

# Toronto Local Appeal Body

Attachment #1:  
FoNTRA Annotated Response to this Document

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## Rules of Practice and Procedure

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### **General Comments:**

- The circulation rules for electronic documents are unduly complicated and should be simplified
- Experienced lawyers do not follow the Rules for documentation circulation, leading to additional confusion

Effective Date of these Rules of

Practice and Procedure: ~~May 3, 2017~~ \*\*On a date to be determined by the TLAB; until such date is established the existing TLAB Rules continue in full force and effect.

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Toronto <b>TLAB</b> Forms	Form Number
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Authorized Representative	Form 5
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Notice of Motion	Form 7
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Notice of Reply to Response to Motion	Form 9
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Request to Summons	Form 11
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## INTRODUCTION

These Rules have been adopted by the Local Appeal Body (hereafter, "TLAB" or "the TLAB") pursuant to the Statutory Powers Procedure Act. These Rules apply to Proceedings brought before the TLAB under subsections 45(12) and 53(14), (19) and (27) of the Planning Act, pursuant to section 115 of the City of Toronto Act.

The TLAB is committed to a paperless process and these Rules have been drafted to give effect to this commitment to the greatest extent possible.

The TLAB may publish Practice Directions which provide additional directions to be followed in Proceedings. Practice Directions are available at the TLAB's Website: [www.toronto.ca/tlab](http://www.toronto.ca/tlab).

The TLAB publishes Forms which are available at the TLAB's Website: [www.toronto.ca/tlab](http://www.toronto.ca/tlab).

## 1. GENERAL

### Application

- 1.1 These Rules apply to the TLAB established on May 3, 2017, and come into force and effect ~~on May 3, 2017.~~ \*\*On a date to be determined by the TLAB; until such date is established the existing TLAB Rules continue in full force and effect.

## Definitions

1.2 In these Rules the following words or phrases have the following meaning:

“Affidavit” means written evidence under oath or affirmation, using Form 10;

“Appeal” means an appeal to the TLAB;

“Applicant” means any Person who has made an application to the Committee of Adjustment under Section 45 or Section 53 of the Planning Act;

“Appellant” means a Person who brings an Appeal;

“Case File” means the referral number, name or nomenclature used by the TLAB to identify a Proceeding brought before it;

“Chair” means a person appointed by Council to act as the Chair of the TLAB;

“Council” means the body politic constituted and empowered pursuant to the City of Toronto Act, 2006, S.O. 2006, c. 11, Sched. A;

“Days” means calendar days;

“Document” includes data and information recorded or stored by any means;

“Electronic Hearing” means a Hearing held by conference telephone call or some other form of electronic technology allowing Persons simultaneously to hear or hear and see one another;

“Email” means messages distributed by electronic means from one device user to one or more recipients via a network;

“File” means to send or deliver a Document to the TLAB in accordance with these Rules;

“Final Decision” means the decision made by the TLAB following the Hearing of evidence and submissions;

“Form” means a Document required by the TLAB for the filing of certain Documents and available on the TLAB’s website;

“Hearing” means the stage in a Proceeding when the TLAB hears evidence and submissions and includes an Electronic Hearing, an Oral Hearing and a Written Hearing;



“Holiday” means Saturday or Sunday and the statutory Holidays of New Year’s Day, Family Day, Good Friday, Easter Monday, Victoria Day, Canada Day, Civic Holiday, Labour Day, Thanksgiving Day, Remembrance Day, Christmas Day, Boxing Day, and any special Holiday proclaimed by the Governor General or the Lieutenant Governor in Council. Where New Year’s Day, Canada Day, Christmas Day, Boxing Day or Remembrance Day fall on a Saturday or Sunday, the following Monday is a Holiday. Where Christmas Day falls on a Saturday or Sunday, the following Monday and Tuesday are Holidays, and where Christmas Day falls on a Friday, the following Monday is a Holiday;

“Mediation” means mediation as described in these Rules;

“Member” means a member of the TLAB;

“Motion” means a request that the TLAB make a decision or issue an order at any stage in a Proceeding;

“Moving Party” means a Person who makes a Motion to the TLAB;

“Oral Hearing” means a Hearing at which Persons attend before the TLAB in person;

“Participant” means a Person who is a participant under Rule 13;

“Party” means a Person who is a party under Rule 12;

“Person” includes a corporation, and the entities included within the meaning of a person in the Statutory Powers Procedure Act;

“Practice Direction” means practice directions issued by the TLAB from time to time;

“Proceeding” means a matter at any stage before the TLAB;

“Representative” means a Person who acts for a Party or Participant in a Proceeding and is authorized under the Law Society Act, or is otherwise authorized by law to represent a Party or Participant in a Proceeding;

“Responding Party” means a Person answering an Appellant or Moving Party;

“Rules” means these Rules of Practice and Procedure;

“Rules of Civil Procedure” means the Rules in effect for the Superior Court of Justice for Ontario;

“Vice Chair” means a Member who is appointed pursuant to the procedural by-law by a majority vote of Members as the Vice Chair of the TLAB and thereafter performs such additional duties as assigned to him or her by the Chair or as set out in the procedural by-law;

“Written Hearing” means a Hearing held by the exchange of Documents; and

“Website” means the website maintained by or on behalf of the TLAB at [www.toronto.ca/tlab](http://www.toronto.ca/tlab).

## 2. APPLICATION OF THE RULES

### Interpretation of these Rules

- 2.1 The TLAB is committed to fixed and definite ~~Hearing~~ dates. These Rules shall be interpreted in a manner which facilitates that objective.
- 2.2 These Rules shall be liberally interpreted to secure the just, most expeditious and cost-effective determination of every Proceeding on its merits.
- 2.3 The TLAB may exercise any of its powers under these Rules or applicable law, on its own initiative or at the request of any Person.
- 2.4 Where any of these Rules or any order issued by the TLAB conflicts with any statute or regulation, the provisions of the statute or regulation prevail.
- 2.5 The TLAB’s Forms are part of these Rules and to the extent there is any inconsistency, these Rules prevail.

### Matters Not Dealt with by the Rules

- 2.56 Where procedures are not provided for in these Rules the TLAB may do whatever is necessary and permitted by law to enable it to effectively and completely adjudicate matters before it in a just, expeditious and cost-effective manner.
- 2.67 The TLAB may issue Practice Directions on the TLAB’s Website.
- 2.78 These Rules shall be interpreted in a manner which facilitates the introduction and use of electronic filing and the use of digital communication and storage media.
- 2.89 Any amendment to these Rules comes into force upon its publication on the TLAB’s Website, unless the TLAB directs otherwise.

"Cost-effective" should be changed to 'effective'. This factor does not appear in modern measures for tribunal excellence, as with the COAT framework.

### Compliance with the Rules

2.910 Substantial compliance with the requirements of these Rules is sufficient.

### **Relief and Exceptions to the Rules**

2.4011 The TLAB may grant all necessary exceptions to these Rules, or grant other relief as it considers appropriate, to enable it to effectively and completely adjudicate matters before it in a just, expeditious and **cost-effective** manner.

**efficient**

### **Failure to Comply With the Rules or Procedural Order**

2.4412 Where a Party or Participant to a Proceeding has not complied with a requirement of these Rules or a procedural order, the TLAB may:

- a) grant all necessary relief, including amending or granting relief from any procedural order on such conditions as the TLAB considers appropriate;
- b) adjourn the Proceeding until the TLAB is satisfied that there is compliance;
- c) order the payment of costs; or
- d) refuse to grant the relief in part or whole.

### **Quorum of Members**

2.4213 Each Hearing will be presided over by a panel composed of at least one Member.

### **Expiry of Member's Term during Hearing**

2.4314 If the term of a Member presiding over a Hearing expires before a decision or determination in a Proceeding is given, the term of the Member shall be deemed to continue, but only for the purpose of participating in the Proceeding to its conclusion and issuing a decision therein in accordance with the Rules and for no other purpose.

