

Toronto Local Appeal Body

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DECISION AND ORDER

Decision Issue Date Friday, November 13, 2020

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): Ephraim Cohen

Applicant: Sarah Ifrah Architect Inc

Property Address/Description: 150 Dalemount Ave

Committee of Adjustment Case File: 19 104876 NNY 08 MV (A0024/19NY)

TLAB Case File Number: 19 194450 S45 08 TLAB

Hearing date: Thursday, November 14, 2019

DECISION DELIVERED BY J. Tassiopoulos

REGISTERED PARTIES AND PARTICIPANTS

Applicant Sarah Ifrah Architect Inc

Appellant Ephraim Cohen

Appellant's Legal Rep. Denise Baker

Expert Witness Janice Robinson

INTRODUCTION & BACKGROUND

This is an appeal to the Toronto Local Appeal Body (TLAB) from a decision of the Committee of Adjustment (COA) on July 4, 2019 granting of variances to permit the construction of a new dwelling at 150 Dalemount Avenue (subject property). The subject property is located in the general area southwest of Bathurst Street and Lawrence Avenue West, two blocks west of Bathurst Street, three blocks south of Lawrence Avenue West.

The COA approved six of the nine requested variances. The following variances were not approved: Zoning By-law 569-2013 permits a maximum building height of 7.20m for a flat roof and a maximum of two storeys while the applicant requested a 9.92m height and three storeys; North York By-law No. 7625 permits a building height of 8.0m for a flat roof while the applicant requested a height of 10.57m. As a result of the three refused variances by the COA, the applicant appealed the decision to the TLAB, whose Hearing date was set as noted above.

The Appellant / Owner was represented by Denise Baker (Counsel) and Janice Robinson, an expert witness, who provided land use planning evidence for this appeal. The architect of the proposed residential dwelling, Ms. Sarah Ifrah, was also in attendance.

I disclosed to Counsel and those in attendance that I had visited the site and the surrounding neighbourhood, in preparation for the Hearing.

MATTERS IN ISSUE

Given the *de novo* nature of the TLAB Hearing, are all the variances sought by the Appellant / Owner supportable?

Are the height variances requested for a flat roofed dwelling, which includes a third storey where two storeys are permitted, appropriate in the neighbourhood context?

JURISDICTION

Provincial Policy – S. 3

A decision of the Toronto Local Appeal Body ('TLAB') must be consistent with the 2014 Provincial Policy Statement ('PPS') and conform to the Growth Plan for the Greater Golden Horseshoe for the subject area ('Growth Plan').

Variance – S. 45(1)

In considering the applications for variances from the Zoning By-laws, the TLAB Panel must be satisfied that the applications meet all of the four tests under s. 45(1) of the Act. The tests are whether the variances:

- maintain the general intent and purpose of the Official Plan;
- maintain the general intent and purpose of the Zoning By-laws;
- are desirable for the appropriate development or use of the land; and
- are minor.

EVIDENCE

Ms. Denise Baker provided a brief introduction regarding the appeal. She pointed out that the property was located at a bend in the road along Dalemount Avenue and that this was significant because it relates to the variance requested for the front yard setback. She described the proposed dwelling as a detached dwelling with a partial third storey and that this third storey is for additional bedrooms for the families' six children and for extended family that visits.

She went on to note that at the COA Hearing, the Applicant had received letters of support from all the abutting neighbours except from their neighbour to the north at 152 Dalemount Avenue. She explained that the neighbours had concerns with the front yard setback variance and that because of the bend in the road the variance appeared more significant numerically than what would actually be experienced. The Applicant, however, did revise the plans with their architect to increase the front yard setback from 5.73m to 7.55m at the closest point to the front lot line. This amendment satisfied the neighbour and that is what was brought forward to the COA on July 4, 2019, which approved six of the nine variances. The variances not approved were related to height as a result of the proposed third storey. She concluded by stating that this was not a unique condition in the neighbourhood, that three storey dwellings have been previously approved in the neighbourhood by TLAB and that others have been supported by City staff. She noted that the City was not present at the Hearing.

