

# **Things You Need to Know About Your Appointment to the APT**

**By John Elvidge, Deputy City Clerk, Secretariat  
Administrative Penalty Tribunal Orientation  
August 25, 2017**



# Terms of appointment

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- Term of office ends on May 26, 2021.
- Continue to serve until a successor is appointed.
- Term limit is two consecutive 4-year terms for a total 8 consecutive years.

# Conditions of your appointment

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- Resident of the City of Toronto;
- Not an employee of the City of Toronto or any of its agencies or corporations;
- Not a spouse, partner, child, or parent of a Toronto Member of City Council;
- Not currently serving on another City of Toronto board, committee, or tribunal;

# Conditions of your appointment

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- Cannot act as an agent for applicants before the APT and the City's other administrative tribunals and would be required to resign from the APT before doing so; and/or
- Cannot act as an agent for applicants or individuals appearing in Provincial Offences Court.

# Hearings and meetings

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- Hearings and business meetings will take place weekdays during business hours.
- Public members will be required to conduct hearings 2-3 days per week or 6-12 days per month (this is not guaranteed).
- Hearings are expected to last approximately 7 hours and will begin at 8:30 a.m. and finish at 4:30 p.m.

# Hearings and meetings

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- Hearings must begin on time and cannot be interrupted by telephone calls or other personal business.
- Be prepared to fully commit yourself to the matters at hand.
- In addition, the APT meets at least twice annually for business meetings.

# Remuneration

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- Members receive a \$350 per diem for attending full day hearings/mediations (7 hours) or a \$250 per diem for half day hearings/mediations (3.5 hours), plus \$200 for business meetings attended.
- The Chair receives an additional \$18,000 annually for performing their duties.
- Members are not reimbursed for transportation or parking costs.

# Leaves of absence or resignations

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- Submit a request to the Tribunal's Chair to take a leave for an extended period of time, for any reason.
- Depending on the duration and the Tribunal's requirements, City Council may fill the vacancy on a temporary basis.
- Required if you run, or seek appointment to, any elected office.



# Leaves of absence or resignations

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- Must begin on, or before, the date of application to, or the date of nomination for, the elected office.
- Notify both the City Clerk's Office and the Tribunal's Chair in writing as soon as possible and state the specific date your resignation will take effect.

# Notifying the Clerk and Tribunal

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- Notify City Clerk and Tribunal in writing if:
  - Contact information changes
  - Eligibility changes
  - Requesting a leave of absence
  - Resigning (please note effective date)

# City of Toronto board behaviours

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- **Serve the public well**
- **Champion the standards of public service**
- **Foster equity, diversity, and inclusion**
- **Act with integrity and impartiality**

# Questions and contact information

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- For questions about your appointment, contact the Public Appointments Secretariat in the City Clerk's Office at the contact information below:
  - [appoint@toronto.ca](mailto:appoint@toronto.ca)
  - 416-397-0088
  - [www.toronto.ca/ServeYourCity](http://www.toronto.ca/ServeYourCity)

# **How open meeting laws apply to local boards like the APT**

**By John D. Elvidge, Deputy City Clerk**  
**Administrative Penalty Tribunal Orientation**  
**August 28, 2017**



# APT is a “city board” for the purposes of s. 190 of COTA

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- APT is a City board
- APT is not a corporation
- The APT’s business meetings will be held under the same meeting laws as City Council and its committees.

# APT will meet in two different modes

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- **Business Meetings**

- Governed by COTA and the procedural by-law the APT ultimately adopts
- The same rules apply to any committee the APT may establish

- **Hearings**

- Governed by the Statutory Powers Procedures Act and any rules the APT ultimately adopts

# **COTA requires every city board to adopt a procedures by-law**

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- **COTA does not prescribe the content for business meetings but the procedures must comply with COTA provisions.**



# COTA requires public notice for all meetings of the Board

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- The APT procedures should establish the method and standard for providing public notice

# All Board & committee meetings must be open to the public

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- “Open” means:
  - At a place ordinarily considered a public place
  - At a time ordinarily considered a time to conduct public business
  - Accessible in accordance with AODA
  - There is room/seating for the public
  - No barriers such as “buzzing through”, requirement for escorts, presentation of ID etc.

# A portion of a meeting may be closed to discuss certain matters

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- Security of the property of the Board
- Personal matters about identifiable individuals
- Proposed or pending land acquisition or disposition
- Labour relations & employee negotiations
- Litigation or potential litigation
- Receiving of advice subject to solicitor-client privilege
- Education & training if no business is advanced

# #1 – the security of the property of the City of the local board

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- For example:
  - Information whose disclosure could reasonably be expected to prejudice the economic interests or the competitive position of the Board.
  - Information whose disclosure could reasonably be expected to be injurious to the financial interests of the Board
  - Information including the proposed plans, policies or projects of the Board if the disclosure could reasonably be expected to result in premature disclosure of a pending policy decision or undue financial benefit or loss to a person.