### **Vacancy in Membership**

2.4415 Any vacancy in the Membership of the TLAB shall be filled as soon as possible.

## **3. FORMS, FORMAT, FILING, SERVICE AND DOCUMENTS**

### **Forms**

3.1 All Persons shall use and complete TLAB Forms, unless the TLAB directs otherwise. Where no Form is available or applicable for any contemplated communication, service, filing or other such action, the following must be included in the Document:

- a) the name of all known Parties and Participants in the Proceeding;
- b) the name of the Person filing the Document and if applicable, that Person's Representative;
- c) the Email address, mailing address and telephone number of the Person filing the Document, and if applicable, the same information for the Person's Representative; and
- d) the Case File number, if available.

#### **Format of Documents**

Could be simplified ... 'Fill out the form'

3.2 Every Document in a Proceeding, including visual evidence, shall be in electronic format, unless the TLAB directs otherwise. Acceptable electronic format includes Documents in PDF, unless the TLAB directs otherwise. Documents shall be in typed format, or, if hand-written, shall be legible.

#### **Filing, Service and Exchange by Email**

3.3 Where any Document is required to be served, Filed or exchanged with or on the TLAB or any another Party, Participant or other Person, it shall be served, Filed or exchanged by Email, unless a statute, or these Rules or a TLAB method is directed to be used by the TLAB, and shall be served

Terms 'served' and 'exchanged' should be defined.

a) to the Representative of the intended Party or Participant, if any;

b) where the Party or Participant is not represented, directly to the Party or Participant;

c) where the Party or corporation directly to receive the Document. This is all quite confusing ... the Persons list should provide directions for all documents. The default circulation should be the Persons list.

d) where served on the TLAB, a local board or commission, or any department, ministry or agency of the federal, provincial or municipal government, to an individual with apparent authority to receive the Document.

#### **Service, Filing or Exchange before 4:30pm or Deemed Next-Day**

- 3.4 Service, filing or exchange of a Document by Email is effective the Day sent, unless sent after 4:30 p.m., in which case the Document is deemed to have been sent on the next Day.
- 3.5 All Emails shall include the TLAB's Case File number in the subject line, if available, and indicate the type of matter and provide full identification of the sender and intended recipient.

### **Proof of Service by Email**

- 3.6 All Documents which are required by these Rules, or required by order, to be served, Filed or exchanged shall be simultaneously electronically carbon copied ("Cc.") to the TLAB and Persons are required to consult the TLAB's website, as required under Rule 15.

This could be simplified. User mailboxes are filled with duplicate information. The size of some attachments (e.g., 30MB) prevent some users from receiving documents.

### **Copies of Local**

- 3.7 Any Person may examine any Document Filed with the TLAB, or request a copy and receive same, after paying the required fee, unless a statute, a court order, an order or Practice Direction of the TLAB, or these Rules, provide otherwise.
- 3.8 Any Person may request a copy of a TLAB Hearing which has been digitally recorded, and receive same, after paying the required fee, unless a statute, a Court Order, an order or Practice Direction of the TLAB, or these Rules, provide otherwise.

## **4. TIME**

### **Time Calculation**

- 4.1 Time shall be calculated in accordance with these Rules, unless the TLAB directs otherwise.
- 4.2 Where an action is to be done within a specified number of Days, the Days are counted by excluding the first Day and including the last Day.
- 4.3 When the time for doing an act expires on a Holiday the act may be done on the next Day that is not a Holiday.

### **Extension or Reduction of Time**

- 4.4 The TLAB may on its own initiative, or, on a Motion by a Party, extend or reduce a time limit provided by these Rules on such conditions as the TLAB considers appropriate.

4.5 The TLAB may exercise its discretion under Rule 4.4 before or after the expiration of a time limit and with or without a Hearing.

4.6 Nothing in this section alters or amends a time limit established by statute.

## 5. FEES

### Filing and Other Applicable Fees

5.1 The TLAB shall post a fee schedule on its website.

5.2 Appeal fees shall be payable to the City of Toronto TLAB by certified cheque, unless the TLAB directs otherwise.

5.3 All other fees required by this section shall be payable by debit or credit card. **Could be simplified ... Why is there a need for paper cheques**

## 6. DIRECTED NOTICES

### Directed Notices

6.1 In addition to any notice requirement prescribed by law the TLAB may direct a Party to give notice of a Proceeding to any Person and may direct the method of providing notice.

## 7. INITIATING A PROCEEDING

### Form of Appeal to the Local Appeal Body

7.1 An Appeal to the TLAB shall be Filed within the prescribed period by filing a Form 1 with the Secretary-Treasurer of the Committee of Adjustment for the City of Toronto.

7.2 A complete Form 1 must provide all of the information requested in every section of the Form and must set out the reasons and grounds which form the substance of the Appeal.

7.3 The Appellant shall pay the required fee at the time the Appeal is Filed.

**Could be simplified ... Why not File at the TLAB office?**

## 8. ADMINISTRATIVE SCREENING

### Administrative Screening

8.1 The Local Appeal Body may not process an Appeal if:

- a) Form 1 is incomplete;
- b) Form 1 was submitted without the required fee for commencing a Proceeding;
- c) Form 1 was submitted after the prescribed time for commencing a Proceeding; or
- d) there is some other technical defect in the submitted Form 1.

### Notice of Administrative Screening

8.2 The **TLAB** shall give a Person who has submitted a Form 1 a Notice of Non-compliance under Rule 8.1, using Form 15, which includes:

- a) the reasons the **TLAB** will not process- the submitted Form 1; and
- b) the requirements for resuming processing of Form 1, if applicable.

8.3 Except in the case of Rule 8.1(c), where requirements for resuming processing of Form 1 apply processing shall be resumed if the Person complies, within 5 Days from the date of notice, with the requirements set out in the notice given under Rule 8.2.

8.4 After the expiry of the time period provided in Rule 8.3, the **TLAB** shall refer the matter for adjudicative screening under Rule 9, without refunding any fee paid.

### Notice of Appeal Deemed Filed on Original Date

8.5 If a **documentary or technical defect** set out in a notice provided under Rule 8.2 is corrected the notice of Appeal is deemed to have been properly Filed on the Day it was first submitted rather than on the Day the defect was cured.

Applicants commonly request a new zoning review (ZZC) to cure an error or omission in the original application. This should be described as a technical defect.

In many cases, the applicant will revise the original plans and may request a new zoning review. These changes should not be considered as a defect.

## 9. ADJUDICATIVE SCREENING

### Adjudicative Screening by Member

- 9.1 In the case of an Appeal under subsection 45(12) of the Planning Act the TLAB may propose to, or upon Motion, – dismiss all or part of a Proceeding without a Hearing on the grounds that:
- a) the reasons set out in Form 1 do not disclose any apparent land use planning ground upon which the TLAB could allow all or part of the Appeal;
  - b) the Proceeding is frivolous, vexatious or commenced in bad faith;
  - c) the Appeal is made only for the purpose of delay;
  - d) the Appellant has persistently and without reasonable grounds commenced Proceedings that constitute an abuse of process;
  - e) the Appellant has not provided written reasons and grounds for the Appeal;
  - f) the Appellant has not paid the required fee;
  - g) the Appellant has not complied with the requirements provided pursuant to Rule 8.2 within the time period specified by Rule 8.3;
  - h) the Proceeding relates to matters which are outside the jurisdiction of the TLAB;
  - i) some aspect of the statutory requirements for bringing the Appeal has not been met; or
  - j) the submitted Form 1 could not be processed and the matter was referred, pursuant to Rule 8.4, for adjudicative screening.

9.2 In the case of an Appeal under section 53 of the Planning Act the TLAB may  
The details of Rule 9.2 is similar to Rule 9.1 and could be shortened and simplified.

