



Agenda: May 07, 2021

Business Meeting No. 31

Meeting Date: Friday, May 07, 2021, 9:30 a.m.

Location: Electronic via Webex

Link to Join:

Q2: TLAB Public Business Meeting - May 7, 2021

Hosted by Toronto Local Appeal Body

Friday, May 7, 2021 9:30 am | (UTC-04:00) Eastern Time (US & Canada)

Meeting number: **133 282 0408**

Password: **pZMp52dW7hp**

<https://toronto.webex.com/toronto/j.php?MTID=ma5b615a862c58071a8e77b57d29260cb>

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Toronto Local Appeal Body - Public Business Meeting – May 07, 2021

Chair: Dino Lombardi

Contact: Tyra Dorsey

Acting Supervisor

Phone: 416-392-4697

Toronto Local Appeal Body Panel Members

Dino Lombardi (Chair)

Ana Bassios

Sabnavis Gopikrishna

Sean Karmali

Christine Kilby

Justin Leung

Stanley Makuch

Shaheynoor Talukder (Vice Chair)

John Tassiopoulos

Ted Yao

Aboriginal Land Acknowledgement

We acknowledge the land we are meeting on is the traditional territory of many nations including the Mississaugas of the Credit, the Anishnabeg, the Chippewa, the Haudenosaunee and the Wendat peoples and is now home to many diverse First Nations, Inuit and Métis peoples. We also acknowledge that Toronto is covered by Treaty 13 with the Mississaugas of the Credit.

Confirmation of Minutes – Business Meeting, February 10, 2021.

Declaration of Interest under the *Municipal Conflict of Interest Act*

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Deferred Items:

31.1 – FoNTRA & ARA COMMUNICATION

Summary

The Toronto Local Appeal Body will consider correspondence received from the Federation of Toronto Neighbourhood Associations (FoNTRA) and the Annex Residents' Association (ARA) in response to TLAB Chair's letter to FoNTRA.

Supporting Documents

Letter from Rita Bilerman, Chair of the Annex Residents' Association (ARA), dated April 9, 2021, to the Toronto Local Appeal Body Chair.

Letter from the Toronto Local Appeal Body Chair to FoNTRA dated February 25, 2021.

Deputations, if any.

31.2 – INFORMATION

Summary

The Toronto Local Appeal Body to consider new Sub-Rule 2.6 to the TLAB's Rules of Practice and Procedure regarding a protocol on communications by a Party, Parties or others directly with Toronto Local Appeal Body Members

Supporting Documents

Proposed wording for Sub-Rule 2.6.

31.3 – INFORMATION

The TLAB Chair will provide an update on Business Meeting Protocols and Procedures.

- Business Meeting Protocols and Procedure
- Chair's Update
 - a) COVID-19 update on tribunal activities.
 - b) Health & Safety Office Update.
 - c) Standardize screen backdrop for virtual hearings.
 - d) Virtual hearing transcripts

31.4 – INFORMATION

Toronto Local Appeal Body – Supervisor's Update

Summary

Court Services Supervisor and Manager to provide an update on administrative matters pertaining to the following items:

- Status of electronic & in-person hearings
- Updates on Covid-19 and impact on services

31.5 – INFORMATION

Toronto Local Appeal Body – Practice Direction for Hearing Extensions

Summary

The Toronto Local Appeal Body will consider a Practice Direction on requests from Members for additional Hearing dates to conclude a hearing matter.

Supporting Documents

Wording of a Practice Direction for Hearing Extensions

31.6 – INFORMATION

Panel Member Ted Yao Item - MP4 Recordings

Summary

The release and use of recorded Toronto Local Appeal Body ‘virtual’ Hearings and issues of privacy and permission.

Supporting Documents

31.7 – INFORMATION

Toronto Local Appeal Body – Draft Evaluation Status Update Memorandum

Summary

The Toronto Local Appeal Body will receive an update from the Chair and Members of the established sub-committee regarding the status of this evaluation initiative and draft Recommendations from the sub-committee. The TLAB may further defer the item to a future business meeting.

31.8 – MEMBER ACCOUNTABILITY

Toronto Local Appeal Body – In Camera Session – Member Accountability

Summary

The Toronto Local Appeal Body will go into closed session to discuss an issue regarding an identified Member or Members.

