

# DECISION AND ORDER

**Decision Issue Date**      Friday, February 22, 2019

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): ERNEST EDWARD WILLSSHER, CITY OF TORONTO

Applicant: DESIGN PLAN SERVICES

Property Address/Description: 80 TWENTY THIRD ST

Committee of Adjustment Case File Number: 17 268079 WET 06 MV, 17 268072 WET 06 MV

TLAB Case File Number: **18 211133 S45 06 TLAB, 18 211149 S45 06 TLAB**

**Hearing date:**      Thursday, January 10, 2019

**DECISION DELIVERED BY TED YAO**

## APPEARANCES

Name	Role	Representative
Mark and Maria Liani	Owner/Party	Russell Cheeseman
TJ Cieciora	Expert Witness	
Ernest Edward Willsher	Appellant	
City of Toronto	Appellant	Aderinsola Abimbola
Long Branch Neighbourhood Assoc.	Party	
Sue Willsher	Participant	
Deborah Hardy	Participant	
Dorothy-Anna Orser	Participant	
Brian Bailey	Participant	

## **INTRODUCTION**

This is a preliminary motion by Mr. Cheeseman, the owners' lawyer, for me to clarify the status of a person named as a representative of a party, where that named person is not licensed by the Law Society of Ontario.

## **BACKGROUND**

### **The previous OMB case**

On June 13, 2017, the OMB granted a severance of 80 Twenty-Third Street, a 50-foot lot, making two 25-foot lots. The owners were Mark and Maria Liani, and they continue to own the two lots, which are in the neighbourhood of Long Branch. Appearing in opposition to the Lianis in 2017 were the City of Toronto, and four neighbours, Susan Willsher, Debbie Hardie, Dorothy Anna Orser and Judy Gibson. The Lianis were represented by Russell Cheeseman, lawyer; their planner was Mr. T.J. Cieciora who are also the lawyer and planner in the hearing before me. The OMB member, Stefan Kreczunowicz, authorized variances 1, 2, and 5, relating to lot frontage, lot area and eave projection, but did not authorize variance 3, relating to floor space index and 4, relating to side yard setback.

On November 27, 2017, the Lianis brought a fresh variance application before the Committee of Adjustment, requesting a smaller floor space index than was requested before OMB Member Kreczunowicz and a new variance for main wall height (since then reduced at the TLAB). The Committee of Adjustment granted the variances on August 2, 2018. Two persons appealed this decision: the City of Toronto and Ernest Willsher. Thus, this matter comes before the TLAB.

### **The TLAB case**

At the outset of the hearing, Mr. Cheeseman brought to my attention a "preliminary matter". Mr. Willsher had requested that the Long Branch Residents' Association, a corporation, to be his authorized representative. (I will simply refer to the latter organization as "the Association"). Mr. Cheeseman questions whether this can be done without exposing the Association to a breach of the *Law Society Act* and prosecution for the unauthorized provision of legal services. Mr. Cheeseman did not allege any prejudice to his client. There is no practical effect, whatever I decide, since the Association is itself a party and could call Mr. or Ms. Willsher itself as a witness. Mr. Willsher did not appear at the hearing, but Susan Willsher, did appear and indicated she would speak for both persons. This concern is not entirely theoretical; Mr. Cheeseman pointed to the fact that the Association has made extensive disclosure of documents, whereas Mr. Willsher has made none. Mr. Cheeseman's concern could be therefore a

preparatory step to disallowing Ms. Willsher from referring to documents filed by the Association.

It is a completely usual arrangement for one family member to elect to be a Party or Participant, and another family member to speak on the electing person's behalf. It is also completely usual for one person to file nothing and refer to another person's filed documents.

### **TLAB Form 5**

Mr. Cheeseman stated that the authorization "runs afoul of the Rules of the TLAB", which I do not think is entirely accurate. Mr. Cheeseman refers to the instruction on Form 5, which is used for authorizing another person to act as a representative:

A party must confirm an authorized representative to act on their behalf . . .  
Representatives acting on behalf of a party are not permitted to both give evidence under oath and act as the representative of a person or corporation. Generally, with the exception of a family member or close acquaintance, a representative requires qualifications recognized by the Law Society Act.

Section 26.1 of the Law Society Act states that no person, other than a licensee (i.e. a lawyer or paralegal) shall practise law in Ontario or provide legal services. Section 1(6) states that a person who does any of the following provides legal services:

1. Gives a person advice with respect to the legal interests, rights or responsibilities of the person or of another person;
2. Selects, drafts, completes or revises, on behalf of a person,
  - i. A document that affects a person's interest in or rights to or in real property,
  - vii. a document for use in a proceeding before an adjudicative body.
3. Represents that person in a proceeding before an adjudicative body.
4. Negotiates the legal interest rights or responsibilities of a person.

It may be noted that 1 and 2 are activities that urban planners engage in every TLAB hearing because they advise as to legal interests or rights and because they draft witness statements for use before the TLAB. "Representing a person" is further defined as

1. Determining what documents to serve or file in relation to the proceeding, determining on or with whom to serve or file a document or determining when, where or how to serve or file a document.  
...
2. Engaging in any other conduct necessary to the conduct of the proceeding.

Even before a hearing begins, all Participants and Parties must serve disclosure and thus determine what documents to serve or file and this falls under “representing a person” under this section of the *Law Society Act*.

