

REVIEW REQUEST ORDER

Review Issue Date: Monday, January 10, 2022

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): CAROLYN PASCOE

Applicant/Owners: GINO DI GESO, SILVANA COLAVECCHIA

Property Address/Description: 347 CORTLEIGH BLVD.

Committee of Adjustment Case File: 19 121451 NNY 08 MV (A0162/19NY)

TLAB Case File Number: 19 161087 S45 08 TLAB

Decision Order Date: Tuesday, February 18, 2020; Re-issued June 22, 2020

DECISION DELIVERED BY S. Talukder

INTRODUCTION

1. This is a Request for Review (Review Request) by Gino de Geso and Silvana Colaveccia (Owners/Review Requestor/Applicant) of a decision by Member Yao. The decision was issued on February 18, 2020 (Decision)¹ in respect of 347 Cortleigh Boulevard (subject property).
2. The Decision allowed the appeal by a neighbour, resulting in the approval by the Committee of Adjustment of twelve (12) variances to permit the construction of a new, three (3) storey dwelling on the subject property.
3. The Review Request is to be considered under Rule 31 of the TLAB as it existed after May 6, 2019 but before December 2, 2020, when a revised version of the Rules of Practice and Procedure (Rules) came into effect.
4. Administrative screening of the Review Request was completed on March 26, 2020. Two interim review request decisions and one Review Request Order were issued as part of Adjudicative Screening under Rule 31.15.

¹ The same decision was re-issued on June 22, 2020.

5. The Review Request Order directed that an oral Hearing for the Review Request be scheduled, which was held on May 5, 2021. This decision, issued following the oral Hearing, is the final decision for the Review Request.
6. For reasons below, I am dismissing the Review Request of the Requestor.

BACKGROUND

7. The Owners filed the Review Request on March 19, 2020. After TLAB's Administrative Screening, the Review Request was the subject of an Adjudicative Screening pursuant to Rule 31.15. As noted, as a result of this screening, two interim decisions were issued.
8. The first interim decision, "Review Request Interim Order" of then Chair Lord, dated May 14, 2020 (First Interim Decision), directed TLAB staff to issue a Notice of Proposed Dismissal and directed the Review Requestor to address specific issues listed in the First Interim Decision.
9. The Review Requestor provided a "Response to Interim Order and Notice of Proposed Dismissal" dated June 29, 2020 to respond to the First Interim Decision.
10. Former Chair Lord issued a second interim decision, "Further Interim Review Request Order", dated July 28, 2020 (Second Interim Decision), which provided the following orders:

"1. The Request to Review the Decision in respect of variances 4 and 11 set out in the Decision (Decision, p.2, Table 1, 'number of storeys', i.e., permission for third floor habitable space) is dismissed. The TLAB Staff are directed to issue a *Notice of Dismissal* on this aspect.

2. TLAB Staff are directed to issue a *Notice of Review* under *Rule 31.18* on terms limited to whether or not the residual 10 variances identified in the Decision as variances 1, 2, 3, 5, 6, 7, 8, 9, 10 and 12 (Decision, p.2, Table 1) should be subject to review and their disposition. The Requestor is at liberty to reformulate the Review Request and Response consistent with and as felt appropriate to address the terms hereof. Whether or not a revised Review Request is formulated, no Party has an obligation to consider or address any matter related to the dismissal in paragraph 1 hereof. The *Notice of Review* will afford the other Parties/Participants an opportunity to comment on the restricted Review Request.

3. The timeline for responses and replies to the *Notice of Review* are set out in the *Rules of the TLAB, Rules 31.20 – 31.23*. Despite the issuance date of this Decision and Order and *Rule 31.31:20-31-23*, the period for response to a *Notice of Review* shall not begin to run until such time as any suspension period (currently scheduled to expire August 14, 2020) of

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TLAB's public business is lifted. Once lifted, the timelines set out in the *Rules* are to be strictly observed.

4. The TLAB Staff are directed to attach or include in the *Notice of Dismissal* and the *Notice of Review*, above, the Interim Order and this Further Interim Review Request Order as a schedule.²

11. Former Chair Lord issued a "Review Request Order" dated November 17, 2020 (Review Request Order), wherein he ordered:

"I direct for the residual 10 variances identified in the Decision as variances 1, 2, 3, 5, 6, 7, 8, 9, 10 and 12 (Decision, p.2, Table 1), an oral Hearing before a different TLAB Member and where one or more of the grounds in Rule 31.25 is established, the Member may confirm, vary, suspend, or cancel the Decision, or order a new de novo Hearing."³

12. Based on the foregoing order, a Hearing for the Review Request was scheduled. For reference, the variances referred to in the above directions are in Table 1, page 2 of Member Yao's Decision and are reproduced in Schedule A of this decision.