- a) the reasons set out in Form 1 do not disclose any apparent land use planning ground upon which the TLAB could give or refuse to give the provisional consent or could determine the question as to the condition Appealed to it;
- b) the Appeal is frivolous, vexatious or is commenced in bad faith;
- c) the Appeal is made only for the purpose of delay;



- d) the Appellant has persistently and without reasonable grounds commenced Proceedings that constitute an abuse of process;
- e) the Appellant did not make oral submissions at a public meeting or did not make written submissions to the Committee of Adjustment for the City of Toronto before a provisional consent was given or refused and, in the opinion of the TLAB, the Appellant did not provide a reasonable explanation for having failed to make a submission;
- f) the Appellant has not provided written reasons for the Appeal;
- g) the Appellant has not paid the required fee;
- h) the Appellant has not complied with the requirements provided pursuant to Rule 8.2 within the time specified by Rule 8.3;
- i) the Proceeding relates to matters that are outside the jurisdiction of the TLAB;
- j) some aspect of the statutory requirements for bringing the Appeal has not been met; or
- k) the submitted Form 1 could not be processed and the matter was referred, pursuant to Rule 8.4, for adjudicative screening.

9.3 Where the TLAB proposes to dismiss all or part of an Appeal under Rule 9.1 or 9.2 it shall give Notice of Proposed Dismissal, using Form 16, in accordance with the Statutory Powers Procedure Act, and to such other Persons as the TLAB may direct.

9.4 A Person wishing to make written submissions on a proposed dismissal shall do so within 10 Days of receiving the TLAB's notice given under Rule 9.3.

9.5 Upon receiving written submissions, or, if no written submissions are received in accordance with Rule 9.4, the Local Appeal Body may dismiss the Appeal or make any other order.

9.6 Where the TLAB dismisses all or part of an Appeal, or is advised that an Appeal is withdrawn, any fee paid shall not be refunded.

## 10. NOTICE OF HEARING

TLAB shall give Notice of Hearing

- 10.1 The TLAB shall give a Notice of Hearing to the Applicant, the Appellant, the Secretary-Treasurer of the Committee of Adjustment for the City of Toronto and to such other Persons as the TLAB may direct, using Form 2.
- 10.2 The TLAB shall determine the format, date, time and location of the Hearing.

## 11. APPLICANT'S DISCLOSURE

### Whether or not Applicant is Appellant, Applicant Must Disclose

- 11.1 Whether or not an Applicant is an Appellant, an Applicant shall disclose any intended revisions or modifications to the application that was made to the Committee of Adjustment for the City of Toronto.
- 11.2 The Applicant shall File an Application not later than 4520 Days after a Notice of Hearing is served. **If the Applicant has requested a revised Zoning Notice, this action should be disclosed**
- 11.3 The TLAB shall post the Applicant's Disclosure Form 3 on its Website.
- 11.4 Waivered applications should not be allowed at the TLAB. The applicant should be expected to get a Zoning review, and disclose the zoning notice as soon as it is made available. A TLAB hearing should be delayed, if the zoning notice cannot be produced in the available time.**
- 12.1 Persons who receive a Notice of Hearing from the TLAB and who wish to be a Party, and Persons entitled by law to be a Party, shall disclose their intention to be a Party to the TLAB.
- 12.2 Persons who wish to be a Party shall File their Notice of Intention to be a Party or a Participant, using Form 4, with the TLAB not later than 2030 Days after a Notice of Hearing is served. Thereafter, a Party shall comply with the Rules relating to Parties and comply with any other directions given by the TLAB pertaining to Parties. An Appellant is not required to File a Form 4.
- 12.3 The TLAB may name Persons to be Parties for all or part of a Proceeding on such conditions as it considers appropriate. A Party to a Proceeding is not a Participant to a Proceeding.
- 12.4 In deciding whether a Person's status as a Party to a Proceeding should be denied, at any time, the TLAB may consider, among other things:
- a) whether the Person's interests may be directly and substantially affected by the Proceeding or its result;
  - b) whether the Person has a genuine interest, whether public or private, in the

subject matter of the Proceeding; and

- c) whether the Person is likely to make a relevant contribution to the TLAB's understanding of the issues in the Proceeding.

12.5 A Party who wishes to relinquish his or her status as a Party shall do so by serving a notice on all known Parties and Participants and filing same with the TLAB at the earliest possible date. If any other Party serves an objection on all known Parties and Participants and Files same with the TLAB, within 5 Days of the service of a notice to relinquish, the Party seeking to relinquish his or her status must bring a Motion.

### **Role of a Party**

12.6 A Party to a Proceeding before the TLAB may participate fully in the Proceeding and this includes the following:

**a) bring, serve and File Motions;**

b) be a witness in the Proceeding, provided they comply with all the requirements in Rule 16 pertaining to Parties;

c) be questioned by the Parties;

d) call witnesses in the Proceeding;

e) receive copies of all Documents served or Filed in the Proceeding;

f) cross-examine witnesses in the Proceeding;

g) make submissions in the Proceeding, including final argument;

h) participate in any Mediation; and

i) claim costs and be subject to a cost award.

## **13. PARTICIPANT**

### **Participant Election**

13.1 Persons who receive a Notice of Hearing from the TLAB and who wish to be a Participant shall disclose their intention to be a Participant to the TLAB.

13.2 Persons who wish to be a Participant shall File a Notice of Intention to be a Party or a Participant, using Form 4, with the TLAB not later than 2030 Days after a Notice of Hearing is served. Thereafter, a Participant shall comply with the Rules

relating to Participants and comply with any other directions given by the TLAB pertaining to Participants.

- 13.3 The TLAB may name Persons to be Participants for all or part of a Proceeding on such conditions as it considers appropriate. A Participant to a Proceeding is not a Party to a Proceeding.
- 13.4 In deciding whether a Person's status as a Participant to a Proceeding should be denied, at any time during a Proceeding, the TLAB may consider whether the Person's connection to the subject matter of the Proceeding is remote and may also consider, among other things, the criteria listed in Rule 12.4.
- 13.5 A Person who may otherwise qualify as a Party may request Participant status.
- 13.6 A Participant who wishes to relinquish his or her status as a Participant shall do so by serving a notice on all known Parties and Participants and filing same with the TLAB at the earliest possible date.

#### **Role of a Participant**

13.7 A Participant in a Proceeding may:

~~a) be a witness;~~

a) be a witness provided they comply with all the requirements of Rule 16 pertaining to Participants;

b) be questioned by the Parties;

b)c) ask clarifying questions of witnesses; and

d) make an oral or written statement to the TLAB at a time set for such a statement.

There is continued confusion around written statements. Suggest that 'Participant Statement' be changed to 'Participant Witness Statement' with appropriate changes.

13.8 A Participant to a Proceeding may not:

- a) call witnesses and cross-examine witnesses;
- b) bring Motions, except a Motion to seek Party status;
- c) participate in Mediation, unless permitted to do so by the TLAB;
- d) make opening and closing submissions; and
- e) claim costs.

## 14. REPRESENTATIVES

### Parties and Participants may be Represented

- 14.1 A Party or Participant may be represented by a Representative. Representatives must confirm authorization to act for a Party or Participant by either indicating on Form 1 that he or she is duly authorized, or by filing a Form 5. If authorization changes, the Party, Participant or newly authorized Representative shall immediately notify the [TLAB](#) and all other Parties of such changes in representation by serving and filing a Form 5.
- 14.2 Where a Party or Participant has a Representative all communications shall be through the Representative.

### Representatives Permitted to call Participants

14.3 A Representative may call Participants as witnesses in accordance with the Rules. Representative may not be an Expert in same Proceeding

- 14.~~3~~4 An expert witness cannot be a Representative in the same Proceeding.

## 15. REQUIREMENT TO CONSULT WEBSITE FOR LIST OF PARTIES AND PARTICIPANTS

### Duty to Consult Website to identify Parties and Participants for Service

- 15.1. All Parties and Participants shall consult the [TLAB's Website](#) in order to determine the Parties and Participants for the purpose of all service requirements provided in these Rules.

### All Parties and Participants Required to Regularly Consult Website

- 15.2 All Parties and Participants are required to regularly consult the [TLAB's Website](#) during the course of a Proceeding.

