

## DECISION AND ORDER

**Decision Issue Date**      Tuesday, November 14, 2017

PROCEEDING COMMENCED UNDER subsection 45 (1) of the Planning Act, R.S.O. 1990, c. P.13, as amended (the "Act")

Appellant(s): ALAN SPENCE

Applicant: KATARZYNA SENDROWICZ

Property Address/Description: 15 NELLES AVE

Committee of Adjustment Case File Number: 17 147628 WET 13 MV

TLAB Case File Number: 17 208355 S45 13 TLAB

**Hearing date:**            Wednesday, November 01, 2017

**DECISION DELIVERED BY S. Ruddock**

Parties:

Katarzyna Sendrowicz, ProjektS Inc.

John Allan Spence, represented by counsel Andrew Chachula

Andrew Stubbs

Participants:

John Arthur Bonsall

### INTRODUCTION

By Notice of Motion dated October 16, 2017, the Applicant sought an order to exclude certain documents filed or referenced to by the Appellant.

## **BACKGROUND**

On July 31, 2017, the Appellant appealed to the Toronto Local Appeal Body (TLAB) from the Committee of Adjustment (COA) which had authorized the variances in these matters. The TLAB Notice of Hearing was issued on August 21, 2017 setting the date for the hearing of the appeal and for filing of the evidence. The hearing is set for December 18, 2017 with document disclosure due on September 20, 2017 and expert witness statements due on October 5, 2017.

The Appellant filed documents on September 20, 2017 and indicated that further documents would be submitted in the next few days, as they had just received information purchased from City Planning the day before, instead of the promised week prior. The Appellant's filings also referred to the fact that they would be relying on full access to documents submitted to the COA. Further documents were filed by the Appellant on September 25, 2017 with additional revised documents resubmitted on September 28, 2017.

On October 5, 2017 the Appellant sent an email to the Applicant indicating that they would be submitting their expert witness statements within fourteen days. On October 27, 2017 the Appellant filed their expert witness statement, without using the prescribed Form 14.

The Applicant's grounds for the exclusion of the documents were based on the following: 1) the quality and accuracy of the documents; 2) copyright infringement, and; 3) the delay in filing. At the motion hearing Counsel for the Appellant raised a preliminary objection to the Applicant's line of questioning regarding the quality and accuracy of the documents. The Appellant submitted that the quality and accuracy of the documents are matters that should be dealt with at the main appeal, and not at the motion hearing dealing with the issue of admissibility. The Appellant's objection was sustained, and the Applicant was directed to restrict her questioning to the admissibility of the documents.

At the motion hearing as well, Counsel for the Appellant objected to the Applicant raising copyright infringement, which he submitted TLAB had no jurisdiction to consider. The Applicant clarified that she was not seeking a copyright decision from TLAB, and had only raised the issue to show the history. The Appellant submitted that the Applicant should declare whether she would be pursuing a copyright infringement claim in the courts and if so the TLAB hearing should be adjourned until the copyright case is decided. The Applicant indicated that she would decide whether to pursue a copyright infringement claim in the courts after the TLAB hearing.

The Applicant submitted that they were prejudiced by the Appellant's delay in filing the documents, in that they had less time to respond and the Appellant was able to tailor their submissions having reviewed the Applicants documents. It was the submission of the Applicant that the Appellant's reference to relying on the COA documents, without uploading them to the TLAB file, is prejudicial to them as they do not know what documents will be relied on.

The Appellant submitted that the Applicant has not demonstrated any prejudice by the delay in the filing of documents, as they did not indicate that they needed an expert to reply to those documents. It was the Appellant's submission that they had substantially complied with the Rules, as contemplated by Rule 2.9 as the documents were provided 1.5 months before the TLAB hearing and before the motion hearing.

With respect to the COA documents, it was the Appellant's submission that they did not need to resubmit these documents as they are part of the COA file and as such they are imported into the TLAB. The Appellant submitted that this issue was one of particulars, not admissibility, and offered to provide the Applicant a list of the documents from the COA file that they intended to rely on. On the matter of the Form 14, the Appellant submitted that an expert report has been provided and the Form 14 goes to form, not substance. It was the Appellant's submission that the lack of a Form 14 does not prejudice the Applicant in any way.

## **MATTERS IN ISSUE**

The issue to be determined is whether the documents filed or referenced to by the Appellant should be excluded from the hearing.

## **JURISDICTION**

TLAB Rules contemplate the ability to recognize and adjust for circumstances that require relief for a just and fair consideration of the appeals before it.

## **ANALYSIS, FINDINGS, REASONS**

In this case, the issue of delay is the only issue relevant to the consideration of the admissibility of the documents filed or referenced to by the Appellant. The issue of the quality and accuracy of the documents can be raised in the appeal hearing as they go to the weight to be given to these documents not their admissibility. No findings on the accuracy or quality of these documents are made. The Applicant has clarified that she is not seeking a copyright decision from TLAB, and TLAB makes no findings on this issue.

Rule 2.10 allows TLAB to grant exceptions or other relief as considered appropriate, to enable it to effectively and completely adjudicate matters before it in a just, expeditious and cost-effective manner. To that end, Rule 2.2 requires that these rules be interpreted liberally. The documents were filed by the Appellant within 1.5 months of the Appeal hearing, and before the Motion hearing. These documents are arguably relevant to the proceeding, and the Applicant has not established any prejudice to their admission. The TLAB does not encourage the late filing of documentation that is specified due on a date certain. The Rules are designed to cause a fair, timely and expeditious disclosure of relevant information by way of mutual exchange. TLAB will not condone efforts that tend to take advantage of or are not cooperative to the diligent exercise of party responsibilities. In this case, I am satisfied

the exchange delay had a rationale and, as I have indicated, that no undue prejudice has occurred.

Attention then is directed to the documents that were not filed by the Appellant, namely the Form 14 and the referenced COA file. The Appellant's filing of the expert report without a Form 14, was not an issue of substance and did not cause prejudice to Applicant. The failure to file the Form 14 can be remedied without prejudice in this case.

TLAB is required to have regard for the decision of the COA and the materials it had before it, in making its decision. Accordingly, the Appellant is not required to resubmit the documents before the COA. However, if a party wishes a specific document from the COA file to be put in evidence, they must make reference to it and prove it for exhibit purposes. For this reason, it would be expected and of assistance for the Appellant to file a list of the documents before the COA intended to be relied upon.

## **DECISION AND ORDER**

The TLAB orders as follows:

1. The motion is allowed in part, without prejudice to the Applicant raising issues of the accuracy and quality of the documents at the appeal hearing, and without prejudice to her pursuing the copyright issues in another proceeding.
2. Documents already filed at TLAB may be used at the hearing notwithstanding the deadlines set out in the August 21, 2017 TLAB Notice of Hearing.
3. The Appellant shall file a Form 14 no later than November 17, 2017 for the expert report already filed. This document may then be used at the hearing.
4. The Appellant shall provide the Applicant a list of the documents before the COA intended to be relied upon and file the same with TLAB no later than November 17, 2017. These documents may then be used at the hearing.

X



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Sophia Ruddock  
Chair, Toronto Local Appeal Body