13. The Parties had requested a Settlement Hearing, which was denied.

14. The Hearing for the Review Request was scheduled for March 23, 2021. At the Hearing, the Parties informed me that they were in the process of negotiating a settlement. I reminded the Parties of my direction by email dated March 2, 2021, which stated:

"The TLAB appreciates the efforts by the Parties to reach a settlement. Please be advised that the disposition of this matter is complete once the Final Review Request Decision is issued and where one or more of the grounds in Rule 31.25 have established the Final Decision and Order of Member Yao dated February 18, 2020 is either confirmed, varied, suspended or cancelled. Therefore, at this time a Settlement Hearing of the Application and the 10 remaining variances is premature. However, as the Final Decision of February 18, 2020 is the subject of a Review Request, the Review Requestor (the Applicant) must prove and establish the grounds for review set out in Rule 31.25 for the ten variances identified in the Review Request Order dated November 17, 2020 (variances labelled as 1, 2, 3, 5, 6, 7, 8, 9, 10 and 12) issued by then Chair, Ian Lord. Consequently, the panel Member presiding over the Review Hearing may proceed with a Settlement Hearing only if the panel Member is satisfied that the grounds of review for one or more of these ten variances are established pursuant to the TLAB's Rules of Practice and Procedure, and only if the Member is satisfied that a Settlement Hearing is an appropriate procedural mechanism for the disposition of the matter by the Tribunal.

² Second Interim Decision, pages 37 – 38.

³ Review Request Order, page 17.

The TLAB will schedule two review hearing dates as soon as possible to address the Review Request.”

15. At the Hearing on March 23, 2021, I issued the following oral order:

“The parties seek an adjournment to continue further settlement negotiations. The adjournment is granted. I will not provide a written interim decision/order with respect to this adjournment. The March 23 and 24th dates are adjourned and one peremptory hearing date is scheduled for May 5th.

A new Notice of Review Hearing will not be issued.”

16. The Hearing for the Review Request was held on May 5, 2021. The Review Requestor was represented by counsel Cynthia B. Kuehl, Lucy Sun and Ian Andres. The Party, Darren Sukonick, also attended the Hearing.

CONSIDERATIONS AND COMMENTARY

Applicable TLAB Rules

17. The applicable TLAB Rule for the Review Request is Rule 31, which can be found in Schedule B of this decision.

Purpose of the Hearing

18. I want to address the purpose of the Hearing, which is to determine whether the Review Requestor has established the grounds for review (Rule 31.25) for the 10 variances labelled as 1, 2, 3, 5, 6, 7, 8, 9, 10 and 12 in the Decision.

19. The nature and content of the Hearing were guided by the Review Request Order. The Review Request Order summarized the reasons for the order as follows:

“1. The 10 variances subject to the Notice of Review stem from a Decision that, individually or cumulatively, failed to address their merits and demerits to any significant degree.

2. The principle finding of the Decision, sustained in the *Notice of Dismissal*, related to the two variances related to the third storey addition. No substantive connection in the Decision was drawn between those two for third storey habitable space and the remaining 10 variances. Consequently, this is not a case where it is self-evident that the failure of partial relief, a third storey, necessarily included the failure of additional relief not necessarily connected thereto.

3. In my view, whether or not there is an error of law to not address the 10 variances requested that was committed, I find it properly arguable that

there was a denial of natural justice by the Member, under *Rule 31.25 b*), in not addressing either the relationship between all the variances or to provide any analysis of the 10 variances on their individual and cumulative merit, on applicable tests. As such, the Applicant would never know the reasons behind the refusal of the 10 variances yet the finding in the Decision could stand as a substantive barrier, as *res judicata*, in a future application for relief.

4. Consequently, I am of the view, pursuant to *Rule 31.15 a*), that the Applicant has demonstrated a sufficient basis in natural justice, if not as well in procedural fairness, both for a further determination that those 10 variances should be properly addressed, and also a sufficient basis upon which the TLAB could allow all or part of the requested relief. I accept the Applicant's submission, recited at p. 8 of the FIRD, that the Request for a 'proper review under *Rule 31.19-25*', is made out as a compelling case.

5. Adjudicative Screening does not permit that I attempt to address a substantive remedy, beyond allowing a dismissal of a Review Request. I find that a dismissal of the 10 unaddressed variances is not justified and that there is no need for further written submissions under *Rule 31.24*. That leaves my jurisdiction to be an Order under *Rule 31.24 c*).⁴

Documents reviewed for the Hearing

20. The following are the documents I reviewed:

- a. Decision and Order by Member Yao dated February 18, 2020, re-issued June 22, 2020 (Decision).
- b. Request for Review filed by the Applicants, dated March 19, 2020, including transcripts (Review Request).
- c. Review Request Interim Order issued by then Chair Lord, dated May 14, 2020 (First Interim Order).
- d. Response to Interim Order and Notice of Proposed Dismissal dated June 29, 2020 (Response to Interim Order).
- e. Further interim review request order issued July 28, 2020 (Second Interim Order).
- f. Review Request Order dated November 17, 2020 (Review Request Order).
- g. Brief of Authorities of The Applicant⁵.