Following this introduction, Ms. Janice Robinson, was affirmed. I indicated that I had reviewed Ms. Robinson's CV, was aware of her experience as a professional land use planner. I was also aware that she had previously appeared before the former Ontario Municipal Board, the Local Planning Appeal Tribunal, as well as the TLAB, and has been previously qualified as an 'Expert Witness'. She confirmed that she had executed the Acknowledgement of Expert's Duty. I qualified Ms. Robinson to provide professional opinion evidence in the area of land use planning.

The following were marked as exhibits at the start of the evidence: Ms. Robinson's Expert Witness Statement (Exhibit #1), the document book (Exhibit #2), the COA decision analysis (Exhibit #3), the City staff report for 19 Madoc Avenue (Exhibit #4), and the Acknowledgement of Expert's Duty (Exhibit #5).

Ms. Robinson began by providing a summary of the variances requested to construct a modern style three storey replacement dwelling and provided the list of variances (Exhibit #2, Tab 16) to the Zoning By-Law:

1. Chapter 900.3.10.(5), By-law No. 569-2013

The minimum required side yard setback is 1.80m. The proposed south side yard setback is 1.22m.

2. Chapter 900.3.10.(5), By-law No. 569-2013

The minimum required side yard setback is 1.80m. The proposed north side yard setback is 1.51m.

3. Chapter 10.20.40.70.(1)(B), By-law No. 569-2013 The minimum required front yard setback is 10.16m. The proposed front yard setback is **7.55m**.

4. Chapter 10.20.40.10.(4), By-law No. 569-2013 The maximum permitted building height is 7.20m for a flat or shallow roof. The proposed building height is 9.92m.

5. Chapter 10.20.40.20.(1), By-law No. 569-2013

The maximum permitted building length is 17.00m. The proposed building length is 21.62m.

6. Chapter 10.20.40.70.(2), By-law No. 569-2013

The minimum required rear yard setback is 10.00m. The proposed rear yard setback is 7.03m.

7. Chapter 10.20.30.40.(1), By-law No. 569-2013

The maximum permitted lot coverage is 35.00% of the lot area. The proposed lot coverage is 38.93% of the lot area.

8. Chapter 10.20.40.10.(3), By-law No. 569-2013

The maximum number of storeys permitted is two (2). The proposed number of storeys is three (3).

9. Section 13.2.6, By-law No. 7625

The maximum permitted building height is 8.00m for a flat roof. The proposed building height is 10.57m.

Ms. Robinson indicated that the last variance, with respect to flat roof building height, remained under appeal by the Ontario Association of Architects and was still being contested at the time of the Hearing. She also noted that whereas the maximum height for flat roof buildings in By-law No. 569-2013 was 7.2m, a pitched roof building was permitted a height of 10.0m to its ridge.

Ms. Robinson continued with a description of the site plan and floor plans (Exhibit #1, Attachment 5). Beginning with the site plan she noted that, because of the bend in the road, at the north end of the lot the setback was at 7.55m while the southern corner of the proposed dwelling was at 12.0m. She noted that in the rear the closest rear yard setback is at 7.03m at the south corner and is over 12.0m at the north corner. She then turned to the floor plans and elevations and noted that the third floor is stepped back from the second floor, has a smaller floor size, and does not include any terraces that may lead to overlook. She then turned to the height of the building noting that By-law No. 569-2013 measures height from established grade while By-law No. 7625 measures it from the centreline of the road which is lower and explains the difference in the variance heights proposed from each Zoning By-law. Finally, with respect to building length variance, she mentioned that the 21.62m is measured at the longest part of the dwelling and that the north sidewall length was 16.69m indicating that the variance was a result the building length on one side.

Moving to her study area analysis, she indicated the boundary of the surrounding area bordered by Englemount Avenue to the west, Fairholme Avenue to the north, properties west of the Bathurst Street frontage in the east, and Coldstream Avenue to the south and the location of the subject property (Exhibit #1, Attachment 2). She noted that the study area did not include the frontages onto Lawrence Avenue West and Bathurst Street, or the school properties in the area. Having established her study area she described her area photos and context (Exhibit #1, Attachment 3) and pointed out that there were numerous replacement houses constructed since the 1980s. She pointed out that 152 Dalemount Avenue was also a new build and required variances in height and side yard setback to be approved. She noted it required a height variance from By-law No. 7625 for 9.0m, which is measured to the midpoint of the pitched roofline, while By-law No. 569-2013 measures height to the ridge, so its height would be greater if measured by that zoning by-law.

