  - (c) the name, address, and telephone number of any agent, representative, or lawyer representing the applicant; and
  - (d) whether special services or accommodation are required, including translation services or services for the visually or hearing impaired.

### **DISCLOSURE**

12. (1) The Toronto Licensing Tribunal may, at any stage in a proceeding, make such orders as it considers just and necessary for,
  - (a) the exchange of documents;
  - (b) the exchange of witness statements;
  - (c) the provision of particulars; and
  - (d) any other form of disclosure.

### **HEARING DATES**

13. Upon receipt of a Notice of Hearing to set a date, the parties shall contact the Tribunal Administrator, to advise him or her of their available dates to attend such hearing so that

a recommendation regarding a hearing date may be made to the Toronto Licensing Tribunal.

14. (1) The Tribunal Administrator or his or her delegate shall set the time and place of a hearing.
- (2) Once a date has been set for a hearing, it may not be adjourned except by order of the Toronto Licensing Tribunal.

### **PRE-HEARING**

15. (1) The Toronto Licensing Tribunal may, at the request of a party or on its own initiative, direct that a pre-hearing conference be held in any proceeding and that the parties participate in the conference.

The purpose of the pre-hearing conference will be to:

- (a) exchange of information between the parties including disclosure of particulars, physical or documentary evidence, lists of witnesses and witness statements;
  - (b) narrow or simplify any issues of law and fact;
  - (c) identify agreed upon facts, evidence or law;
  - (d) provide notice of any preliminary motions;
  - (e) establish dates by which any steps in the proceeding are to be begun or completed;
  - (f) determine the estimated duration of the hearing;
  - (g) determine any other matter that may assist in the just and expeditious disposition of the proceeding; and
  - (h) mediate any or all outstanding issues in dispute.
- (2) Pre-hearing conferences may be conducted in person, in writing, or by telephone conference call at the discretion of the Toronto Licensing Tribunal or as may be agreed upon by the parties.
  - (3) The Chair of the Toronto Licensing Tribunal may designate any person to preside at the pre-hearing conference.
  - (4) If a member of the Toronto Licensing Tribunal presides at a pre-hearing conference, that member shall not be a member of the panel hearing the proceeding discussed at such pre-hearing conference unless all parties consent thereto in writing or on the record.

- (5) At the conclusion of the pre-hearing conference the parties or their representatives may sign a memorandum setting out the results of the pre-hearing conference and a copy of the signed memorandum shall be placed before the panel presiding at the hearing.
- (6) No information shall be provided or made available to the panel presiding at the hearing with respect to any statement made at a pre-hearing conference except as disclosed in the memorandum under clause 5 of this Rule.
- (7) A party may be represented by counsel or an agent at a pre-hearing conference and where the party is not in attendance at the conference, such counsel or agent shall ensure that the party is available, either by telephone or by other means, to provide such instructions as may be required during the course of the conference.

### **HEARING QUORUM**

16. (1) Quorum for a hearing is two members of the Toronto Licensing Tribunal.
- (2) Where a hearing panel consists of two members of the Toronto Licensing Tribunal, the Tribunal's decision must be unanimous.
- (3) Where a hearing panel consists of more than two members of the Toronto Licensing Tribunal, the decisions of the majority of the hearing panel shall constitute the Tribunal's decision.
- (4) Notwithstanding the provisions of subrules 16(1), (2) and (3), the quorum for a hearing proceeding on the consent of all parties to that hearing may be one member of the Toronto Licensing Tribunal although the Toronto Licensing Tribunal may, at its sole discretion, decide to proceed with a hearing panel of more than one member on consent matters.

### **FAILURE TO ATTEND**

17. Where a person is properly served with notice of a pre-hearing or hearing and does not attend at the time and place appointed, the Toronto Licensing Tribunal may proceed in that person's absence and without further notice to that person; and, unless the matter has been referred to the Toronto Licensing Tribunal by the City of Toronto, may dismiss the application without a hearing.
18. (1) Where a party intends to bring a motion before the Toronto Licensing Tribunal in a proceeding, a minimum of seven business days of written notice shall be given to all other parties, and filed with the Tribunal Administrator no later than seven business days prior to the commencement of the hearing of the motion.
  - (2) The written notice may be in letter form and shall include:

- (a) the order being requested in the motion and the grounds to support it;
  - (b) the affidavits and any exhibits to be relied upon at the hearing of the motion or a list of witnesses who intend to give viva voce testimony (live evidence) at the hearing of the motion and a synopsis of their intended evidence, together with the transcripts of cross-examinations.
  - (c) references to any statutes, by-laws and authorities to be submitted in support of the motion; and
  - (d) a statement notifying the responding party that opposing material in similar form may be served on the moving party and filed with the Tribunal Administrator no later than two business days prior to the date set for hearing the motion.
- (3) Where the responding party wishes to oppose the motion, he shall deliver to the moving party no later than two business days prior to the date set for hearing the motion a written statement which may be in letter form and which shall include:
- (a) the order being requested, if any, and the grounds to support it;
  - (b) the affidavits and any exhibits to be relied upon at the hearing of the motion or a list of witnesses who intend to give viva voce testimony (live evidence) at the hearing of the motion and a synopsis of their intended evidence, together with the transcripts of cross-examinations; and
  - (c) references to any statutes, by-laws and authorities to be submitted in opposition to the motion;

and filed with the Tribunal Administrator no later than two business days prior to the date set for hearing the motion.