## 16. DISCLOSURE

### Disclosure May be Ordered at any Stage

16.1 In addition to the Rules for the filing, service, exchange and disclosure of evidence and Documents, the TLAB may, at any stage in a Proceeding, make orders for:

- a) the discovery of a Party under Rule 18;
- b) the exchange of witness statements and reports of expert witnesses;
- c) the provision of particulars;
- d) the exchange of a list of issues; and
- e) any other form of disclosure.

### Disclosure of Documents

16.2 Parties and Participants shall serve on all Parties a copy of every Document they intend to rely on or produce in the Hearing, except:

a) any Document previously Filed with the Committee of Adjustment; and,

b) any public Document listed on the TLAB's List of Public Documents,

and File same with served.

It is not clear if relying on documents with TLAB by other Parties is sufficient for Participants

16.3 Where a Party or Participant fails to disclose Documents in accordance with Rule 16.23 the TLAB may disallow the Document to be entered in evidence and may make such other orders as it deems appropriate in the circumstances.

Should be 16.2 not 16.3

### Witness Statements

16.4 Parties shall serve witness statements on all other Parties and File same with the TLAB, using Form 12, not later than 4560. A witness statement shall include, where applicable.

Should also include Participants

- a) a short written outline of the Person's background, experience and interest in the Appeal;
- b) a list of the issues that they will discuss and a short written outline of that Person's intended evidence;
- c) the date; and

d) the full legal name and full mailing address of the witness; ~~and.~~

^ "and email address"

e) ~~the signature of the witness.~~

### Response to Witness Statements

16.5 If any Party intends to respond to a Witness Statement a Responding Party shall serve on all Parties a Responding Witness Statement using Form 19 and File same with the TLAB not later than 75 Days after the Notice of Hearing is served.

### Reply to Response to Witness Statement

16.6 If a Party intends to reply to new issues, facts or Documents raised in the Responding Witness Statement a replying Party shall serve on all Parties a Reply to Response Witness Statement using Form 20 and File same with the TLAB not later than 85 Days after the Notice of Hearing is served.

### **Participant Statements**

16.57 Participants shall serve a Participant Statement on all Parties and File same with the TLAB, using Form 13, not later than 4560 Days after a Notice of Hearing is served. A Participant Statement shall include, where applicable:

a) a short, written outline of that Participant's

Should include Parties and Participants

~~a list of every Document and relevant portions of public Documents the Participant intends to rely on or produce in the Hearing;~~

b) the date; ~~and.~~

c) ~~the signature of the Participant.~~

### **Witness Statement of Expert**

16.68 Parties shall serve an Expert's Witness Statement on all Parties and File same with the TLAB, using Form 14, not later than 4560 Days after a Notice of Hearing is served.

Should include Parties and Participants

16.7 Response to Witness Statement of Expert

16.9 If a Party intends to respond to an Expert's Witness Statement a Responding Party shall serve on all Parties a Responding expert's Witness Statement using Form 21 and File same with the TLAB not later than 75 Days after the Notice of Hearing is served.

### Reply to Response to Witness Statement of Expert

16.10 If a Party intends to reply to new issues, facts or Documents raised in the Responding Expert's Witness Statement a replying Party shall serve on all Parties a Reply to Responding Expert's Witness Statement using Form 22 and File same with the TLAB not later than 85 Days after the Notice of Hearing is Served.

### Expert's Duties

16.11 An expert engaged by or on behalf of a Party who is to provide opinion evidence in a Proceeding shall acknowledge his or her duties as an expert in writing by executing a Form 6. An expert witness' duties include:

- a) providing opinion evidence that is fair, objective and non-partisan;
- b) providing opinion evidence that is related only to the expert's area of expertise; and Should be changed to 'unbiased'
- c) providing additional assistance to the TLAB as may reasonably be required to determine a matter in issue.

16.812 The duties of an expert provided in Rule 16.711 prevail over any obligation owed by an expert to the Party on whose behalf he or she is engaged.

### Contents of Expert's Witness Statement

16.913 The witness statement of an expert shall include:

- a) the expert's name, address and area of expertise;
- b) the expert's qualifications, employment and educational experiences in his or her area of expertise;
- c) the instructions provided to the expert in relation to the Proceeding;
- d) the nature of the opinion being sought and, where there is a range of opinions given, a summary of the range and the reasons for the expert's opinion within that range; and
- e) the expert's reasons for his or her opinion, including a description of the factual assumptions, research and any Documents relied upon by the expert in forming



his or her opinion.

## 17. MOTIONS

### Date by which Motions will be Heard

- 17.1 No Motion, except a Motion brought under Rule 28, shall be heard later than ~~30~~15 Days before the Hearing, unless the TLAB orders otherwise.

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## Consent adjournments Excepted Unless TLAB Directs Otherwise

17.2 Where all Parties consent to an adjournment request and have obtained from the TLAB an adjourn-to date and all Participants have been notified of the request no motion is necessary and the TLAB may issue a revised Notice of Hearing.

### **Notice of Motion**

17.23 A Motion in a Proceeding shall be made by Notice of Motion, using Form 7.

### **Date for Motion**

17.34 A Motion shall be heard by Oral Hearing and the Moving Party shall obtain from the TLAB a Motion date prior to service of the Notice of Motion, unless the TLAB directs otherwise.

### **TLAB may Require Motions to be in Writing or Electronically**

17.45 The TLAB may require a Motion to be held in writing upon such terms as the TLAB directs.

17.6 The TLAB may require a Motion to be held by ~~Written Hearing or by~~ Electronic Hearing ~~upon such terms as the Local Appeal Body directs.~~

### **Content of Motion Material**

17.57 A notice of Motion to be heard by Oral Hearing, by Electronic Hearing or ~~by Written Hearing~~ in writing shall:

- a) state the date, time and location of the Motion, unless the Motion is to be ~~by Written Hearing~~ in writing;
- b) state the precise relief sought;
- c) state the reasons and grounds to be argued, including a reference to any statutory provisions or Rules to be relied on;
- d) list and attach the Documents to be used in the Motion;
- e) be accompanied by an Affidavit setting out a brief and clear statement of the facts upon which the Moving Party will rely; and
- f) state the names and contact addresses of the responding Parties or their Representatives and all Persons to whom the Notice of Motion is to be given.

## Service of Notice of Motion

17.68 A Moving Party shall serve a Notice of Motion on all Parties and Participants and File same with the TLAB at least 15 Days before the date the Motion is to be held by Oral Hearing or by Electronic Hearing, unless the TLAB directs otherwise.

## Notice of Response to Motion and Service

17.79 If a Party intends to respond to a Motion a Responding Party shall serve on all Parties and Participants a Notice of Response to Motion, using Form 8 and File same with the TLAB at least 7 Days before the Date the Motion is to be held by Oral Hearing or by Electronic Hearing, unless the TLAB directs otherwise.

17.810 A Notice of Response to Motion shall:

- a) state the Responding Party's response, including a reference to any statutory provisions or Rules to be relied on;
- b) list and attach the Documents to be used in the Motion; and
- c) be accompanied by an Affidavit setting out a brief and clear statement of the facts upon which the Responding Party will rely.

## Notice of Reply to Response to Motion and Service

17.911 If a Moving Party intends to reply to new issues, facts or Documents raised in the Notice of Response to Motion the Moving Party shall serve on all Parties and Participants a Notice of Reply to Response to Motion, using Form 9, and File same with the TLAB at least 4 Days before the date of the Motion is to be held by Oral Hearing or by Electronic Hearing, unless the TLAB directs otherwise.

17.4012 A Notice of Reply to Response to Motion shall:

- a) only address new issues, facts and Documents raised in the Notice of Response to Motion;
- b) state the Moving Party's reply, including any reference to any statutory provisions or Rules to be relied on;
- c) list and attach the Documents to be used in the Hearing relating to those matters addressed in the reply; and
- d) be accompanied by an Affidavit setting out a brief and clear statement of the facts upon which the Moving Party will rely.