31.9 – SCHEDULE OF BUSINESS MEETINGS – 2021

The Toronto Local Appeal Body will confirm the dates of the next two (2) Business Meetings scheduled in 2021 and confirm the date of the 5th Business Meeting on November 16, 2021 scheduled to facilitate Member education and training sessions and which will be conducted ‘In-camera’.

31.10 - CLOSING BUSINESS AND REMARKS

Adjournment

TORONTO LOCAL APPEAL BODY

Practice Direction No. ____

Hearing Extensions

NOTE

The TLAB's Rules of Practice and Procedure, and its attendant Public Guide, contain further details about Hearings before the TLAB. Parties should consult these resources, and if further information or direction is needed, a lawyer.

Nothing in this Practice Direction diminishes or lessens the requirement on all Parties to comply with the TLAB's Rules of Practice and Procedure.

TLAB and Party Resources

Parties and Members are encouraged to consider the appropriate and effective allocation of resources in relation to matters before the TLAB. Scarce resources should be conserved, and efficiency in the hearing of matters remains an important goal.

When a Member accepts the assignment of a matter that Member should consider the number of days reasonably required to conclude its Hearing. The following Direction, and the established practices of TLAB Staff, are outlined below:

1. A 'variance-only' Hearing will typically be scheduled by Staff for no more than two (2) Hearing days;
2. A 'consent and variances' Hearing will typically be scheduled by Staff for no more than four (4) Hearing days;
3. When a seized Member believes or has concerns the Hearing may require additional days, beyond those automatically scheduled by Staff, the Member should consider whether a Pre-Hearing Conference (PHC) would assist in determining this issue;
4. Where the Member concludes a PHC should take place, that PHC should normally take place at the earliest opportunity next-following the filing of Party/Participant status notices, and the Member should thereafter direct that all Parties coordinate with the TLAB to appropriately and expeditiously schedule a PHC, in whatever format (electronic, written or oral) the Member determines is best;

5. At the PHC, the Member should rule upon the appropriate number of days to schedule for the matter, after having heard from all Parties on the issue of scheduling. The Member may, in addition, wish to seek firm commitments from the Parties and their representatives as to the approximate amount of time each step leading to the conclusion of the Hearing will take. This may include the setting of a timetable plan establishing the amount of time required for each witness for examination in-chief, cross-examination and re-examination as well as an estimate of time for submissions. In many circumstances, these estimations may be included in the Member's PHC order to assist the Parties and their representatives in ensuring the Hearing proceeds efficiently;
6. Following the PHC, the Member should advise Staff so that required changes to the TLAB's scheduling can be affected. Staff will provide an update to the Chair (or his or her designate) on such changes to the TLAB's schedule, where such changes result in a deviation from the typical scheduling outlined in #1 and #2, above, or 7, below;
7. In addition to #1 and #2, any Hearing that involves three (3) or more Parties will typically be scheduled by Staff for a PHC, unless the seized Member determines a PHC is not necessary; and,
8. For potential extensions to Hearings already underway, the seized Member should hear submissions on the issue, and should obtain firm commitments from Parties and their representatives in respect to the time they reasonably believe will be required to complete each remaining step of the Hearing process.

Memorandum

Date: April 28, 2021

Subject: Update on progress

From: Subcommittee on “Evaluation”

To: Toronto Local Appeal Body

A verbal update will be provided at the May 7, 2021 Quarter 2 Business Meeting.

Draft Subcommittee Recommendations:

- A Continuous Service Improvement (CSI) initiative be adopted such that an amount of time be allotted as part of every Business Meeting or other appropriate meeting for the TLAB Membership (a) to be able to share relevant, helpful, and/or useful experience and knowledge about its observed practices, situations, and trends and in respect of matters that *were before* the TLAB; and (b) to receive advice from Legal Counsel about such matters, where appropriate.
 1. Thus, the CSI initiative would include a *proceedings portion* of the meeting;
 2. This proposed portion represents an opportunity to identify and appropriately discuss what needs our attention and how we *should* act. To focus this discussion, here are some examples of items of interest warranting coverage in the proceedings portion:
 - Do we need to attend to explaining the electronic hearing process better? How should an opening script adequately consider the electronic hearing format?
 - Should we direct a practice of providing self-represented and non-lawyer represented parties with links to the TLAB *Rules* and TLAB Public Guide well in advance of the electronic hearing date?
 - Should the *Rules* concerning costs include another consideration point to help with efficient and fair disposition? For instance, where the appellant withdraws their appeal two weeks before the scheduled electronic hearing date and the prepared opposing party moves for costs immediately after the withdrawal, would an enumerated point in the *Rules* be of any assistance for our consideration? What could this point be?
 - If we believe consistency is a virtue in the TLAB process, how can we foster an environment that aims for consistency while maintaining individual member independence?¹