### **Exceptions to rule that only licensees may provide legal services**

Section 1(8) of the *Law Society Act* provides exceptions for persons who act in the normal course of an occupation governed by the Federal or Provincial government. Architectural technologists may be certified under the Ontario Association for Applied Architectural Sciences. I do not see any governing statute for planners, who are frequent witnesses before the TLAB, so they would not seem to be exempted under this exception. There is a second exception for officers or employees of corporations; this would cover Judy Gibson, vice chair of Long Branch Residents’ Association. A third exception in 28 (3) of By-law 4:

a person whose profession or occupation is not the provision of legal services or the practice of law, who on behalf of another person, participates in hearing before a committee of adjustment . . .

Although the Toronto Local Appeal Body Rules are more rigorous than those of the Committee of Adjustment, the subject matter is the same, involving application of policies to whether a landowner may be permitted to sever lands or build beyond what is permitted by the zoning by-law.

The exception in 28 (3) refers to a “person”, which includes a corporation. It will be noted that exceptions that follow below refer to an “individual”, or a human being. Although I cannot speak for the Law Society, I would assume that its Unauthorized Practice Unit acts on complaint and when it does investigate, its primary interest is the protection of the public and the upholding of public confidence in its licensees.

Section 30 of By-law 4 lists nine further exemptions where non-lawyers or non-paralegals may provide legal services without offending the *Law Society Act*:

1. In house legal services
2. Legal aid clinics
3. Governmentally funded not -for-profit organizations
4. An individual acting for a friend or neighbour, where there is no compensation (The Association is participating in the hearing without compensation, but the exception is made only for an individual.) This exemption is restricted to three matters a year. Presumably the Association is involved in a significant number of matters. A final complication is that Ms. Gibson could wear two “hats” —both as a neighbour and an officer of the Association.
5. An individual acting for family
6. Member of Provincial Parliament

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7. Human resources professionals
8. Worker or Employee Advisor before the Workplace Safety and Insurance Appeals Tribunal
9. Trade unions
10. Law students

There are the following considerations:

- Participation in an TLAB hearing is arduous; it may take many days' absence from work and other responsibilities.
- The *Law Society Act* definition of providing legal services is in itself wide enough to catch planners and other witnesses who prepare documents at the TLAB; in fact, it appears to catch any expert witness in a non-regulated occupation who prepares a document in any Tribunal or Court, whether represented by a lawyer or not;
- There are exceptions to private, quasi-public and governmentally funded organizations where there are safeguards against members of the public being left unprotected by the provision of legal services from an unlicensed persons where standards of professional accountability, conduct and continuing education are absent;
- The friend, neighbour or family exception only applies to individuals, not corporations;
- Section 28 3 of Law Society By-law 4 is an explicit exception for representation before the Committee of Adjustment, but not before the TLAB<sup>1</sup>; and
- The TLAB rules have built in exceptions to consider the failure to file documents on time, or other procedural defaults where the Member deems it is the most just, expeditious and cost-effective way of determining a proceeding on its merits.

Sauce for the goose is sauce for the gander and lawyers who attack others for unauthorized provision of legal services should be prepared to defend a like attack on their witnesses who may have prepared filings before the TLAB without being licensed as paralegals or lawyers. That being said, residents should hesitate to appoint ratepayer corporations as their legal representatives as Mr. Cheeseman is correct that it appears to expose those corporations to some liability. A second reason is because TLAB Rules do not permit a representative to also give evidence. What Mr. Willsher probably had in mind is that the Association should organize the case for persons like himself, who oppose the variances, question Mr. Cieciora, and make final submissions

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<sup>1</sup> Mr. Cheeseman did not give a thorough factual and legal basis for his concern about possible prosecution of the Association and there may be information I do not know about 28 (3) vis à vis the OMB and LPAT.

in support of that position, but not create a client-professional relationship, which is the hallmark of self-governing professions.

### **TLAB “Parties” and “Participants”**

There is no suggestion being made that Mr. Willsher should be “chilled” from seeking legal representation, if he so desires. Section 10 of the *Statutory Powers Procedure Act* states a party has the right to representation. Representative is defined as a person authorized under the *Law Society Act* to represent a person in that proceeding and TLAB Rules have a similar definition. At this point I would like to distinguish between a "small p party" ("party" under the SPPA) and "large p Party" (Party" under the TLAB rules). It is the small p party that has the right to representation and that would include everyone in a TLAB hearing, whether they have elected to become Parties or Participants; both have a right to representation. Small p party is defined in the SPPA in s. 5:

The parties to a proceeding shall be the persons specified as parties by or under the statute under which the proceeding arises, or, if not so specified, persons entitled by law to be parties in the proceeding.

There are no specifications of who are parties at the TLAB under the *City of Toronto Act*, or the *Planning Act*. Under TLAB Rules, Parties and Participants are persons who elect this status. They are thereby entitled by law to be small p parties in a proceeding and are entitled to representation by a lawyer or paralegal, if they so desire.

### **Direction**

I regard Mr. Willsher’s appointment of the Association as his TLAB authorized representative as implicitly revoked when Ms. Willsher appeared at the TLAB hearing to speak on the Willsher family’s behalf. Ms. Willsher is plainly exempted from prosecution under the “self-representation” and “family” exemptions. If the Long Branch Residents' Association will confirm to me on the resumption of the hearing on May 28, 2019 that its officers and volunteers act for itself and in the course of so doing may call Ms. Willsher and others as witnesses, that will end the concern raised by Mr. Cheeseman.

There is no need for a decision or order.

X 

Ted Yao  
Panel Chair, Toronto Local Appeal Body  
Signed by: Ted Yao