Continuing onto the surrounding streets she pointed out that in reviewing COA decisions, there were other newly built dwellings that had three storeys and similar variances approved (e.g. 57, 62, 72 and 80 Dell Park Avenue; 7, 9, 50 and 52 Fairholme Avenue; and 2 and 19 Madoc Drive) or a three storey appearance. The site coverage on these properties was similar or greater than that proposed on the subject property. She explained that the subject property was generous in size at 15.0m by 40.0m and could accommodate a larger house such as the proposed dwelling.

Ms. Robinson then began a review of her COA Decision Analysis (Exhibit #3) which Ms. Baker noted was an update to the analysis found in Exhibit #1 to include 19 Madoc Drive which included a third storey variance. Her analysis looked at COA decisions in the study area in the past 15 years. She noted that almost all of the approved applications had a variance for area coverage and many had a greater coverage than that of the proposal. She also pointed to a number of approved third storey variances and front yard and sideyard setback variances that were similar to those proposed for the subject property.

Noting that this provided a quantitative analysis, Ms. Robinson, turned to the renderings and elevations to provide a qualitative analysis. She proceeded to the rendering of the proposed dwelling and a massing comparison with the dwelling at 33 Glen Park Avenue (Exhibit 1, Attachments 6 and 7). She provided that the proposed building will be stepped and that the third storey will be further setback to address massing. In comparing the proposal to 33 Glen Park she pointed out that the massing and height were generally identical except that one had a pitched roof while the other has a modern flat roof.

She then turned to the COA public circulation of the proposal and the staff comments regarding their recommendation to refuse the flat roof height variance and the variance for a third storey; she indicated no other concerns were expressed regarding the proposal (Exhibit 2, Tab 10). She referenced the following staff comments:

"...a flat roof dwelling would create greater overlook issues, result in more shadowing and would generally feel more imposing than a pitched roof building. Staff believe that the proposed flat roof building heights under By-law Nos. 569-2013 and 7625 are contrary to the intent of the Zoning By-laws."

Responding to the comment, Ms. Robinson noted that overlook would not be possible as there were no outdoor spaces indicated on the third floor and that it was setback. With respect to the proposal being more imposing she referred to the comparison provided with the elevation of 33 Glen Park Avenue. She did not agree with staff comments that suggested three storey dwellings were not consistent with the neighbourhood character and that the proposal would be destabilizing to the neighbourhood. She opined that her photos and analysis of the neighbourhood area included numerous examples of three storey dwellings and that they were not destabilizing but were examples of regeneration and investment in the neighbourhood. There were no comments from Urban Forestry and there were seven letters from neighbours (15 & 17 Reddick Court; 146, 148,154 and 157 Dalemount Avenue, and 8 Madoc Drive), indicating they had reviewed the drawing and had no objections (Exhibit #2, Tab 14).

Ms. Baker asked whether the application was consistent with the PPS 2014, the Growth Plan 2019, and had regard for Section 2 of the *Planning Act.* Ms. Robinson replied that this application was generally a local planning matter and did not engage at the level of provincial policy. Nonetheless, she went on, it would provide modest intensification of the built up area, would make more efficient use of an existing site and infrastructure, and the subject property would be more optimally developed. She stated that the application does have appropriate regard for matters of provincial interest as per Section 2 of the *Planning Act*, be consistent to the PPS 2014, and would be in conformity with the Growth Plan 2019.

Turning to the four tests under Section 45(1) of the *Planning Act,* Ms. Robinson noted that the application maintained the general intent and purpose of the Official Plan. She pointed to Section 2.3.1 of the OP noting that it requires that new development in *Neighbourhoods* respects the existing physical character of the area and reinforces neighbourhood stability. She noted that this does not require that the proposal be the same but that it should respect the existing physical character in the neighbourhood.

With respect to built form policies she referenced Section 3.1.2.1 (a-d):

"New development will be located and organized to fit with its existing and/or planned context. It will frame and support adjacent streets, parks and open spaces to improve the safety, pedestrian interest and casual views to these spaces from development..."

and noted the proposal is a good fit with both its existing and planned context and even though there is a front yard setback the proposed dwelling generally aligned with the neighbouring dwellings on each side. Ms. Robinson then turned to the sidebar entitled *Exterior Design - Character, Scale and Appearance* (OP, 3.1.2, p.3-8) given the contemporary design of the proposal, she focused on the following reference:

"The harmonious relationship of a new façade to its context can be achieved with contemporary expression provided that the existing context, proportions, forms, sizes and scale are fully respected and appropriate materials are used. A new façade need not be a simple replication of adjacent building facades."