¹ *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 129-130:

[129] ...Nevertheless, administrative decision makers and reviewing courts alike must be concerned with the general consistency of administrative decisions. Those affected by administrative decisions are entitled to expect that like cases will generally be treated alike and that outcomes will not depend merely on the identity of the individual decision maker — expectations that do not evaporate simply because the parties are not before a judge.

3. The proposed proceedings portion should be a safe space to ask germane questions, including raising hypothetical situations. This is based on the notion that the TLAB as an entity would be more robust if Members had opportunities to learn from each other.
4. The proposed proceedings portion would be managed for focus and time. Thus, the portion would not be a forum for a Member to advance one's opinion *ad infinitum*.

That the Draft Subcommittee Recommendations be circulated to the TLAB Members and Duxbury Law for feedback and input, and that the Subcommittee report back on progress to the Q3 Business Meeting.

[130] Fortunately, administrative bodies generally have a range of resources at their disposal to address these types of concerns. Access to past reasons and summaries of past reasons enables multiple individual decision makers within a single organization (such as administrative tribunal members) to learn from each other's work, and contributes to a harmonized decision-making culture. Institutions also routinely rely on standards, policy directives and internal legal opinions to encourage greater uniformity and guide the work of frontline decision makers. This Court has also held that plenary meetings of a tribunal's members can be an effective tool to "foster coherence" and "avoid . . . conflicting results": *IWA v. Consolidated-Bathurst Packaging Ltd.*, 1990 CanLII 132 (SCC), [1990] 1 S.C.R. 282, at pp. 324-28. Where disagreement arises within an administrative body about how to appropriately resolve a given issue, that institution may also develop strategies to address that divergence internally and on its own initiative. Of course, consistency can also be encouraged through less formal methods, such as the development of training materials, checklists and templates for the purpose of streamlining and strengthening institutional best practices, provided that these methods do not operate to fetter decision making.

<https://www.canlii.org/en/ca/scc/doc/2019/2019scc65/2019scc65.html>

New Rule 2.6

Excluding communications between Parties and TLAB staff that is merely of an administrative nature only, all communications with or from the TLAB in relation to any proceeding must be copied to, or be made in the presence of, all other Parties.”

DRAFT

Procedural Protocol for TLAB Quarterly Business Meetings

In an attempt to improve the efficiency of the Toronto Local Appeal Body's Quarterly Business Meetings and reduce the overall time commitments required of Members attending those Meetings, I am proposing a modified protocol as to how the meetings should be conducted.

The approach is based primarily on Section G, Rules of Debate, of the Procedural By-law 1-2017 governing the meetings of the TLAB and is generally patterned on how City Council meetings are currently conducted. If adopted, I believe this protocol will result in Business Meetings that are more productive, efficient, and less taxing for the Members and a more enjoyable and productive experience for all participating.

I am proposing the following approach:

- Members shall review the business meeting agenda prior to the meeting and identify agenda items of interest.
- For each matter under consideration, the Member is to advise TLAB staff, either through an email to staff the day prior to the subject meeting or on the morning of the meeting or submit a request through the 'chat' function on the WEBEX platform directly to staff prior to the commencement of the virtual meeting, indicating a request to speak to that item.
- The Chair will maintain a list of those Members who have requested to speak to a specific agenda item and the Chair will designate Members to speak in accordance with that list.
- The Member initially will be given a maximum of 5 minutes to speak on the item. No Member shall speak more than once until every Member who wishes to speak has done so.
- Follow-up questions must be clear and concise; however, statements will be allowed as long as they are related to a question.
- Friendly amendments to Motions are permitted; however, ancillary new Motions not previously moved are to be discouraged.