## #2 - personal matters about an identifiable individual, including a city employee or a local board employee

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- For example:
  - Matters relating to an individual's race, national or ethnic origin, colour, religion, age, sex, sexual orientation and marital or family status.
  - The education, criminal, medical or employment history of an identifiable individual
  - Any identifying number, symbol or other particular assigned to an individual
  - The address, telephone number, fingerprints or blood type of an individual.

# #3 - a proposed or pending acquisition or disposition of land by the City or local board

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- This includes acquisition or disposition by way of lease.

# #4 - labour relations or employee negotiations

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- For example:
  - Positions, plans, procedures, criteria or instructions to be implemented during employee negotiations
  - Hiring, disciplinary or termination matters
  - Management-union negotiations during the collective bargaining process

## **#5 - litigation or potential litigation, including matters before administrative tribunals, affecting the City or local board**

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- **Matters before all courts**
- **Matters before administrative tribunals such as the Ontario Municipal Board, the Ontario Labour Relations Board or other labour arbitrators, the Ontario Human Rights Commission, the Workplace Safety and Insurance Board etc.**



## **#6 – the receiving of advice that is subject to solicitor-client privilege including communications necessary for that purpose**

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- **Verbal or written legal advice, whether given in contemplation of or for use in litigation or not.**
- **To qualify advice must be from person acting as the board's solicitor**
  - **Does not apply to advice from people who happen to be lawyers**
  - **Does not apply to the relay of legal advice by non-lawyers**

# #7 - education or training of members if no business is advanced

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- Example:
  - Meeting of Councillors to provide Provincially-required training in the Ontario Clean Water Act
- This provision does not apply to “briefings” or “retreats”
- All other meeting rules apply

# Additional reasons were recently adopted but have not yet be proclaimed

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- information explicitly supplied in confidence to the City or local board by Canada, a province or territory or a Crown agency of any of them;
- a trade secret or scientific, technical, commercial, financial or labour relations information, supplied in confidence to the City or local board, which, if disclosed, could reasonably be expected to prejudice significantly the competitive position or interfere significantly with the contractual or other negotiations of a person, group of persons, or organization;
- a trade secret or scientific, technical, commercial or financial information that belongs to the City or local board and has monetary value or potential monetary value; or
- a position, plan, procedure, criteria or instruction to be applied to any negotiations carried on or to be carried on by or on behalf of the City or local board.

# A meeting must be closed to consider the following:

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- FOI requests
- Interim reports or findings of the City or Provincial Ombudsman

# Meetings must begin and end in public

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- This applies even if all business on the agenda qualifies for a closed session
- Before meeting in closed session, COTA requires the board to adopt a resolution
  - Stating the general nature of the matter to be debated
  - The statutory exception relied upon to close the meeting
- After a closed session, the Board conducts its public debate on a matter

# No votes may be taken in closed session\*

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- Exceptions
  - Votes on procedural motions
  - Votes on instructions to officers, staff or agents
- All other votes must be conducted in public

# There are risks associated with improperly closed meetings

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- Any person who believes a meeting has been improperly closed may request that the City investigate
- The investigator makes a public report to the Board or Council with any recommendations they see fit
- City has retained Osgoode Hall Dean of Law Lorne Sossin as its meeting investigator
- Alternatively a person may make an application to a court or tribunal to have a decision quashed

# COTA does not permit electronic participation in meetings

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- At present COTA does not authorize electronic participation in meetings.
  - A new provision yet to be proclaimed will permit electronic participation with limitations:
    - Such members cannot be counted for quorum
    - Participation in closed session is prohibited
- Members must be present to be counted for quorum and to debate and vote



# Quorum

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- A quorum of a majority of members must be present for business to proceed
- Quorum is not reduced by vacancies on the board
  - e.g. Quorum remains four even if 2 seats are vacant
- Quorum is reduced by Members declaring interests provided that at least 2 members are present.
  - e.g. Quorum is three if 2 members declare an interest in a matter

# Voting

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- The Chair votes
- Tie votes lose
- If any member requests it, the vote shall be recorded

# COTA requires a record of all meetings be made “without note or comment”

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- The Secretary will prepare minutes of Board and committee meetings
- Minutes are public
  - Exception: Minutes of closed sessions must be taken, but are not made public
- This means that your Secretary must be present for all sessions of a meeting.

# Members are bound by the Municipal Conflict of Interest Act

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- Members must declare any direct or indirect pecuniary interest in a matter affecting the Member, their partner/spouse, parents or children and refrain from influencing the debate
  - Each member must make an independent determination
  - Members' circumstances are not subject of points of order or rulings by the Chair
- **Coming soon:** Members must also make a written declaration and submit it to the Secretary for publishing in a public register

# Questions are welcome

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