

May 11, 2018

**By E-Mail Only to [tlab@toronto.ca](mailto:tlab@toronto.ca)**

Toronto Local Appeal Body  
40 Orchard View Boulevard, Suite 211  
Toronto, ON  
M4B 1R9

Dear Toronto Local Appeal Body:

**Re: Invitation to Participate in the Public Consultation on the Toronto Local Appeal Body (“TLAB”)  
Submission of Davies Howe LLP (“Davies Howe”)**

We write to you in response to TLAB’s invitation to participate in public consultation on the TLAB Rules, Practice Directions, Forms and Public Guide (the “**Rules**”). Davies Howe is a law firm specializing in land development law. Our lawyers regularly appear before the TLAB and are familiar with the Rules and related processes at the TLAB.

This letter summarizes Davies Howe’s comments and suggestions regarding TLAB operations and the Rules which have been developed through our ongoing working relationship with TLAB.

### **Forms and Signing**

Davies Howe regularly acts as a representative for Appellants and Parties before the TLAB. Part of our work includes filing and signing forms on behalf of our clients. To date however we have received conflicting interpretations from TLAB and Committee of Adjustment staff on which forms must be signed by our client and which may be executed by a retained lawyer on behalf of the client before TLAB. We have also receive differing views on which “box” is to be signed as it is not always clear on the face of a form.

*Recommendation: The Rules and TLAB Forms should be updated to be explicit and clear as to which forms must be signed by a client – regardless of whether they are represented by a lawyer.*

### **Appeal and Document Filing**

Davies Howe regularly files appeals at the TLAB on behalf of its clients. Filing electronic appeals in person is cumbersome and expensive.

*Recommendation: Ideally, an all-electronic system for appeal filing and fee payment would be of great assistance. Alternatively, the process could be revised to permit appeals to be delivered by courier to a Committee of Adjustment. This process is similarly used for all other Planning Act appeals where appeals are filed directly with the Clerk for the City of Toronto.*

The current TLAB fee schedule requires that the \$300 appeal fee be payable by debit, cash, certified cheque or money order *only*.

*Recommendation: Similar to the relief granted to law firms at the Local Planning Appeal Tribunal (“L.P.A.T.”) (formerly the O.M.B.), we respectfully suggest that law firm’s be permitted to pay fees by uncertified cheque drawn on a lawyer’s general or trust account. We note, this is the same exemption permitted for appeals to the L.P.A.T..*

### **Service of Documents**

As the TLAB is primarily an electronic-only forum, the expectation is that parties and participants are served documents by electronic means. While we recognize there are some parties/participants who may not have access to e-mail (or who choose not to disclose their address), in today’s world, this is becoming far less common. When a party either does not have an email address or chooses not to disclose it (a “Recipient”), the person filing documents on behalf of a different party is required to serve the Recipient by courier or hand delivery. This can create significant issues in meeting the service deadlines.

*Recommendation: The Rules should be revised to relax the deadlines for serving Recipients until noon on the day after a deadline is imposed by the Rules. This will encourage more reliance on electronic communication. This provides a greater measure of equity to the individual filing whose timelines should not be truncated because a Recipient is an exception and not the norm.*

Similarly, an updated or improved means of filing, serving and exchanging documents with the TLAB, parties, and participants would be of assistance. Currently, documents must be emailed to parties and the TLAB. This creates an issue as the TLAB’s servers have a 10mb size limitation. Some individuals email addresses have an even greater limitation. This results in a multiplicity of emails and PDF files being email and uploaded which has already led to confusion on several occasions.

*Recommendation: The ability to send files via file-transfer-protocol (FTP) site, or a file transfer link (ie. Dropbox, WeTransfer), would reduce the significant number of emails needed to submit larger documents. This would also reduce the possibility for confusion, missed attachments, or the need to divide larger*

*documents into a multitude of parts. These (larger) documents can be easily downloaded by anyone accessing the TLAB's website.*

While Davies Howe has crafted a template for its document disclosures, direction from the TLAB on the format of document disclosures and how document books should be prepared for hearings would be appreciated to ensure that submissions are accessible and adequately work with the TLAB's electronic systems.

*Recommendation: A Practice Direction should be issued to streamline how document "books" (or master PDF files) to reduce the need for filing of unnecessarily large numbers of independent files.*

We have encountered cases where the TLAB's "People List" is either out of date or incorrect.

*Recommendation: Immediately after the final date a person is to elect to be a Party or a Participant, the TLAB should update the "People List" to reflect who has made such elections.*

We find that the current time frame for the filing of documents and witness statements is too early in the TLAB process. The current timelines effectively require representatives and expert witnesses *who may not have previously been involved in an application* to be retained prior to the Committee of Adjustment hearing in order to provide sufficient time to adequately prepare for the required document disclosure and statement preparations. This has a significant effect on increasing the cost of filing a minor variance or consent application which, we respectfully submit, was not intended.