## 18. DISCOVERY

### Order for Discovery

- 18.1 The TLAB may make an order for discovery for a Party to obtain relevant and necessary information from any Person.
- 18.2 A Motion for an order for discovery, using Form 7, shall be by Written Hearing, unless the TLAB directs otherwise, and shall be served on all Parties and Filed with the TLAB.
- 18.3 A Notice of Motion for discovery shall be accompanied by an Affidavit. The Affidavit in support of the Motion for discovery shall set out the efforts made to obtain the desired information and the reasons which demonstrate the information sought is both relevant and necessary to the disposition of the issues in the Proceeding.
- 18.4 An order for discovery shall only be issued if the Party seeking an order for discovery has already requested the information sought and it has been refused or no answer has been received from the other Party, and the TLAB is satisfied there is good reason to order discovery.
- 18.5 On a Motion for discovery the TLAB may order:
- a) any Person to provide an Affidavit containing a list of relevant Documents in their possession and a list of Documents for which privilege is claimed;
  - b) the delivery of some or all of the Documents;
  - c) an oral examination or cross- examination of any Person or Party;
  - d) an examination for discovery by written questions;
  - e) the inspection and testing of property;
  - f) the examination of a witness before the commencement of a Proceeding;
  - g) any other form of discovery; and
  - h) conditions concerning the timing, scope and duration of discovery.

### Rules of Civil Procedure Apply to Discovery

18.6 If an order for discovery is granted the TLAB may make any further order or give any direction necessary for the discovery process. The TLAB may refer to, vary or order that portions of the Rules of Civil Procedure, pertaining to discovery, apply.

## 19. SETTLEMENT

### Settlement before Final Determination

Instead of the "earliest possible date", it should read upon signing of the settlement agreement

19.1 The TLAB is committed to encouraging Parties to settle some or all of the issues by informal discussion, exchange and Mediation.

19.2 Parties who arrive at a settlement shall serve the terms of the proposed settlement on all other Parties and Participants and File same with the TLAB at the earliest possible date.

19.3 The TLAB shall give notice to all Parties and Participants of the date, time and location of the settlement Hearing, and shall thereafter conduct a settlement Hearing on the terms of the proposed settlement.

19.4 Where no Person at the Hearing opposes the proposed settlement or where the TLAB rejects an objection the TLAB may issue an order giving effect to the settlement and any necessary amendments.

A settlement Hearing should only proceed if all Parties have signed the settlement agreement. A settlement Hearing cannot proceed if the settlement is only with a Participant

## 20. MEDIATION

### Date by which Mediation shall be Held

20.1 No Mediation conducted by the TLAB shall be held later than 3015 Days before the Hearing, unless the TLAB directs otherwise.

### Mediation

20.2 Where the TLAB is satisfied there is good reason to believe one or more of the issues in dispute may be resolved through Mediation the TLAB may, on notice to any Participants, direct the Parties, and such other Persons as the TLAB may direct, using Form 17, to attend non-binding Mediation. Mediation shall be confidential.

20.3 The TLAB shall set the location, date and time of any Mediation to be conducted and direct how notice of the Mediation will be given to the Parties.

### TLAB appoints Member as Mediator

- 20.4 If Mediation is to be conducted, the TLAB will appoint a mediator who is a Member of the TLAB and the mediator may make use of any appropriate dispute resolution techniques to assist the Parties in resolving some or all of the issues in dispute.

#### **Member to Preside at Hearing with Parties' Consent**

- 20.5 A Member who conducts a Mediation in which one or more of the issues have not been resolved may not preside over any Hearing relating to those unresolved issues unless all of the Parties consent and the Member agrees.

#### **Mediation and Settlement Discussions Confidential**

- 20.6 Any information or Documents provided or exchanged during a Mediation and any discussions or exchanges relating to the resolution of issues or offers to settle are and shall remain confidential and shall not be disclosed or entered as evidence in the same or any other Proceeding. Any notes of a Mediation made by a Member shall remain confidential and shall not be released to any Person or admitted into evidence in any Proceeding.
- 20.7 Nothing in Rule 20.6 affects the disclosure of the settlement terms and conditions that are proposed to be approved by the TLAB.
- 20.8 Nothing in Rule 20.6 affects the obligations of Parties to make disclosure as otherwise required by these Rules.
- 20.9 A Member who participates in Mediation is not competent or compellable in any Proceeding to give evidence or produce Documents regarding the Mediation.

### **21. PREHEARING CONFERENCES**

#### **Date by which Prehearing shall be Held**

- 21.1 No prehearing shall be held later than 30 Days before the date of the Hearing, unless the TLAB directs otherwise.

#### **A Prehearing may be conducted only if there is Good Reason to do so**

- 21.2 The TLAB shall not conduct a prehearing unless the TLAB is satisfied there is good reason to do so.

#### **A Prehearing may be Oral, Electronic or in Writing**

- 21.3 A prehearing may be by Oral Hearing, Electronic Hearing or Written Hearing.

#### **Parties must be Prepared for Prehearing**

21.4 The TLAB is committed to ensuring all Parties involved in a prehearing are focused and prepared to fully and definitively address those matters outlined in Rule 21.6.

**If Prehearing, TLAB shall Give Notice**

21.5 In the event the TLAB directs a prehearing be held it shall give notice of the location, date and time for same, using Form 18.

**Matters to be Dealt with in a Prehearing**

21.6 A prehearing may include settlement discussions, Motions or other procedural issues, in order to:

- a) identify the Parties and Participants and determine or resolve the issues raised by the Appeal;
- b) identify facts or evidence the Parties may agree on or upon which the TLAB may make a binding decision;
- c) obtain admissions that may simplify the Hearing;
- d) provide directions to the Parties;
- e) discuss the possible use of Mediation or other dispute resolution processes;
- f) estimate the length of the Hearing and encourage the Parties to agree upon the date for any further procedural steps;
- g) discuss issues of confidentiality, including any need to hold a part of the Hearing in the absence of the public or to seal Documents; and
- h) deal with any other matter that may assist in a fair, cost-effective, and expeditious resolution of the issues.

**Member who Conducts Prehearing may make Orders**

21.7 The Member conducting a prehearing conference may make any orders necessary to give effect to those matters provided for in Rule 21.6.

**Member who Conducts Prehearing May or May Not be Seized**

21.8 A Member who conducts a prehearing may or may not remain seized of the Proceeding.

**No Further Prehearing unless Compelling Reason Shown**

21.9 The **TLAB** is committed to reducing the time and cost of Proceedings and it is expected that, in the event a prehearing is held, no other or further prehearing will be held unless there is a compelling reason to do so. In considering whether any further prehearing may be directed the **TLAB** may weigh, among other things, the time and cost of conducting a further prehearing against the advantages of a further prehearing.

## 22. CONSOLIDATION

### Consolidating Proceedings or Hearing Matters Together

22.1 The **TLAB** may order that Proceedings be consolidated, heard at the same time or heard one after the other, or stay or adjourn any Proceeding until the determination of any other proceeding.

### Effect of Consolidation

22.2 When two or more Proceedings are consolidated, the nature of the consolidated Proceedings should be described in the Notice of Hearing

- a) statutory procedural requirements for any of the original separate Proceedings apply, where appropriate, to the consolidated Proceeding;
- b) Parties to each of the original separate Proceedings are Parties to the consolidated Proceeding; and
- c) evidence to be presented in each of the separate Proceedings is evidence to be presented in the consolidated Proceeding.

### Effect of Hearing Proceedings Together

22.3 When two or more Proceedings are heard together but not consolidated:

- a) statutory requirements for each Proceeding apply only to that particular Proceeding and not to the others;
- b) Parties to the Hearing are Parties to their individual Proceedings only and not Parties to the other Proceedings; and
- c) unless otherwise ordered by the **TLAB**, evidence in the Hearing is only evidence in each Proceeding to which it could apply.