Date: Thursday, February 25, 2021

To: Federation of North Toronto Residents Association (FoNTRA)
Geoff Kettel, Co-Chair
Cathie Macdonald, Co-Chair

Subject Matter: **TLAB Chair's Response to FoNTRA's July 23, 2020 Letter Re: Chair's 2019 Annual Report**

Dear FoNTRA Co-Chairs,

Thank you for your recent correspondence to the Toronto Local Appeal Body (TLAB) on behalf of The Federation of North Toronto Residents Association (*FoNTRA*) including the July 23, 2020 letter to Mayor Tory and City Council, carbon copied to the Tribunal. As you know this letter was addressed as an agenda item at the TLAB's Q4 Business Meeting of December 2, 2020.

It was formally received at that Meeting and subsequently, by Motion, the TLAB Chair was directed to respond to *FoNTRA's* letter.

Let me commence my response by stating that I believe public input into the operation of the TLAB and correspondingly the appeals process is fundamental to the Tribunal's function and legitimacy. Such participation assists in keeping the Body accessible to all.

Your letter raised several concerns with respect to the appeals process that your Association and its members have experienced. Those comments have been expressed with a purpose and in a constructive manner and that is appreciated. Your letter raises three areas of concern regarding that process with an overarching common thread that I suggest can be narrowed to what appear to be two key concerns – procedural complexity and excessive burdens on lay citizens; and a perceived lack of natural justice and procedural fairness.

Let me address each individually.

1. *Procedural Complexity*

In correspondence previously submitted to the TLAB, and further highlighted in your July 23rd letter, *FoNTRA* continues to advance the narrative that the Tribunal's process is unfair to residents. This is supported in your letter by statements found on page 1 where you state that "*Residents play a key role in the operation of the TLAB and need it to operate in a way that is fair to them.*" On that same page, you further state that "*the TLAB operates largely without input from residents*" and finally that "*the (TLAB) is unfair to residents.*"

The TLAB has spent many hours in our business meetings over the last three years listening to deputations and receiving input from the public on many topics, most importantly with respect to its operating procedures found in its Rules. That input has greatly assisted the Tribunal's Members in judiciously and transparently crafting revisions to its Rules; the result being the adoption of significant Rule amendments that have created a more balanced and fairer process for all involved.

While *FoNTRA* intimates that the TLAB's Rules have somehow been crafted to "*favour applicants who can afford to retain expert witnesses*," I can assure you that that perception is simply not factual. On the contrary, Tribunal Members have continued to be sensitive to residents' calls to 'level the playing field' in land use disputes. The revised Rules attempt to do just that, by increasing the rights of both Parties and Participants in a Hearing, including the ability to ask 'clarifying' questions of witnesses and by extending an equal opportunity to provide evidence.

In fact, the Tribunal recently introduced the category of 'Local Knowledge Expert' to the list of experts recognized before the TLAB at hearing events. Creating such a category of expert is an effort by the TLAB to accord some members of the public, who have gained specific recognized knowledge and experience in their neighbourhoods, with additional standing in hearings and is intended to improve the ability of residents to present their cases effectively. I disagree with your assertion that this "*only serves to create another level of 'rug rank' in the hierarchy of privilege at the tribunal.*" On the contrary, I believe it contributes overall to the evidence heard and taken into consideration by Members in the decision-making process.

'Expert' testimony is an expectation, but not a necessity at the Hearing. Furthermore, 'experts' are subject to being qualified and must meet standards of education and/or experience.

As to the issue of the complexity of the appeals process, the assertion in your letter is that the entire TLAB process is too complex, cost-prohibitive, and time-consuming for residents. We all acknowledge that the appeals process has costs associated with it, and residents are required to attend hearing events that may engage multiple hearing days. However, the reality is that hearing time is allowed in order that all persons with an interest have a fair opportunity to express their views and that those views are heard. This is the duty on any hearing officer charged with the responsibility to decide anything under statutory direction.

