

MEMORANDUM

To: All TLAB Members
From: Chair, Ian Lord
Date: January 15, 2018

SUBJECT: Decision Review, Timeliness and Accountability

Background

Members will recall that with the institution of the TLAB, an objective was set for the timely advancement of appeals. These objectives were expressed both formally and informally:

- a) The Rules established a regime of disciplined advancement of an appeal demonstrated through regimented timeframes established in advance and disclosed in the Notice of Hearing.
- b) Rulings and Decisions have enforced a timely disposition of matters;
- c) Practice Directions have been promulgated to deal with aspects of convenience and cost reduction elements to the benefit of the parties and participants.
- d) Members have endeavoured to meet a general guide of producing draft decisions for review and issuance in a two-week (14 calendar day) time frame, from the conclusion of the respective sitting.

In respect of each of these matters, intervening circumstances have occasioned Hearing adjournments, filing and appearance relief, administrative improvements in the processing of appeals, including interim relief measures supportive of Written and Electronic Hearings. Generally, Members have relaxed a strict construction of the Rules in favour of leniency in their introduction and deployment.

As well, the TLAB has committed to a series of Open Public Meetings to hear from the public on issues related to improved service, including changes to the Rules. These dates were set in Business Meeting 10, held December 13, 2017.

Observation

At each Business Meeting the Secretary has reported on statistical measures both with respect to file flow, assignments, timeliness of reporting and timelines performance for: administrative reviews; adjudicative reviews; Hearing scheduling (the '100 day) objective and decision writing performance.

As a general overview, these statistics have indicated that the TLAB performance is commendable. Excluding Hearings that become delayed or adjourned by Motion Decision, or which have required multiple rescheduled sittings, the effort expended by the Rules regimen and the positive adherence by the bar, the planning profession and the public, all have resulted in timely service.

The TLAB is functioning at or close to its 100 day scheduling promise and its two-week Decision issue objective. On the latter, there are obvious exceptions for complex appeals, appeals with multiple parties, multi-day appeals and instances of intervening holidays, review delays and availability for accessibility reviews, signature, dating and issuance all on the same day.

I am grateful for the Members participation in the review of decisions.

In the preparation of the TLAB Annual Report to Council, I am hopeful that the statistics will continue to demonstrate that the Members service to the public remains exemplary.

Issue Identification

Rules etc., Review.

In setting a schedule for Business Meetings convened by the widest possible Notice and Invitation respecting Rule changes, the TLAB has set in place its promised opportunity to hear deputations and consider revisions that may benefit the greater common good, and not necessarily any particular interest group. That assessment of realities is well underway.

However, for it to be truly successful, each TLAB Member is asked to carefully review his or her experience with the Rules, Forms, Practice Directions, Public Guide and other relevant sources bearing on the conduct of appeals and Decision writing, for tabling and discussion during the succession of three (3) business meetings ending in March and April, 2018.

While these meetings will not be the last opportunity for Rule revision, they are designed to present open opportunities to discuss revisions, including those that a Member may wish to have considered.

Without the input of the TLAB sitting Members, this process of review will not have fullest exposure possible.

I am therefore asking each Member to address revisions and, where appropriate, provide the Secretary with suggestions to be compiled for discussion in Public session. Preferably, these should identify:

- a) The Rule, Practice Direction or topic of interest
- b) The Issue
- c) Options to Address
- d) Recommendation(s), if any.

The identification of these matters should not be tied to any specific file or disposition and may or may not necessarily disclose origination by Member.

This self analysis should be done now as it is important to identify topics in order that they be placed in-train for the upcoming meeting roster. Depending on suitability, complexity and length, topics identified may form part of the Notice and Invitation to the public to attend the Rules, etc., Review meetings.

Decision Timeliness and Accountability

Although quite possibly an imposition of personal schedules, Members have supported the rationale that timely decision reporting is not just a service to the public as expected of the TLAB by Council, but also it serves to avoid the potential for backlog building that can overwhelm and compromise the Member.

Delay in the production of Decisions keeps the interested Parties and Participants in regrettable suspension as to their future course of action. For the Member, it raises the prospect of more time engagement finding, listening and reviewing the DAR, and heightens the prospect of factual or other 'error on the face of the record'. For Staff, inordinate delay requires the fielding of multiple enquiries from Parties and Participants.

The TLAB reputation is built on timely service. To date, feedback is generally positive not only as to the responsiveness of Member's Decision process, but also the demeanor of conduct of hearings and the

incisiveness and descriptive engagement by Members in the facts and appreciation of the evidence as demonstrated in thorough, well written and accurate decisions. Site visits, as required by Council, have been well or at least neutrally received by the public.

The TLAB, however, has no mechanism to which it has agreed, beyond the good will of the Members, to ensure timely, thorough, responsive accountable decisions are produced.

As Chair, I would benefit from consensual direction by the Members of measures to ensure that the standard of excellence is maintained.

In requesting this direction for future events should they occur, this is not to address delays that occur in decision issuance arising from complexity, multiple parties, intervening absences, schedules or other reasonable circumstances, whether foreseeable or unforeseeable.

I see a need to have direction where a Members 'backlog' reaches the dimension of risk at an unacceptable scale.

In that circumstance, it would be preferable to have consensual direction from the Members that where a pattern of decision inactivity demonstrates the need and where good will has failed, that there be a remedy to encourage appropriate conduct. I therefore propose that:

WHERE any of the following is demonstrated by a Member:

- i) Inordinate delay, i.e., greater than two (2) months has elapsed since the close of the Hearing and one or more decisions have not been rendered; or
- ii) A member has outstanding six (6) or more decisions; or
- iii) There is a refusal, direct or indirect by action or inaction, to address the timely delivery of decisions without reasonable explanation or excuse.

In those circumstances, because of the risk of injury to the public, to the reputation of the TLAB and to the potential for embarrassment to City Council, I am asking that the Chair have consensus authority to take one or more of the following actions (including any others that the Members consensus might endorse):

1. Require the offending Member to attend *in camera* at a business meeting of the TLAB to explain the circumstances;
2. Require the Secretary to suspend scheduling subsequent appointments until the backlog of the Member is cleared;
3. Require the Secretary to cancel Member appointments and to re-assign current schedules to other Members, where availability permits, until the backlog is cleared.

I have asked the Secretary to list both aspects, above, for discussion at a Business meeting.

Thank you.

Ian James Lord
Chair