### **TLAB** may Reverse Consolidation



22.4 The TLAB may separate Proceedings that have been consolidated or matters heard together at any time if it determines that the Proceedings have become unduly complicated, delayed or repetitive or a Party is unduly prejudiced.

## 23. ADJOURNMENTS

### Hearing Dates Fixed

23.1 Proceedings will take place on the date set by the TLAB and provided in the Notice of Hearing, unless the TLAB orders otherwise.

### Request for Adjournment must be on Motion

23.2 A Party shall bring a Motion to seek an adjournment, unless the adjournment is on consent in accordance with Rule 17.2.

### Considerations in Granting Adjournment

23.3 In deciding whether or not to grant a Motion for an adjournment the TLAB may, among other things, consider:

- a) the reasons for an adjournment;
- b) the interests of the Parties in having a full and fair Proceeding;
- c) the integrity of the TLAB's process;
- d) the timeliness of an adjournment;
- e) the position of the other Parties on the request;
- f) whether an adjournment will cause or contribute to any existing or potential harm or prejudice to others, including possible expense to other Parties;
- g) the effect an adjournment may have on Parties, Participants or other Persons; and
- h) the effect an adjournment may have on the ability of the TLAB to conduct a Proceeding in a just, timely and cost-effective manner.

### Powers of the TLAB upon Adjournment Motion

23.4 On a Motion for adjournment the TLAB may:

- a) grant the Motion;
- b) grant the Motion and fix a new date, or where appropriate, the TLAB may schedule a prehearing on the status of the matter;
- c) grant a shorter adjournment than requested;
- d) deny the Motion;
- e) direct that the Hearing commence or continue as scheduled, or proceed with a different witness, or evidence on another issue;
- f) grant an indefinite adjournment if the request is made by a Party and is accepted by the TLAB as reasonable and the TLAB finds no substantial prejudice to the other Parties or to the TLAB. In this case the Moving Party must make a request that the Hearing be rescheduled or the TLAB may direct that the Moving Party provide a timeline for the commencement or continuance of the Proceeding;
- g) convert the scheduled date to a Mediation or prehearing conference; or
- h) make any other appropriate order including an order for costs.

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## 24. HEARINGS

### Form of Hearing

24.1 The TLAB may hold an Oral Hearing, Electronic Hearing or Written Hearing.

### Hearing to be Oral

24.2 Unless the TLAB directs or these Rules provide otherwise, Hearings shall be by Oral Hearing.

### Objection to an Electronic Hearing

24.3 A Party who objects to an Electronic Hearing shall bring a Motion within 5 Days of service of the notice of Electronic Hearing.

### Factors Considered for Holding Electronic Hearing

24.4 The TLAB may consider any relevant factors in deciding to hold an Electronic Hearing, including:

- a) the convenience to the Parties and the TLAB;
- b) the likelihood of the process being less costly, faster and more efficient;
- c) whether it is a fair and accessible process for the Parties;
- d) the desirability or necessity of public participation in, or public access to, the TLAB's process;
- e) whether the evidence or- issues are suitable for an Electronic Hearing;
- f) whether credibility may be an issue or the extent to which facts are in dispute;  
or
- g) whether an Electronic Hearing is likely to cause significant prejudice to any Party or Participant.

### Objection to a Written Hearing

24.5 A Party who objects to a Written Hearing shall bring a Motion within 5 Days of service of the notice of Written Hearing.

### Factors Considered for Holding a Written Hearing

24.6 The TLAB may consider any relevant factors in deciding to hold a Written Hearing, including:

- a) the convenience to the Parties and the TLAB;
- b) the likelihood of the process being less costly, faster and more efficient;
- c) whether it is a fair and accessible process for the Parties;
- d) the desirability or necessity of public participation in or public access to the TLAB's process;
- e) whether the evidence or legal issues are suitable for a Written Hearing;
- f) whether credibility may be an issue or the extent to which facts are in dispute;  
or
- g) whether a Written Hearing is likely to cause significant prejudice to any Party or Participant.

#### **Procedure for Exchange of Documents in Written Hearing**

24.7 If a Hearing proceeds as a Written Hearing the Appellant shall serve on all Parties and Participants and File with the TLAB all evidence and submissions within 30 Days after the TLAB's notice of Written Hearing is served.

24.8 Parties and Participants who wish to respond to the Appellant's submissions shall serve on all Parties and Participants and File with the TLAB all responding submissions and evidence within 20 Days of service of the Appellant's submissions.

24.9 The Appellant may serve a reply to the other Parties and Participants' submissions and File a copy of the reply with the TLAB within 10 Days of receipt of the responding submissions. The reply shall be limited to any new evidence and new submissions in the responses.

24.10 Following the expiry of the time for any reply submissions the TLAB shall make its decision.

#### **Evidence in a Written Hearing must be by Affidavit**

24.11 Evidence in a Written Hearing must be by way of Affidavit and any Documents -and relevant portions of public Documents to be relied on shall be attached to the Affidavit.

## 25. COMPELLING ATTENDANCE OF A WITNESS BY SUMMONS

### Who may Summons a Witness

25.1 A Party who wishes to compel a Person in Ontario to attend before the TLAB to appear as a witness may serve a summons on that Person to attend any Proceeding before the TLAB to:

- a) give relevant and admissible evidence under oath or affirmation; and
- b) produce any relevant and admissible Document or thing.

### How to Obtain a Summons

25.2 A Party who wishes to summons a witness shall make a request in writing and File same with the TLAB, using Form 11.

### When Summons will Issue

25.3 A Party requesting a summons shall set out in a Request to Summons the issues and evidence the witness is intended to address and explain the relevance of that evidence to the issues in dispute. If the requested information is contained in the Request to Summons, the summons may be signed and issued by the Chair and sent to the requesting Party for service upon the Person to be summoned.

### Serving and Filing a Summons

25.4 A summons shall be served on the witness by personal service no later than 30 Days before the time for attendance, unless the TLAB directs otherwise.

25.5 Attendance money shall accompany a summons when served on a witness, in accordance with the Rules of Civil Procedure.

25.6 A Party who has served a summons upon a witness shall thereafter forthwith serve a copy of the Request to Summons, the summons and all Documents and correspondence related thereto upon every Party and File same with the TLAB.

### Motion to Quash a Summons

25.67 Any Person who is served with a summons may move to quash the summons and seek an award of costs in accordance with these Rules.

### Attendance of Summoned Witness

25.78 A summoned witness shall attend a Hearing of the TLAB at the time and place stated in the summons or as otherwise arranged with the Party serving the summons. A witness shall bring with them all Documents and things within their possession, as required by the terms of the summons.

## 26. INTERPRETER

### Where Interpreter Required

26.1 Where an interpreter is required the Party calling the witness, or the Party or Participant making submissions, shall provide an interpreter, except as required by the Accessibility for Ontarians with Disabilities Act.

## 27. CONDUCT OF PROCEEDINGS

### Proceedings to be Public

27.1 All TLAB Proceedings shall be public, unless the TLAB orders otherwise.

27.2 Subject to the Statutory Powers Procedure Act and any other applicable law the TLAB may hold an Oral Hearing or Electronic Hearing or part of a Hearing in the absence of the public, with such Persons in attendance as the TLAB may permit and with such conditions as it may impose.

### Procedure at a Proceeding

27.3 A Member presiding at a Proceeding shall control the conduct of that Proceeding, including the order of presentation of evidence and submissions, and may limit further examination or cross-examination of a witness where the Member is satisfied that the examination or cross-examination has been sufficient to disclose fully and fairly all matters relevant to the matters at issue.

27.4 A Member may stipulate and allocate the time permitted for any Proceeding or part of a Proceeding.

### Media Coverage - Photographic, Audio or Video Recording

27.5 No Person shall take or attempt to take a photograph, motion picture, video recording, or other recording capable of producing visual or auditory representations by electronic means, or otherwise, at any Proceeding of the TLAB, unless the presiding Member authorizes such recording, on such terms or conditions as the presiding Member may direct.