In this regard, the TLAB has attempted to address the length of hearings through the implementation of a strict Chair's protocol for hearing day extensions. That process directs Members to exercise case management discipline that best ensures the disposition of assignments based on a formula that schedules a one (1) day hearing for variance applications and two (2) day hearings for combined variance/consent appeals. Members are allowed some latitude for additional hearing days to a specified limit, after which any extension request is escalated to the Chair's attention. In any event, in the case of initial scheduling, a Pre-Hearing Conference involving the Chair/Vice-Chair and the presiding Member is required before any extension dates are accepted or scheduled by the administration.

I note that the TLAB is in the process of further revising and perfecting the protocol outlined above for extra Hearing days. It is anticipated that any revised procedural wording will further address this issue.

In its public process, by Rule revisions and other means, the Tribunal has sought to provide a timely response to areas perceived as requiring protections, improvements, and greater informality in the dispute resolution process, including the contemporary emphasis on mediation and consensual dispute resolution. Members have been encouraged to use TLAB-led confidential mediation to settle some or all the issues in an appeal in an attempt to resolve matters pursuant to Rules 19 and 20 of its Rules. This strategy has resulted in several appeals being resolved by expedited Settlement Hearings or, indeed, without the need for further hearing days thereby reducing the overall cost and time commitments for all Parties involved.

The TLAB's process is underpinned by its Rules. As you may know, the TLAB's Rules of Practice and Procedure (Rules) and its operation is based largely on the Statutory Powers and Procedure Act (1990). Those Rules have been crafted to ensure that all documents are filed in a timely manner and issues are identified 'upfront' and prior to the hearing event to the benefit of all participants but especially residents, lay citizens, and the general public. If *FoNTRA* is advocating a nostalgic return to 'trial by ambush', such is not supported by the TLAB Rules.

In the letter, *FoNTRA* characterizes the TLAB's mandate as dealing "*with appeals of Committee of Adjustment decisions on minor variances.*" (p. 1, July 23rd letter) The Association then poses the question why such timelines and complexity for applications that it categorizes as involving 'minor' issues. I must disagree strongly with this characterization. The Association's inference, that the TLAB deals mostly with somewhat trivial variance appeals, is facile. Appeals deal with matters of great personal import and significant monetary value and they ought not to be treated casually.

Your characterization of the term 'minor' is a misnomer in itself. 'Minor', under the statute is but one test. The applications are for 'variances' and the import of the requested approval can be of significant concern to the applicant and persons involved.

2. Perceived Lack of Natural Justice and Procedural Fairness

In your July 23rd letter, you state the following on Page 3, "*In our opinion the TLAB is overturning CofA decisions to an extent far beyond what one would reasonably expect in a fair process.*" The implication I take from this statement is that *FoNTRA* believes this is somehow inherently a 'negative outcome' for residents.

I find this representation to be somewhat ill-conceived and rather misleading. There are multiple variables engaged in a TLAB appeal including: a) the application for relief itself; b) the statutory directions under s. 45 and 51 of the *Planning Act*; the appellant, whether the applicant or some other interest person or group; the parameters of the appeal; the participants in the appeal; the TLAB decision; and the TLAB reasons for the decision. Gloss generalizations at the level of whether the TLAB decision confirms, reverses, or alters the Committee decision are generalizations that fail to have regard to the variables at play and are meaningless comparisons.

Each Committee and TLAB decision are duty bound to treat each appeal on its merits. To group a TLAB reversal of some part of a Committee decision in the same category whether the appeal is made by the Applicant or a neighbour, is simply using statistics for an agenda that bears no rational support. I would respectfully ask *FoNTRA* to reassess their conclusions and question its hypothesis in this regard. Perhaps the analysis

should not be whether the statistics show a certain unacceptable percentage of overturned COA decisions but rather, do the decisions, in the individual circumstances in which they are rendered by the Tribunal, represent 'good planning'.

The reality is that the TLAB affords greater time to review and consider applications on a 'de novo' basis and produces decisions and orders that are detailed, measured, and that provide the parties with reasoned findings for outcomes. To paraphrase, there is little merit in the impatience of those who seek to use imperfect information to reform an imperfect world.

FoNTRA represents that it has a platform to project a commonality of interest. A great contribution is one that is made with reasoned passion based on a studied and balanced presentation of factual and informed opinion, not advocacy for political gain. A system of reasoned decision-making, as supported by the TLAB, is properly balanced only when all interests have an equal opportunity to present their opinions for sober consideration.