*Recommendation: Filing dates more closely linked to the actual scheduled hearing date would allow for more time to prepare the case in advance of the finalization of documents and witness statements. Later filing dates might also encourage settlement discussions or negotiations as the majority of preparation work for the Hearing will not yet have been completed. We have found that the current "quiet period" (duration and time frame) dissuades some parties from settling as much of the work (and expense) has already been completed. Thus, the financial incentive to settle evaporates too early.*

## **Reply Statements and Documents**

Upon receipt of document disclosure and witness statements, the need for reply witness statements and/or additional documents or materials to address unanticipated issues may arise. Currently, the Rules do not provide any opportunity for the submission of such materials to the TLAB. As a result, a motion to permit such a submission is required, adding significant additional administrative steps and expense to the process. Facilitation of the right of reply under the Rules would improve and simplify this process, recognizing that the right may not be exercised in all cases.

*Recommendation: The TLAB should add Rules that permit Parties to file reply documents, including reply witness statements or visual evidence, within a reasonable time. Given the often extensive time between the filing of Witness Statements and a hearing date, there is usually ample time to include this additional step – without the need for a motion to permit such submission. We suggest that the deadline be approximately two weeks after witness statements are exchanged.*

### **Where Additional Notice Required**

There are times when additional notice to the public is required for an application. For example, when a new variance is discovered that was not identified by the City's zoning examiner. Further it is usually the TLAB that directs new/modified notice to be given. The circulation list is part of the record delivered to the TLAB by the respective Committee of Adjustment panels and, as such, it is within the TLAB control and possession.

*Recommendation: A new Rule (or set of Rules) and internal protocols should be added outlining the procedure for when the TLAB directs, or when an Applicant elects to provide additional notice. These Rules (and internal protocols) should confirm the timeframe for the TLAB to provide circulation list. Direction to the TLAB and its staff for immediate disclosure will help to streamline cases when new/modified notice is required. Again, this can be particularly critical where a new variance is required to address a party's concern or where it was not originally identified by the City's Zoning Examiner when the Examiner's Notice was issued to the Applicant.*

### **Unopposed Items and Items on Consent**

There are occasions where all parties to a matter agree on an issue or procedural matter. For example, parties will often agree to a different exchange dates to allow greater time for ongoing and productive settlement discussions;

*Recommendation: The Rules should be revised to indicate that a formal motion need not be filed when all parties consent to adjourning or postponing items (ie. a pre-filing deadline). This encourages parties to work towards advancing settlement discussions rather than focusing on hearing preparation (which has a tendency to entrench parties).*

### **Motions for Uncontested Approvals**

It is not uncommon for appeals to the TLAB to be completely unopposed. Last month, I had *two* such matters. While they were heard before the O.M.B., there have been years when I've appeared on 4+ uncontested variance and/or consent appeals at the O.M.B.

Given the costs associated with a full hearing (including those associated with compliance with the Rules's disclosure obligations) and the delay until the hearing date, where no person or entity has elected to be a party or a participant, there should be a mechanism to expedite the hearing of an appeal. We respectfully submit that where an applicants who advance proposals without contest from any other party or participant should be afforded some flexibility and leeway.

*Recommendation: Additional Rules and Practice Directions should be added to expressly allow for Motions seeking expedited approvals where the matter is uncontested. These Rules and Practice Directions should identify:*

- 1. The threshold/criteria to permit an earlier determination;*
- 2. The format and content of such process (e.g. a motion);*
- 3. What submissions must be made to obtain the motion;*
- 4. Whether the motion will be for a hearing will be in person, in writing, or by teleconference;*
- 5. What general materials must be filed in support of the motion;*
- 6. An abatement of the standard filing and procedural deadlines and rules for appeals to be addressed via this process; and*
- 7. A form of Draft Order.*

*Having specific rules to address these not unique situations would help to streamline the process in these circumstances, reduce wasted time and cost for the applicants that have brought uncontested applications. The corollary being that the TLAB would be afforded greater time to focus on contested matters.*

### **Hearing Locations and Equipment**

While not listed as part of this call for public submissions, we think it important to note that there are ways in which the hearing rooms themselves can be streamlined.

More than one mouse and keyboard within the hearing room controlling the monitor would aid in allowing a smoother flow for hearings.

**Conclusion**

We trust that the above comments will prove helpful in your ongoing consultation and review of the TLAB's operations, Rules, Practice Directions, Forms and Public Guide. Please don't hesitate to contact me with any questions you may have.

Thank you for your consideration and we look forward to appearing before you in the future.

Yours truly,  
**DAVIES HOWE LLP**



Aaron Platt

AP:SH