Grounds for Review asserted and relief sought

21. The Review Requestor put forward the following grounds for review:

⁴ Review Request Order, pages 15 -16.

⁵ This document was reviewed after the hearing and before writing this decision.

- a) the TLAB acted outside of its jurisdiction (Rule 31.25(a));
- b) the TLAB violated the rules of natural justice and procedural fairness; and (Rule 31.25(b)); and,
- c) the Decision contains several significant errors of law and fact such that the TLAB would likely have reached a different decision had such errors not been made (Rule 31.25(c)).⁶

22. At the Hearing, submissions were made on the grounds, above cited, for review.

23. As noted in the Review Request Order, I can confirm, vary, suspend, or cancel the Decision, or order a new de novo Hearing. My power to provide such relief is set out in Rule 31.24(c).

Submission from Party Sukonick denied at the Hearing

24. Mr. Sukonick had attended the Hearing but was not permitted to provide any formal submissions as he had not filed any response to the Review Request. He submitted that he should be allowed to speak at the hearing. He said that he was a self-represented litigant and was not fully able to prepare a Response to the Review Request. I did not agree with Mr. Sukonick and as such, did not permit him to provide formal submissions.

25. Being a self-represented litigant cannot be used as an excuse to avoid following the requirements set out in the Rules. The Rules are for the benefit of all parties who appear before the TLAB, including self-represented parties and parties represented by legal counsel. Parties are expected to follow the Rules to avoid creating any prejudice toward other parties and to ensure fairness.

26. The Second Interim Decision had addressed Mr. Sukonick's failure to provide formal submissions and states as follows:

“In the interim as well, a Party to the appeal, Mr. Sukonick, wrote to the TLAB advising of a continuing interest in the Review Request - but made no formal submissions reserving any contribution pending the matter proceeding further.⁷”

27. The Review Request Order also addresses Mr. Sukonick's lack of response, as follows:

“Mr. Sukonick had expressed the interest in a further submission; however, promises are only valuable if they are fulfilled within the timeframe, twice extended.⁸”

⁶ Review Request, para. 5.

⁷ Second Interim Decision, page 2.

⁸ Review Request Order, page 15.

28. The TLAB Rules require Mr. Sukonick to provide a formal Response to the Review Request should he have any objection to the Review Request. It is procedurally unfair to the Review Requestor to permit Mr. Sukonick to make formal submissions at the Hearing, which is the final stage of the Review Request, when he has not provided any written Response beforehand. The Review Requestor would not have had the opportunity to review and prepare for a formal response in relation to Mr. Sukonick's submissions.

Submissions not considered

29. I appreciate the level of professionalism shown by counsel for the Review Requestor. At the Hearing, counsel discussed variances 4 and 11 (number of storeys) in an effort to provide fulsome submissions on their position with respect to what should be considered.

30. Though counsel for the Review Requestor was permitted to speak about variances 4 and 11, I will not accept these submissions for the following obvious reasons:

- a. The Second Interim Decision is clear that the Request for Review with respect to variances 4 and 11 are dismissed and the Review Request Order is clear that the Hearing is restricted to the remaining 10 variances.
- b. Pursuant to Rule 31.24, the panel Member reviewing a Review Request can dismiss the Review Request and this decision may not be further reviewed by the TLAB, as per Rule 31.26.

31. As such, I did not consider the Review Requestor's submissions and case law references related to the following topics:

- a. Error of law with respect to zoning by-law, such as whether general intent or specific intent should be considered with respect to variance for two storeys or whether the intent of the zoning by-law can be determined by the approved number of variance applications in the neighbourhood.
- b. Error of law in misinterpretation of the Official Plan (OP) with respect to the number of storeys.
- c. If the relief of a *de novo* Hearing is granted, this *de novo* Hearing should be for all the variances including variances 4 and 11.

