

This is a short report on the issue of Rule 31.26, with suggested changes to the Rules.

ISSUE:

This report stems from detected concerns regarding Rule 31.26, wherein it has been suggested that the current version may permit (i.e. be interpreted as permitting) multiple Review requests for a singular matter before the Tribunal. For example, if a matter results in a Final Decision, which is requested to be Reviewed, and the result of that Review is the ordering of a de novo re-hearing of the matter, can the Final Decision resulting from the de novo hearing itself be the subject of a further Review request?

The current Rule 31 provision reads as follows:

No Further Review Permitted

31.26 A Review decision may not be further reviewed by the TLAB.

The problem with this wording is apparent. It limits only Review Decisions, and does not appear to impact (new) Final Decisions, resulting from ordered de novo hearings, following Review.

The LPAT's Rules do not have an analog on this issue, and thus are not instructive for our purposes. We reviewed several other tribunals' Rules, including the Assessment Review Board, Environmental Review Tribunal, the Law Society's Tribunal and Financial Services' Tribunal – none of these provided instruction or sufficient instruction on this point.

The HRTTO's Rules, however, state the following:

- 26.7.1 Where a Request for Reconsideration has been determined, the Tribunal will not consider a subsequent Request for Reconsideration of the same decision, absent exceptional circumstances. The Tribunal need not give reasons for a decision not to consider a subsequent Request.

This may not specifically cure the issue now apparent with Rule 31.26, but its use of language is instructive.

THE FIX:

A solution to the Rule 31.26 issue noted above may be to implement the following changes to the Rules:

Re Rule 31.26:

“One Review Per Matter – No Further Reviews Permitted

Where there is a Review decision or a decision flowing therefrom, including a Final Decision or Order resulting from a re-hearing of the matter, the TLAB will not consider any subsequent request for Review with respect to the same matter. The TLAB need not give reasons for denying any subsequent Review request and may administratively screen such requests.”

A further change should be made to the Administrative Screening Rule. It *currently* reads:

Administrative Screening

31.10 The TLAB may not process a Review request if:

- a) it does not relate to a Final Decision or final order;
- b) it was submitted after the prescribed time for requesting a Review;
- c) it is incomplete;
- d) it was submitted without the required fee; or
- e) there is some other technical defect in the submitted Review request.

A change to this Rule to include therein a new “c” would be advisable: “c) The matter was previously the subject of a Review request;”. This would further clarify the intent of the TLAB to restrict Reviews to one per matter.

A revised Rule 31.10 would thus read as follows:

Administrative Screening

31.10 The TLAB may not process a Review request if:

- a) it does not relate to a Final Decision or final order;
- b) it was submitted after the prescribed time for requesting a Review;
- c) The matter was previously the subject of a Review request;
- d) it is incomplete;
- e) it was submitted without the required fee; or
- f) there is some other technical defect in the submitted Review request.

The Alternative:

The alternative is to leave the Rules as they currently read. It is conceivable that a “new” Final Decision, resulting from a Review cum de novo hearing, could itself contain problems that should/could be reviewed. For instance, in the first Review one might order a new hearing because new evidence has come to light that was not available at the first hearing; the second Final Decision might then be questioned because of an alleged breach of natural justice. The potential for multiple Reviews on a singular matter, however, is a live concern, if the Rules are left unchanged.