She was of the opinion that this indicated support for a modern style, providing that the proposal fits in its context, and that the proportions of the dwelling fit in the scale of other buildings in the neighbourhood. She explained the proposal does this when considered in the context of the neighbourhood as illustrated in her photos and in the comparison diagram between the proposal and 33 Glen Park Avenue. She stated the proposed development will meet the built form policies.

Looking at *Neighbourhoods* policies in Section 4.1.5 she referred to the development criteria that seek to ensure that *"Development in established Neighbourhoods will respect and reinforce the existing physical character of the neighbourhood..."*. In reviewing the development criteria applicable to the proposed dwelling, she indicated that the overall dwelling height of less than 10.0m is similar to other heights in the neighbourhood, some with a flat roofs and some with greater heights. In addition, the area coverage was in keeping and similar or less than other new dwellings in the neighbourhood area which she demonstrated in her photos of the neighbourhood. In terms of prevailing height, massing, scale and density she was of the opinion that the proposal met this criteria.

In terms of prevailing pattern of front yard and rear yard setbacks she mentioned that the front yard setback was in line and that the rear yard setback ranging from 7.03m and increasing to 12.89m indicated there was a sufficient rear yard to serve the dwelling and that it was in keeping with other rear yards in the neighbourhood. She went on that the proposal respects the prevailing patterns for setbacks and open space and will maintain the existing curb cut and driveway location. She concluded that the proposal conforms with the development criteria of policy 4.1.5.

Ms. Robinson then turned to policy 4.1.8 which indicates zoning by-laws and other performance standards are meant *"to ensure that new development will be compatible with the physical character of established residential Neighbourhoods."* She explained that the concept of compatibility means that a development is capable of co-existing in harmony with its immediate and broader area and if the proposal variances were approved, the proposed dwelling will do that. She repeated that the scale, height, and coverage are similar to what is found in the study area and in this context the proposal is compatible. She concluded that the proposal maintains the general intent and purpose of the Official Plan.

With respect to the Zoning By-laws, Ms. Robinson explained that the general intent and purpose of the Zoning By-law has been satisfied by the proposed development as it will be compatible with the surrounding area. With respect to height she explained that the proposed dwelling is similar in size to other replacement dwellings in the area which includes dwellings that are three storeys in height or have the appearance of being three storeys in height and referred to 17 Madoc Drive being approved in 2014 with a GFA of 760 sq.m. She went on to explain that the lower permitted height for flat roof dwellings than that of sloped roof dwellings was meant to control massing. In the case of the proposed dwelling she indicated that the third storey is stepped back resulting in a massing similar to a sloped roof, therefore, the design of the proposed dwelling meets the general intent of the zoning by-law.

She noted that the intent of the sideyard setback is to ensure access to the rear yard which the proposal does; the front yard setback is to align the front walls with neighbours, which even with the variance, the proposal does; and the rear yard setback is meant to provide sufficient rear yard area, which the proposal does as well. She concluded that the variances both individually and cumulatively, maintain the general intent and purpose of the Zoning by-law(s).

On whether the variances were minor, Ms. Robison explained that the variances sought were numerically minor and that the setback variances, building length, and lot coverage were minor in magnitude in the context of the study area. The variances for the number of storeys and height were also noted as minor in magnitude given the context of dwellings in the study area with similar heights, with three storeys, or with the appearance of three storeys. She further noted that the variances individually and cumulatively did not give rise to adverse planning impacts, that there were no visual impacts concerning massing when compared to its context, and there are no terraces or overlook from the third storey that would impact privacy for neighbours. She concluded that the application is within the order of magnitude to be considered minor and it does not give rise to adverse planning impacts and is therefore minor.