- (4) The Toronto Licensing Tribunal may require that all cross-examinations on affidavits to be relied upon at a motion be completed prior to the date set for hearing the motion.
- (5) The Toronto Licensing Tribunal may permit viva voce testimony (live evidence) at the hearing of the motion instead of or in addition to affidavit evidence.
- (6) Notwithstanding the provisions of subrules 18(1), (2), (3), (4) and (5), the Toronto Licensing Tribunal may, at its sole discretion, vary or dispense with the herein procedure to be followed for a motion.

### **CONDUCT OF PROCEEDINGS**

- 19. Proceedings may be conducted in person, in writing or by telephone conference call.
- 20. (1) A proceeding shall not be conducted in writing if a party objects.
- (2) Where a proceeding is conducted in writing,



- (a) all parties are entitled to receive every document that the Toronto Licensing Tribunal receives in the proceeding prior to the commencement of the hearing; and
  - (b) subject to paragraph (a) of this clause, the proceeding shall be upon such terms as the Toronto Licensing Tribunal may order or permit.
- 21. (1) A proceeding shall not be conducted by telephone conference call if a party satisfies the Toronto Licensing Tribunal that holding a telephone conference call is likely to cause that party significant prejudice in participating in the proceeding.
- (2) Where a proceeding is conducted by telephone conference call,
  - (a) all the parties and the members of the Toronto Licensing Tribunal participating in the hearing must be able to hear one another and any witnesses throughout the hearing, and
  - (b) subject to paragraph (a) of this clause, the conduct of the proceeding shall be upon such terms as the Toronto Licensing Tribunal may order or permit.
- 22. An in person proceeding shall be conducted in the following order of presentation, unless the Toronto Licensing Tribunal directs otherwise:
  - (1) Counsel for the Municipal Licensing and Standards Division may make an opening address and, subject to clause (2), shall then adduce evidence;
  - (2) An applicant or licensee may make an opening address immediately after the opening address of counsel for the Municipal Licensing and Standards Division and before counsel for the Municipal Licensing and Standards Division adduces any evidence;
  - (3) When the evidence being called on behalf of the Municipal Licensing and Standards Division is concluded, the applicant or licensee may make an opening address, unless he or she has already done so pursuant to clause (2), and may then adduce his or her evidence;
  - (4) When the presentation of the evidence of the applicant or licensee is concluded, counsel for the Municipal Licensing and Standards Division may adduce any proper reply evidence;
  - (5) After all of the evidence has been adduced by all parties to the proceeding, counsel for the Municipal Licensing and Standards Division may make a closing address, followed by the closing address of the applicant or licensee, if he or she decides to do so; and
  - (6) Where there are two or more applicants or licensees, the order of presentation shall be as directed by the Toronto Licensing Tribunal.

#### **EVIDENCE BY WITNESSES**

- 23. (1) Unless these Rules provide otherwise, witnesses at a proceeding shall be examined orally and the examination may consist of direct examination, cross examination and re-examination.

- (2) The Toronto Licensing Tribunal shall ensure that there is no undue harassment or embarrassment of the witness as he or she is giving evidence and may disallow a question put to the witness that is vexatious or irrelevant to any matter that may be properly inquired into at the proceeding.
- (3) The Toronto Licensing Tribunal may at any time during a proceeding direct that a witness be recalled for further examination.
- (4) Where a witness appears unwilling or unable to give answers to the questions being posed, the Toronto Licensing Tribunal may permit the party calling the witness to examine him or her by means of leading questions.

### **EVIDENCE BY AFFIDAVIT**

24. Where a proceeding is conducted in writing, the evidence of a witness shall be given by affidavit or, subject to the approval of the Toronto Licensing Tribunal, as agreed upon by the parties.
25. This by-law shall come into force on the date of its enactment.

AMENDED AND PASSED this 21<sup>st</sup> day of July, 2006.

Section 18 (Motions) AMENDED AND PASSED this 29<sup>th</sup> day of March 2007.

Section 6 (Time) AMENDED AND PASSED this 3<sup>rd</sup> day of April 2008.

Section 6 (Time) AMENDED AND PASSED this 13<sup>th</sup> day of November 2008.

Carol Shirliff-Hinds, Chair

Section 9 (Exhibits) AMENDED AND PASSED this 16<sup>th</sup> day of January 2014.

Section 17 (Failure To Attend) AMENDED AND PASSED this 16<sup>th</sup> day of January 2014.

Lionel Miskin, Chair