The residents of Toronto sought an apolitical local dispute resolution process. City Council responded by appointing an arm's length, quasi-judicial body modeled on hundreds of years of English common law jurisprudence and statutory structure. That effort is diminished by representations designed to reverse its detachment and balancing of participants' interest.

In conclusion, I support *FoNTRA*'s recommendation that the City continue to review opportunities for expanded public engagement at the TLAB with a view to ensuring that the public has access to fair, open, reliable, and accessible appeals. However, *FoNTRA* might well reconsider its recommendation to Council to reduce the cost of the Tribunal's operations given that the current complement of 10 '**part-time**' Members is working well and contributing effectively to the efficient operation of the TLAB.

Again, let me take this opportunity to thank you and *FoNTRA* for your letter and for your Association's participation in the on-going effort to ensure that the City and its people strive for improvements.

X 

Dino Lombardi
Chair, Toronto Local Appeal Body

Cc. TLAB Members

Susan Garossino, Director, Court Services

Gary Clarke, Acting Manager of Tribunal Operations

Shaheynoor Talukder, Vice-Chair, TLAB



The Annex Residents' Association

April 9, 2021

Dino Lombardi
Toronto Local Appeal Body
40 Orchard View Blvd, Suite 253
Toronto, ON M4R 1B9

Dear Mr. Lombardi:

RE: TLAB Letter to FoNTRA dated February 25, 2021

The Annex Residents' Association is a member of the Federation of North Toronto Residents' Associations. We are in receipt of your response to FoNTRA's letter dated July 23, 2020. While we are pleased to see some mutually agreed upon objectives, such as making the best planning decisions for the City and its residents, the response was not constructive.

Having been involved with my Residents' Association for many years, I can attest that most residents feel overwhelmed just going to the Committee of Adjustments. Appealing a decision is even more daunting. It is from that perspective that FoNTRA wrote to you and with the aim of making suggestions to make the process more accessible and **equitable**.

Your website says, decisions made "in a fair, consistent, fact-based and informed manner" and continues to state that the TLAB is a quasi-judicial tribunal which conducts itself in accordance with its Rules and as you state, "...based largely on the Statutory Powers and Procedure Act (1990)". It was created in 2017 to hear appeals of Committee of Adjustment decisions for minor variances and consents.

As this was created to ensure a more robust and thoughtful local decision-making process, it is logical that you continue to revise your procedures and rules and that you support looking at ways to expand the public engagement at the TLAB. In that regard, the TLAB can always:

- Improve its protocol and procedures (i.e. defining/categorizing "minor variances").
- Communicate these, as well as, the decision-making process and decisions in plain language and framed within the context of other projects in the pipeline.
- Continue to review rules and procedures in a transparent manner that welcomes and ensures public engagement.

We understand and fully appreciate that the TLAB makes decisions independently of the C of A. And so it should. Without getting into statistics at this time, there is a perception that the C of A is overwhelmed and decisions are sometimes hastily approved. The C of A approval rate is very high.

Most residents have no planning or legal training, so a C of A hearing is unnerving and intimidating. Knowing the approval rates are generally high, this is off-putting and often discourages residents from getting involved in the first place. Then, if a resident wishes to appeal a decision, they are often up against paid and experienced professionals. They are generally told, if they "have a chance" at winning, the cost to appeal (with their own paid professionals) is in the tens of thousands of dollars.

As the TLAB is a product of the C of A, we will be advocating for more scrutiny at the C of A level. We appreciate the TLAB's critical analysis in support of better planning decisions, but believe the C of A process needs a deeper analysis.

We continue to support a process for making the best planning decisions for our City and its residents and also support FoNTRA's good intentions of making the TLAB more accessible and encouraging public engagement.

Yours sincerely,

A handwritten signature in blue ink, appearing to read "Rita Bilerman". The signature is fluid and cursive, with a long horizontal stroke at the end.

Rita Bilerman
Chair, Annex Residents' Association
PO Box 19057, RPO Walmer
Toronto, ON M5S 3C9

Copy to: Mayor John Tory
Councillor Mike Layton
Michael Mizzi
FoNTRA