



Consultation on TLAB's Rules of Practice and Procedure and Related Documents

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Submitted by: Ontario Bar Association



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Introduction

The Ontario Bar Association (the “**OBA**”) appreciates the opportunity to provide a submission on the TLAB's revised draft Rules of Practice and Procedure released in October 2018 (the “**Revised Rules**”) and related documents. We understand submissions will be considered as part of the final public consultation on the Revised Rules that took place on October 29, 2018.

The OBA

Established in 1907, the OBA is the largest legal advocacy organization in the province, representing more than 15,000 lawyers, judges, law professors and law students in Ontario. In addition to providing legal education for its members, the OBA assists key decision makers in the province with many policy initiatives each year - both in the interest of the legal profession and in the interest of the public.

This submission was prepared by the OBA Municipal Law Section (the “**Section**”), whose approximately 300 lawyer members are leading experts in municipal and land use planning law matters representing proponents, municipalities, residents, developers, and other stakeholders. Members of the Section often advocate before municipal councils and committees, all levels of court in the Province of Ontario, and the various tribunals that comprise the Environment and Land Tribunals Ontario (“**ELTO**”), including the Local Planning Appeal Tribunal (the “**LPAT**”), and the Toronto Local Appeal Body (“**TLAB**”). Though we represent a broad spectrum of clients with diverse and sometimes competing interests, our goal is to provide decision-makers with commentary that represents a balance of the various interests of our members and their clients.

Comments

This submission contains our comments on the Revised Rules as they relate to our practice before the TLAB over the past year. It expands upon and supplements the OBA's initial correspondence on the draft Rules dated May 2, 2017 (the “**OBA Initial Submission**”) as well as the OBA's submission in respect of the TLAB's Rules of Practice and Procedure (the “**In Force Rules**”) and related public consultation throughout 2018 (the “**OBA April Submission**”). For ease of reference, a copy of the OBA Initial Submission and the OBA April Submission are enclosed.

The OBA commends the TLAB for providing an opportunity for public engagement by seeking comments on the In-Force Rules and now the Revised Rules.

We have reviewed the Revised Rules and are generally supportive of the proposed changes as improvements to the In Force Rules. While the OBA is encouraged by the positive changes, we reiterate the comments made in the OBA April Submission to the extent such matters have not been



addressed in the Revised Rules. In particular, we highlight below a few matters of import that remain unaddressed from the OBA April Submission and that we believe can be further refined in the Revised Rules. Matters for clarification in the Revised Rules have also been identified.

Outstanding Concerns

While extension of the filing deadlines and the addition of a right to reply are positive changes introduced in the Revised Rules, tying such dates to the Notice of Hearing will continue to result in a large gap in time from the last filing to the hearing date, particularly where a hearing is held more than 100 days from the date of the Notice of Hearing. Given the significant expenditure undertaken by the parties to prepare and file witness statements and other materials, it has been our experience that parties are less likely to achieve settlement once these costs have been incurred. Accordingly, minimizing as much as possible the time between filing deadlines and the hearing date will help to encourage settlement. We maintain that, as outlined in the OBA April Submission, this is best achieved by tying the various filing dates to the hearing date instead of the issuance of the Notice of Hearing. We believe this would result in a more efficient process that better encourages settlement. As a further means of facilitating settlement discussions, we also recommend that a rule be added to permit parties to extend filing deadlines on their own accord if all parties consent, without having to bring a motion to request the permission of TLAB to extend the filing deadlines.

We note that no changes have been made to simplify the process for putting a settlement before the TLAB. We continue to recommend that a rule be added to allow parties to request that a settlement hearing be scheduled without having to file a motion where all parties are in agreement. This would make the process of requesting a settlement hearing less burdensome and streamline the disposition of the appeal.

The addition of Rules 16.5, 16.6, 16.9 and 16.10, which provide for responding witness statements and a further reply witness statements (as well as associated filing deadlines), creates a conflict with the timelines relating to motion deadlines. Assuming 100 days from the Notice of Hearing to the hearing date, a reply to response to witness statements filed 85 days after the Notice of Hearing will be served on the last day for bringing a motion to dispute any of the contents of reply. This effectively prevents parties from bringing any motions that may be required in respect of reply. The OBA suggests that there only be one opportunity to reply to the initial witness statements and that it should be no later than 75 days after the Notice of Hearing is served to allow parties to bring motions.

Finally, members who regularly appear before the TLAB have found that hearings of many if not most contested matters take more than one day. As stated in the OBA April Submission, it is suggested that Rule 10.2 be amended to allow the scheduling of hearings for more than one day where the number of parties and matters in issue would require additional time. In practice, the



TLAB should consider setting down longer hearings for all appeals involving consents under section 53 of the *Planning Act*.

Points for Clarification

Clarification regarding the operation of some of the Revised Rules is also requested as follows:

- Rule 13.7 now contemplates that participants may ask clarifying questions of witnesses. It is unclear how this rule change will interact with the prohibition on cross-examination in Rule 13.8. Clarification on the limits of "clarifying questions" and the meaning of "clarifying questions" is requested.
- The OBA commends the TLAB in streamlining the Document Disclosure requirements pursuant to Rule 16.2. Clarification is requested, however, regarding what Documents would be listed on the TLAB's List of Public Documents. We would suggest addition of a definition in the Revised Rules, containing a list of those Public Documents.
- In Rule 17.2, the TLAB requires consent of all of the parties to an adjournment in order to proceed without a motion. Kindly advise whether the TLAB will have any particular requirements of the parties for confirming that such consent has been obtained.

In the experience of our members, there have been instances where an appellant has withdrawn its appeal to the TLAB and the TLAB has subsequently issued a Decision and Order purporting to dismiss the appeal or otherwise dispose of the matter. Under the *Planning Act*, upon withdrawal of an appeal the TLAB no longer has jurisdiction as there is no longer any appeal before the TLAB. Consequently, no "decision" or "order" should be issued by the TLAB following withdrawal of an appeal. The OBA seeks confirmation from the TLAB that upon a withdrawal, the TLAB shall take no further step other than to notify the Deputy Secretary Treasurer of the Committee of Adjustment that the appeal has been withdrawn, as required under subsections 45(15) and 53(29) of the *Planning Act*.

Conclusion

We thank you for considering this correspondence and the important matters it identifies. We would be pleased to answer any questions you may have or to meet with you regarding any of the comments provided herein. We look forward to developing an ongoing relationship and dialogue between the OBA and the TLAB, recognizing that it is in our collective interest that this body operates in an efficient and effective manner given the important role it plays in the land use planning system within the City of Toronto regarding minor variances, consents and potentially site plan applications in the future.