## Withdrawal of Approval

27.~~76~~ If any authorization to record is granted under Rule 27.5 the TLAB may withdraw permission to record temporarily or permanently.

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## **Proceedings Recorded**

27.87 All Proceedings of the TLAB are digitally recorded by the TLAB. A copy of same may be requested by any Person and received by any Person in accordance with Rule 3.8.

## **Transcripts**

27.98 If a Party produces a transcript or partial transcript of a Proceeding, the Party must notify the TLAB, and the other Parties to the Proceedings, that it has done so, and the TLAB shall receive a copy of the transcript free of charge, if requested. The Party must File the copy of the transcript with the TLAB within 5 Days of the date of that Party's receipt of the transcript.

27.409 Transcripts or partial transcripts shall be transcribed by a qualified verbatim reporter.

## **28. COSTS**

### **Who May Request an order for Costs**

28.1 Only a Party or a Person who has brought a Motion in the Proceeding may seek an award of costs.

28.2 A request for costs may be made at any stage in a Proceeding but in all cases shall be made no later than 30 Days after a written decision is issued by the TLAB.

### **Member Seized to Consider Costs Order**

28.3 The Member who conducts or conducted the Proceeding in which a request for costs is made shall make the decision regarding costs.

### **Submissions Respecting Costs**

28.4 Notwithstanding Rule 17.34 All submissions for a request for costs shall be made by Motion by Written Hearing and served on all Parties and Filed with the TLAB, unless a Party satisfies the TLAB that to do so is likely to cause the Party significant prejudice.

28.5 Submissions for a request for costs shall address:

a) the reasons for the request and the amount requested;



- b) an estimate of any extra preparation or Hearing time, and a breakdown of all associated rates, fees and disbursements, caused by the conduct alleged to attract costs and specifically any of those matters outlined in Rule 28.6;
- c) copies of supporting invoices for expenses claimed or an Affidavit of a Person responsible for payment of those expenses verifying the expenses were properly incurred; and
- d) attach an Affidavit in which the Party swears the costs claimed were incurred directly and necessarily.

### **Considerations for Costs Award**

28.6 Notwithstanding the TLAB's broad jurisdiction to award costs the TLAB is committed to an approach to awarding costs that does not act as a deterrent to Persons contemplating becoming a Party or continuing to be a Party to a Proceeding. In determining whether to award costs against a Party the TLAB may consider the following:

- a) whether a Party failed to attend a Proceeding or to send a Representative when properly given notice, without giving the TLAB notice;
- b) whether a Party failed to co-operate with others or the TLAB, changed a position without notice or introduced an issue or evidence not previously disclosed;
- c) whether a Party failed to act in a timely manner;
- d) whether a Party failed to comply with the TLAB's Rules or procedural orders;
- e) whether a Party caused unnecessary adjournments, delays or failed to adequately prepare for a Proceeding;
- f) whether a Party failed to present evidence, continued to deal with irrelevant issues, or a Party asked questions or acted in a manner that the TLAB determined to be improper;
- g) whether a Party failed to make reasonable efforts to combine submissions with another Party with similar or identical issues;
- h) whether a Party acted disrespectfully or maligned the character of another Party or Participant; or
- i) whether a Party presented false or misleading evidence.

## Threshold relating to Costs

- 28.7 In all cases a Member shall not order costs unless the Member is satisfied that the Party against whom costs are claimed has engaged in conduct, or a course of conduct, which is unreasonable, frivolous, vexatious or in bad faith.

## Interest on Award of Costs

- 28.8 Costs bear interest at the same rate as provided in the Courts of Justice Act.

## 29. DECISIONS AND ORDERS

### Issuing a Decision or Order

- 29.1 An order may be contained in the decision and issue as a decision and order of the TLAB. Where an order issues after a written decision, the TLAB will issue the appropriate order.

### Condition Imposed by the TLAB Must be Satisfied

- 29.2 Subject to subsection 45(9) and a TLAB decision shall be satisfied by the date and in the manner ordered by the TLAB. If a condition is not satisfied, and, subject to any statutory requirements, the TLAB may on its own initiative, or by Motion, require the Parties to re-attend before it.

Clarification is required: TLAB Rules do not appear to allow for Oral Decisions. Is this correct?

### Effective Date of TLAB Decision

- 29.3 A TLAB decision or order is effective on the issue date provided in the decision or order.

## 30. CORRECTING MINOR ERRORS IN DECISIONS AND ORDERS

### Correcting Minor Errors

- 30.1 The TLAB may at any time and without prior notice to the Parties correct a technical or typographical error, error in calculation or similar minor error made in a Decision or order. There is no fee if a Party requests such corrections.

## 31. REVIEW OF ORDER OR DECISION

**\*\*Rule 31 continues to be under, and subject to further review, by the TLAB**

### A Party may Request Review

31.1 A Party may request a review of a Final Decision or order of the Local Appeal Body.

**Request does not Operate as a Stay**

31.2 A request for a review shall not operate as a stay, unless the Local Appeal Body orders otherwise.

**Time Period for Requesting Review**

31.3 A Party shall serve on all Parties and File with the Local Appeal Body a request for review within 30 Days of the decision or order, unless the Local Appeal Body directs otherwise.

**Contents of a Request for Review**

31.4 A Party requesting a review shall do so in writing by way an Affidavit which provides:

- a) the reasons for the request;
- b) the grounds for the request;
- c) any new evidence supporting the request; and
- d) any applicable Rules or law supporting the request.

**Fee for Filing of Review**

31.5 A Party requesting a review shall, at the same time as filing a request for review, pay to the Local Appeal Body the required fee.

**Local Appeal Body may seek Submissions, Direct Motion, Rehear etc.**

31.6 The Local Appeal Body may review all or part of any final order or decision at the request of a Party, or on its own initiative, and may:

- a) seek written submissions from the Parties on the issue raised in the request;
- b) grant or direct a Motion to argue the issue raised in the request;
- c) grant or direct a rehearing on such terms and conditions and before such Member as the Local Appeal Body directs; or
- d) confirm, vary, suspend or cancel the order or decision.

### **Grounds for Review**

- 31.7 The Local Appeal Body may consider reviewing an order or decision if the reasons and evidence provided by the requesting Party are compelling and demonstrate grounds which show that the Local Appeal Body may have:
- a) acted outside of its jurisdiction;
  - b) violated the rules of natural justice and procedural fairness;
  - c) made an error of law or fact which would likely have resulted in a different order or decision;
  - d) been deprived of new evidence which was not available at the time of the Hearing but which would likely have resulted in a different order or decision; or
  - e) heard false or misleading evidence from a Person, which was only discovered after the Hearing, but which likely resulted in the order or decision which is the subject of the request for review.

### **Local Appeal Body Shall Give Procedural Directions**

- 31.8 Where the Local Appeal Body seeks written submissions from the Parties or grants or directs a Motion to argue a request for review the Local Appeal Body shall give the Parties procedural directions relating to the content, timing and form of any submissions, Motion materials or Hearing to be conducted.
- 31.9 For the purposes of Rule 31 any decision following a review may not be further reviewed by the Local Appeal Body.

## **Attachment #2.1**

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**Effective Date: TBD**

**Number: xx**

### **Practice Direction: Minimum Level of Assistance to Unrepresented Persons**

#### **Direction:**

Unrepresented Persons who appear in opposition to an application under appeal should be provided with a minimum level of assistance<sup>i</sup>.

A minimum level of assistance, to ensure meaningful participation by the unrepresented Person, requires the Hearing Officer to do the following, on the record:

- Confirm whether the Person was aware that they were entitled to be represented by legal counsel at the proceedings.
- Explain the roles of the Parties at the proceeding and the process that would be followed. This would include the right of each Party, including the Person, to call witnesses, introduce evidence, object to evidence adduced, cross-examine witnesses, and make submissions on all motions and at the end of the hearing.
- Explain the role of the adjudicator in the proceedings, including his role in relation to the Person.
- Confirm that the Person understands the process and their role in it.
- Ask the Person, at the appropriate time, if they would like to call any witnesses.
- Ask the Person, at the appropriate time, if they would like to question each of the witnesses of the Parties.
- Ask the Person, if they would like to make submissions on all motions and at the end of the hearing.

