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The focus of my presentation today will be with regards to the to the following rules of Toronto Local Appeal Board (TLAB) practice and procedures:

- **2) Application of the rules**
- **23) Adjournment**
- **28) Costs**

My client and I interpret that the laudable goals of TLAB are to provide a local environment in which transparency and professionalism would allow the local decision-making process to provide a clear methodology for the development of properties in the Toronto area. It is a widely known and discussed fear that Not in my Backyard (NIMBYs) could hijack the process and this fear seems to be realized in recent TLAB cases.

I hope that the issues below regarding the rules and how they have affected my client specifically will allow you to see how they have been abused or poorly interpreted and leave much open to speculation.

## **2) The application of the Rules:**

The application rules is broken into several different sections however as with any democratic institutions which creates a series of rules and laws for us to abide by the purpose of these rules and laws are to allow us to have a clear definition of the parameters within which we must all act as such I find it very disappointing to see that the rules of TLAB themselves allow for a vague and variable interpretation and implementation of these rules. **2.1** states that TLAB is committed to fixed and definite hearing dates and then further supports this by stating that these rules should be interpreted in a manner which facilitates that objective

**2.2)** goes on to state that the rules should be liberally interpreted to achieve a just, expeditious and cost-effective determination – but this then contradicts with the first rule which is the commitment to a fixed and definite hearing since it allows for a new interpretation of rule **2.1** based on these three categories. Furthermore, TLAB rules do not define which of these three subcategories carries more weight. Functionally, it is impossible for something to be fixed and definite but then to be subject to being able to be liberally interpreted in the following sentence. A simpler rule would have been to have TLAB state that it is committed to a fixed and definite hearing date with the principles of a just, expeditious and cost-effective basis.

**2.10** states that TLAB may also then grant all necessary exception to the rules as it considers appropriate; in essence within the TLAB rules itself while TLAB claims that

fixed and definite hearing dates are paramount it also goes on to undermine this rule by making it subject to liberal interpretation and allowing all necessary exceptions the rule.

In my client's case – a motion to defer was entered in less than thirty days before the hearing dates (of which there were three dates assigned) by an opposing party who was informed for the dates more than 5 months in advance but waited until the last minute to bring their motion. My client had taken considerable efforts with his legal, consultants and his personal patient practice to be in attendance to the “fixed and definite date” to then have this date vacated by TLAB less than 7 business days in advance. Further adding to the difficulties TLAB has now canvassed the more than 20 persons involved in the matter (parties, consultants, counsel etc.) and has only provided a one-day hearing and another non-contiguous date (a week later) based on the availability of the opposing parties.

It is important to note that the new extension offered by TLAB is now a 100% increase in time from the original hearing date and now pushes this minor variance application to more than one day.

The liberal interpretation of the rules, and the ability to grant all necessary exemptions to the rules leads to a very unjust and unfair process. It can and has been abused by the opposing parties to frustrate, increase cost for my client the applicant, disrupt on a last-minute basis a 3-day dedicated hearing and replace it with a future date more than 100% increased in time in the future.

### **23) Adjournment**

With regards to the allowing of an adjournment the TLAB rules once more are vague and are open to liberal interpretation that allow for an abuse of process. In my client's case the motion to adjournment was made by an opposing party during the cooling of period (less than 30 days from the hearing date) and despite them being aware of the issue more than 5 months in advance. In the current world we have the ability to form social network groups where public opinion is often swayed to manipulate democratic processes. The simple fact that TLAB puts equal footing to more than seven (7) items **23.3 (a – h)** leads the process to be subject to abuse since the applicant is often limited to being one party. My client has been subjected to racial harassment, criminal harassment, and loss of privacy with the TLAB forum contributing to some aspects of this – notably the loss of privacy. TLAB's website has hosted images that have been violated the privacy of my client's family and children with images now hosted there.

**23.3(h)** In my client's example, TLAB ruled to allow a last-minute adjournment without considering the cost that would be incurred for my client, the timeliness of the request **(23.3((d))** and ignored the effect that this adjournment would have on my client **23.3(g)**.

**23.3(g)** TLAB claimed that my clients house is habitable and this as such precluded my client from being affected by the adjournment. I submit to you that if the criteria for

owners/developers is whether something is habitable then this low threshold will always favour the opposing parties. Furthermore, TLAB also dismissed the potential prejudice that my clients would face.

It should be noted that the arguments made to TLAB in writing do not allow for a back and forth discussion that would have brought these issues to the attention of TLAB – since when responding to a motion one structures the legal arguments but cannot comprehensively anticipate the concerns that the TLAB may have in making a decision.

## **28) Costs**

One of the founding principles behind a rule-based system is a mechanism to penalize those who abuse, distort, lie and manipulate a system. Needless to say we have seen the weakness of our democratic systems when subjected to the garnering of Facebook data and the manipulation of this data by certain powerful individuals and others in the world. To assume that TLAB is not subjected to these same manipulations would be naïve and short sighted.

Participants – are allowed to make submissions to TLAB but are excluded from being subjected to cost award (**13.7 & 13.8**). In my client's case the local opposing participants have worked together to provide a campaign of deceit and manipulation (orchestrated by the opposing parties) but are insulated from a method of cost to awards. There is no consequence for those providing frivolous conjecture to delay the process, which leaves it ripe for abuse.

Furthermore, they have hidden behind TLAB and have submitted documents which have been slanderous, insulting, racist and denigrating to my client whose only possible recourse is for civil litigation. It should be noted that my client does not have any opportunity to respond to these vile allegations which are published on a public forum and are available for the wider community to view. In the day of social media, Twitter and Facebook commentary about any document which is left unchallenged becomes acceptable – it has been 12-months since the process has started and my client's have been unable to defend their position or their respected names.

Nonetheless, it should be noted that since the TLAB process has started for my client he has been subject to physical harassment with the police having be called to attend to one of the opposing parties on more than four (4) occasions. Additionally, they have had to endure racial taunts, racial abuse and an overall hostile environment where "community involvement" has instead evolved into community bullying using the rallying cry of "in the interest of the neighbourhood". TLAB's role in this is the publishing of documents that have not been vetted, have not been verified, persistent delays and last-minute changes all at the significant detriment to my client.

While there is a potential for costs to be awarded, the onus on this is on the applicant to demonstrate to TLAB these issues. TLAB rightly desires to have a process that will allow engagement but at the same time, TLAB must recognize that engagement can

often be abused subtly and often resulting in significant costs. My client has estimated that the TLAB appeal process will cost well in excess of six (6) figures by the time this proceeding is completed – TLAB has at no point contacted my client to verify these documents that have been circulated as fact when they are untrue or misleading. This has led to increased costs and hostility from not only his neighbourhood, but the greater surrounding area canvassed by those who oppose them.

Generally, we commend TLAB for its efforts in attempting to improve and make the process more inclusive however, its intentions have been hijacked by those who act in bad faith and ulterior motives at a significant cost those individuals who are affected by their decisions and rulings. We believe that it is paramount that TLAB adopt a new rule requiring parties to act with “civility” as per the Report for action by the City Solicitor as such a rule may help stem some of these bad acts. In my client’s case it is very apparent that many of the tactics utilized by the opposing parties are in bad faith and TLAB lacks a standard for the actors in the proceedings.