Ms. Robinson turned to the test of whether the proposal was desirable for the appropriate development or use of the land. She explained that the proposed dwelling was a reinvestment in the subject property, that more fully utilizes the zoning permissions, and that it will provide the space needed for a large family. She added that the proposal is compatible, fits within the neighbourhood and with adjacent properties, and will contribute to the ongoing stability of the neighbourhood. Concluding that there are no undue adverse impacts arising from the proposal, she stated that the variances were desirable and appropriate for the development or use of the land and building.

Ms. Robinson concluded that the proposal represents good planning, is in the public interest and satisfies all four (4) tests set out in Section 45(1) of the Planning Act. She recommended that TLAB allow the appeal in part and authorize the revised variances with the condition that construction be in substantial accordance with the Site Plan and Elevation Plans dated September 12, 2019.

ANALYSIS, FINDINGS, REASONS

The evidence of Ms. Robinson was uncontested and it was provided in a concise and thorough manner that was informative to the Hearing. Although her opinions on the requested variances were thoughtful and well-reasoned, I need to consider the four tests under s. 45(1) of the Planning Act in my analysis of the requested variances, and do so as follows:

Variances 1 & 2 – Relate to the proposed sideyard setbacks from the north and south property line with proposed setbacks of 1.51m and 1.22m respectively, whereas 1.8m is required. Having considered Ms. Robinson's evidence, my visit to the neighbourhood, and reviewing the COA Decision Analysis (Exhibit #3), I am of the

opinion that these variances are indeed minor and are in keeping with the sideyard setback variances approved for the neighbourhood for other applications.

Variance 3 – Relates to the proposed front yard setback variance of 7.55m where 10.16m is required. In the review of the site plan, I did note that the variance was to the north corner and the garage wall projection of the proposed dwelling. The property location at the bend of the road in combination with the trapezoidal shape of the lot triggers this variance. The increase in the setback from the original proposal has resolved the concern of the neighbour to the north, and the stepping of the proposed dwelling provides for an appropriate transition that aligns with the neighbouring properties' front yard setbacks. I also noted that the south corner of the proposed dwelling complies with the 10.16m setback. I agree with the evidence provided by Ms. Robinson and concur that the front yard setback is affected by the location at the bend of the road. Furthermore, the shape of the lot also impacts the front yard setback and the applicant has addressed the condition through a stepping of the building face. For these reasons I find the variance is appropriate and minor.



Front Yard Setback of 150 Dalemount Avenue- Site Plan Excerpt

Variances 4, 8 & 9 – Relate to the permitted building height for a flat roof dwelling of 7.2m in in By-law No. 569-2013 and 8.0m in By-law No. 7625 whereas a height variance of 9.92 and 10.57m in height are proposed. These variances are triggered by the proposed third storey where two storeys maximum are permitted. I have given these variances thorough consideration because they are the basis of the appeal. Ms. Robison provided a good explanation with regard to why the height variances differ, indicating that the former North York By-law measured the height from the centreline of the road to the top of the flat roof, while By-law No. 569-2013 measures height from established grade. Furthermore, Ms. Robinson's photo evidence (Exhibit#1, Attachment 3) provided numerous examples of similar developments in close proximity to the subject property and in the neighbourhood that were three storeys or had the appearance of three storeys. There were also examples provided where the heights were similar to that proposed for the building. I tend to agree that part of the reason for the maximum number of storeys is, as Ms. Robinson noted, to address overall massing

of a proposed building. The difference is that while residential dwellings with hipped roof styles are permitted a greater height that allows a third storey to be accommodated, a flat roof building does not have the ability to integrate a third storey in the same way. The stepping back of the third storey in the proposed development helps to mitigate the potential massing impact of the third storey building and mimics the massing of more traditional roof designs. Ms. Robinson noted that the OP does suggest that a harmonious relationship "can be achieved with contemporary expression provided that the existing context, proportions, forms, sizes and scale are fully respected and appropriate materials are used." For these reasons, all three variances sought meet the tests and are minor and in keeping with this particular context.