Failure of the Hearing Officer to provide the minimum assistance will be considered to be a breach of natural justice and procedural fairness and may require a new hearing.

Approved by the Toronto Local Appeal Body this XX day of XXX, 2018.

**Ian James Lord**

**Chair**

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<sup>i</sup> The Divisional Court, in *Challans v Timms-Fryer*, 2017 ONSC 1300, has established a minimum level of assistance that a tribunal must provide to an unrepresented complainant.

## **Attachment #2.2**

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**Effective Date: TBD**

**Number: xx**

**Practice Direction: Representation of Parties and Participants**

**Direction:**

This Practice Direction discusses the representation of Parties and Participants at the TLAB boards, including who can provide representation and the obligations of these representatives. This Practice Direction relates to Rule 14 of the TLAB Rules of Practice and Procedures.

### **Support Persons**

A support person, such as a family member or friend, may attend a hearing or mediation with a party or witness to assist the Person in participating in the proceeding, communicating with the Tribunal and making necessary decisions and may sit with the Person during the hearing or mediation. Such a support person is not considered a representative, so long as they do not make submissions on the Person's behalf.

### **Self-Represented**

A Person may be self-represented and appear before the Tribunal and present his or her case. The TLAB's rules are interpreted and applied to allow Persons to participate effectively in the process, whether or not they are represented by a lawyer or paralegal.

### **Representatives**

A Person may also choose to appoint another person to represent him or her in TLAB proceedings.

The representative may be:

- a lawyer, licensed by the Law Society of Upper Canada (LSUC),
- a paralegal, licensed by the LSUC, or
- an unlicensed person, if that person falls within a category of persons the LSUC has exempted from its licensing requirements.

A person who is not licensed, whose license is suspended or who is not in an exempted category will not be permitted to act as a representative in TLAB proceedings.

## **Licensed Representative**

A licensed representative is a lawyer or paralegal licensed by the LSUC. A licensed representative must be in good standing with the LSUC and must provide his or her license number to the Tribunal.

There are Rules of Conduct for lawyers and for paralegals established by the LSUC.

## **Unlicensed Representatives**

An unlicensed person may represent a party in proceedings before the TLAB if that person falls within the specific licensing exemptions established by the LSUC.

A person who is not licensed may be asked by the TLAB to identify the LSUC exemption category to which he or she belongs.

The current exemptions permit the following unlicensed persons, among others, to act as a representative:

- an unpaid friend or neighbour who is not in the business of providing legal services, who does not receive compensation, and who provides legal services in no more than 3 matters in a year
- an unpaid family member who is not in the business of providing legal services and who does not receive compensation
- a volunteer from a residents' organization
- students, volunteers and employees of legal clinics funded through Legal Aid Ontario.

A complete list of approved exemptions is on the LSUC's website.

A person who is not licensed and who is not exempt from licensing requirements will be not permitted to act as a representative in an TLAB proceeding. This would include:

- a friend, neighbour or family member who expects to/or receives compensation in return for acting as a representative
- an unpaid friend or neighbour who has already provided legal services in respect of three matters in that year.

## **Representative's Responsibilities**

Where a party is represented, the Tribunal will communicate with the party through its representative.

Representatives must treat all participants and the Tribunal with courtesy and respect. Both licensed and unlicensed representatives are expected to know and follow the Tribunal's rules and procedures and any directions or orders made during the

proceeding. Acting on the client's behalf and instructions, a representative is responsible for all communications with the Tribunal and the other parties and for preparing and presenting the client's case to the Tribunal.

The Tribunal may exclude a representative from a hearing where necessary to prevent an abuse of process (for example, because the representative has a conflict of interest) or, in the case of unlicensed representatives, where the Tribunal finds the representative is not competent to properly represent or to advise the party or witness, or does not understand and comply at the hearing with the duties and responsibilities of a representative, *Hansen v. Toronto (City)*, 2010 HRTO 13.

The Tribunal recognizes that limited scope retainers exist. A representative on a limited scope retainer shall ensure the client understands the extent and scope of the services that will be provided and is responsible for advising the tribunal when no longer retained.

Approved by the Toronto Local Appeal Body this XX day of XXX, 2018.

**Ian James Lord**

**Chair**



## **Attachment #2.3**

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**Effective Date: TBD**

**Number: xx**

**Practice Direction: Guidelines on Evidence and Submissions**

**Direction:**

Unrepresented Parties may be invited to provide both evidence and submissions in the course of the hearing. This practice direction is to assist the Parties in understanding the mode and format of presenting evidence and making a submission before the Tribunal.

Persons who are not familiar with legal proceedings often make the error of confusing evidence with submissions (or arguments). The attached table is intended to show the difference between evidence and submissions.

Statements of evidence should recognise the distinction between evidence and submissions as valuable hearing time can be wasted in dealing with objections correcting statements of evidence.

Approved by the Toronto Local Appeal Body this XX day of XXX, 2018.

**Ian James Lord**

**Chair**

**TABLE 1: EVIDENCE AND SUBMISSIONS BEFORE THE TLAB**

**Basic Distinctions**

<b>Evidence</b>	<b>Submissions</b>
A statement given by a witness	Argument or persuasion provided by an representative
<p>Of fact or opinion so as to prove that fact or opinion:</p> <p>e.g., facts - details of a development                      e.g., opinion – fit of the physical character of the proposed development with the neighbourhood</p>	<p>Argument as to which facts or opinions should be accepted by the Tribunal and as to the effects of those facts and opinions and the law upon the issues before the Tribunal.</p> <p>Submissions refer to the evidence given or assessed.                      Submissions do not contain new facts and are not capable of proving anything.</p>
Normally evidence is given first	Normally submissions are made after the evidence has been concluded.
Normally not given as to construction of an Act, Policy, Plan, Bylaw or other legal instrument.	Characteristically as to proper construction (meaning) of an Act, Policy, Plan, Bylaw or other legal instrument, as well as about the effects of facts or opinion.
Evidence may be non-expert or expert	
<p>Expert - as to fact or opinion requiring special skill or knowledge</p> <p>Facts - outside the expertise of the Tribunal</p> <p>e.g., accepted scientific fact behaviour of sound - behaviour of fume and odour plumes – accepted chemical reactions - accepted physical facts</p> <p>Opinion - e.g., inferences or conclusions drawn from facts proved by the expert or by other witnesses in the proceedings</p> <p>e.g., probable overshadowing resulting from a structure - likely behaviour of an odour plume – effect of a development upon heritage significance of a building - likely extent of overshadowing caused by a structure</p>	

<b>Evidence</b>	<b>Submissions</b>
<p>While expert opinions must be formed upon stated or proven facts, there are some facts that do not require proof, e.g., dictionaries, generally accepted scientific texts and writings and journals, generally accepted bodies of expert knowledge</p>	
<p>The Tribunal is not obliged to accept expert evidence, even though it remains uncontradicted.</p>	
<p>Experts should not express an opinion upon the ultimate question the Tribunal is to decide.</p> <p>For example, in an appeal against the refusal of a permit, an opinion that the permit should be granted. An opinion that there is no apparent planning reason why a permit could not be granted would be acceptable.</p>	<p>Submissions may be made as to what conclusions the Tribunal should reach and the proper form of any order.</p>
<p>The limits of evidence - evidence is not receivable if it is not relevant to issues in the proceedings before the Tribunal.</p> <p>For example, in an appeal against the grant of a permit, residential amenity may be relevant, but the way in which Council reached its decision is not.</p>	
<p>Matters such as a failure to follow the City Planner's advice, are not relevant. It is the decision (i.e., Committee of Adjustment refusal of the application) that is relevant and not the manner in which Committee reached that decision.</p>	