

DECISION AND ORDER

Decision Issue Date **Tuesday, August 28, 2018**

PROCEEDING COMMENCED UNDER section 45(12), subsection 45(1) of the Planning Act, R.S.O. 1990, c. P.13, as amended (the "Act")

Appellant(s): KATHRYN KOTRIS

Applicant: MICHAEL FLYNN

Property Address/Description: 93 LAKE PROMENADE

Committee of Adjustment Case File Number: 17 262420 WET 06 MV

TLAB Case File Number: **18 149850 S45 06 TLAB**

Motion Hearing date in writing: Wednesday, August 28, 2018

DECISION DELIVERED BY S. MAKUCH

APPEARANCES

Ian Flett for the Appellant

Mary Flynn-Guglietti for the Owner

INTRODUCTION AND BACKGROUND

This is a motion in writing for the adjournment to a date agreed to by the parties of a hearing scheduled for August 29, 2018. Notice and supporting material were served and filed on August 27, 2018.

MATTERS IN ISSUE

The grounds for the motion were the contagious illness of the Appellant's counsel, Mr. Flett, and the inability to have alternate counsel available to replace him. Motion material in response was filed on August 28, 2018. The grounds for opposing the motion were a pattern of previous delays in filing disclosure material for the hearing by Mr. Flett, and the costs which would be incurred by the applicant as a result of the adjournment. Additional material, filed by Mr. Flett on August 28 2018, emphasized the

importance of the appellant in having legal counsel and the lack of any undue delay. The applicant himself, late on August 28, 2018, wrote directly to TLAB emphasizing the high cost of an adjournment.

JURISDICTION

TLAB has jurisdiction to grant adjournments under Rule 23. In doing so under Rule 23.3 it may consider, inter alia: the interest of the parties in having a full and fair proceeding; the timeliness of the adjournment; the effect an adjournment may have on the parties; and the ability to conduct a proceeding in a cost effective manner.

EVIDENCE

The evidence was in the form of affidavits by law clerks in the employ of each counsel. It was not tested and I accept it without needing to reach any conclusions as to its credibility. A summary of it is as follows.

Mr. Flett was informed of the seriousness of his illness on August 27, and told by his doctor to keep away from public places for 72 hours. There was no one in Mr. Flett's office to replace him at the hearing. The affidavit in response stated there was a pattern of delay in dealing with this hearing, that disclosures had not been filed and that Mr. Flett had stated there would be no request for an adjournment. This affidavit also stated that there would be significant monetary costs on the applicant if an adjournment were granted and that Mr. Flett could appear at the hearing with a mask on.

ANALYSIS, FINDINGS, REASONS

In my view, in this situation, the need for the appellant to have legal representation is paramount and thus an adjournment should be granted. There were, nevertheless, significant issues raised in response to the adjournment related to the need for and timeliness of the request for the adjournment, as well as additional costs which would arise from it. Indeed, the real prejudice to the applicant arose, according to the affidavit evidence and the applicant's own letter, from costs which would be incurred as a result of the adjournment. The granting of this motion is, therefore, without prejudice to the applicant bringing a motion for costs.

DECISION AND ORDER

The hearing of the above matter is adjourned to September 20, 2018, 9:30 a.m. at the TLAB offices. There is no need for new disclosure dates as disclosure was to

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have been completed. TLAB staff may be spoken to on or before August 31, 2018 if the parties have reached agreement on an alternate date.

X 

S. Makuch

Panel Chair, Toronto Local Appeal