During her closing, Ms. Baker cited a Decision by TLAB Member Yao for 97 Dell Park Avenue (File No. 18 267533 S45 08 TLAB), which is in close proximity to the subject property and within the evidence study area. In that Decision, Member Yao quotes the evidence given during the Hearing:

"I find that with this explanation, the variance meets the intent of the Zoning Bylaw, maintains the "full range of housing" provisions of the Official Plan and is desirable for the appropriate development of the lands, **provided** that this policy is <u>restricted</u> in the way Mr. Goldberg's evidence suggests, <u>to this particular</u> <u>neighbourhood and there is evidence that this form of housing will meet the needs</u> <u>of current and future residents</u>." (underline is mine for emphasis)

I would echo that assessment, noting that the provision and variance to permit the third storey is specific to this particular context and neighbourhood and is not meant to provide a precedent for the addition of a third storey in other neighbourhoods in the City. The general intent and purpose of the Zoning By-law and the OP is maintained in this particular context and with this specific architectural design response to the subject property.

Variance 5 – Relates to the building length variance proposed for 21.62m where the maximum length permitted is 17.0m. In the review of the site plan, I noticed that the stepping of the building to both the front and rear elevations to address the shape of the lot and bend in the road result in the requested variance length on the south side of the proposed dwelling, while the same stepping results in a building length on the north side of 12.57m. It was also indicated in the evidence and in Counsel's closing remarks that although there is a variance for building length, a building variance for depth is not required. This is a variance triggered by the lot shape, is technical in nature, and is also minor.

Variance 6 – Relates to the proposed rear yard setback variance of 7.03m where 10.0m is required. In her evidence Ms. Robinson mentioned that the intent of the rear yard setback is to provide a sufficient rear yard area and that the proposal provides that. In addition, I would add that the intent is also to ensure separation distance from adjacent buildings on lots abutting the rear yard. The site plan indicates that the rear north corner is 12.89m from the rear lot line. Again, this variance is a result of the lot shape and orientation of the building on the subject property. Having considered the

evidence and reviewed the site plan, I find this variance, based on the proposed plans, is also minor.

Variance 7 – Relates to the proposed lot coverage of 38.93%, whereas a maximum of 35% is permitted. The variance is similar to the lot coverage variances sought in other new residential construction in the neighbourhood. Having considered Ms. Robinson's evidence, my visit to the neighbourhood, and the review of the COA Decision Analysis (Exhibit #3), I find that this variance is also minor and appropriate in this context.

For these reasons, I find that the appeal should be allowed and that the nine variances sought, individually and cumulatively, meet all four tests under s. 45(1) of the *Planning Act.*

DECISION AND ORDER

The appeal of the Committee of Adjustment decision dated July 4, 2019, is allowed. The following variances indicated as 'proposed' are authorized subject to the condition listed below:

- 1. Chapter 900.3.10.(5), By-law No. 569-2013 The minimum required side yard setback is 1.80m. The proposed south side yard setback is 1.22m.
- 2. Chapter 900.3.10.(5), By-law No. 569-2013 The minimum required side yard setback is 1.80m. The proposed north side yard setback is 1.51m.
- **3. Chapter 10.20.40.70.(1)(B), By-law No. 569-2013** The minimum required front yard setback is 10.16m. The proposed front yard setback is **7.55m**.
- **4. Chapter 10.20.40.10.(4), By-law No. 569-2013** The maximum permitted building height is 7.20m for a flat or shallow roof. The proposed building height is 9.92m.

5. Chapter 10.20.40.20.(1), By-law No. 569-2013 The maximum permitted building length is 17.00m. The proposed building length is 21.62m.

6. Chapter 10.20.40.70.(2), By-law No. 569-2013 The minimum required rear yard setback is 10.00m. The proposed rear yard setback is 7.03m.

7. Chapter 10.20.30.40.(1), By-law No. 569-2013

The maximum permitted lot coverage is 35.00% of the lot area. The proposed lot coverage is 38.93% of the lot area.

8. Chapter 10.20.40.10.(3), By-law No. 569-2013 The maximum number of storeys permitted is two (2).

The proposed number of storeys is three (3).

9. Section 13.2.6, By-law No. 7625

The maximum permitted building height is 8.00m for a flat roof. The proposed building height is 10.57m.

Required Condition

A. The proposed development shall be constructed substantially in accordance with the site plan, roof plan, and building elevations (Drawings A-1, A-7, A-8, and A-10), dated September 12, 2019, and found in **Attachment 1** to this Decision. Any variance(s) that may appear on these plans but are not listed in the written decision are NOT authorized.

J. Tassiopoulos Panel Chair, Toronto Local Appeal Body