32. With respect to the submission regarding that a *de novo* hearing should be for all of the variances and not for the 10 variances, the Review Requestor relies on the decisions of *Saskatchewan (Employment Standards) v. North Park Enterprises*

*Inc. (North Park Enterprises)*⁹ and *Balyokwabwe v. Canada (Citizenship and Immigration)*¹⁰. Both of these decisions support the principle that:

“a finding of a breach of the duty of procedural fairness would often result in the entirety of a decision being quashed and the matter being remitted back to the administrative body for a rehearing. When there has been a breach of procedural fairness, this is normally required because it is frequently impossible to separate the good portions from the bad portions... when an appellate court can clearly isolate the portions of the decision that were affected by the breaches of the duty of procedural fairness from those portions that were not affected, the appellate court can sever the offending portions as long as the remaining portions can stand alone. In such a case, the key analysis concerns the interconnectedness between the severed portions and the remaining portions.¹¹”

33. The Review Requestor submits that the 10 variances are interconnected with the variance for the number of storeys. As such, if the Review Request for the 10 variances is allowed, then the *de novo* Hearing should be for all of the variances (including 4 and 11).
34. Notwithstanding the fact that the TLAB is not an appellate court of its own decisions, there is an issue if this principle is applied. If the 10 variances are integral with the variances for the number of storeys such that the portions of Member Yao’s Decision for these variances cannot be separated from the 2 denied variances, then there is no need to have this review Hearing. This is because the variances taken together would have not satisfied the four statutory tests, which is what has been stated in the conclusion of the Decision¹².

Submissions on the ten variances

35. The Review Requestor’s submission was that the TLAB breached the rules of procedural fairness¹³ by failing to give any reasons for the denial of the 10 variances.
36. The Review Requestor submitted that Member Yao stated the correct tests in page 2 of his Decision:

“The variances must meet all four tests under s. 45(1) of the *Planning Act*: that is, whether they **individually and cumulatively**:

- maintain the general intent and purpose of the Official Plan;

⁹ 2019 SKCA 69

¹⁰ 2020 FC 623

¹¹ *North Park Enterprises*, at para 47.

¹² Decision, page 11.

¹³ Counsel for the Review Requestor made submissions on *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65; *Dunsmuir v. New Brunswick*, 2008 SCC 9.

- 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.¹⁴ (*emphasis added*)

37. The Review Requestor submitted that from the outset, Member Yao was misdirected as to what he was tasked to do as he did not analyze the other 10 variances, regardless of his decision on the variances related to the number of storeys. The Requestor asserts that this fails to consider the variances in a meaningful way that breaches the rules of procedural fairness by failing to give reasons (Rule 31.25(b)). In addition, the Review Requestor claims that this failure to consider the remaining 10 variances has also resulted in the decision-maker acting outside their jurisdiction (Rule 31.25(a)), as he has failed to apply the four statutory tests towards the proposal.

38. The Review Requestor's submission is based on the concept that the whole proposal, with all of the variances, should be reviewed by the decision-maker and that all of these variances are integral to the proposal.

39. I find that the Review Requestor has not succeeded in proving that there was a breach of the rules of procedural fairness in this regard.

40. I accept that the Decision does not delve into an analysis of the remaining 10 variances and that is the reason for this review Hearing. The Decision, however, does describe some of these 10 variances¹⁵ and the Decision refers to and analyzes the key variance, which is the number of storeys.

41. The decision-maker is required to review the proposal cumulatively and also review the variances individually. For example, OP 4.1.5, which is one of the main policies reviewed for properties in a *Neighbourhoods* designated area, requires the decision-maker to assess and compare the physical characteristics of the proposed dwelling with the physical character of the geographic neighbourhood. Similarly, in reviewing a proposal, the decision-maker is required to review each applicable Zoning By-law and determine whether the proposal maintains the general intent and purpose of each of the by-laws. The statutory test referred to by Member Yao in his decision clearly outlines this requirement as there is reference that the variances must **individually and cumulatively** satisfy the four tests.

42. If I consider the Review Requestor's submission in the analysis of the proposal that was before Member Yao, I find that Member Yao followed the same logical analysis as proposed by the Review Requestor. In fact, in the conclusion of his Decision Member Yao states:

¹⁴ Decision, page 3.

¹⁵ Decision, pages 3 and 4.

“I find that the third storey variances fail to maintain the intent and purpose of the Official Plan and zoning by-law. As such they are not minor nor is the package of 12 variances suitable for the appropriate development of the land. **They do not cumulatively respect and reinforce the existing physical character of the neighbourhood.**¹⁶” (emphasis added)

43. Member Yao states that as the third storey variances fail two of the four tests, the whole proposal with its package of 12 variances fails as well. The phrase “respect and reinforce the existing physical character of the neighbourhood” is derived from OP 4.1.5, and by referring to this phrase, Member Yao, ties the proposal again to the relevant OP policy.
44. The variances must satisfy the four tests individually and cumulatively. The onus is on the Applicant to provide evidence that a deviation from this statutory requirement should be considered, such that one or more variances in a proposal can be approved even if the remaining variances are denied. Instead, At the Hearing, the Review Requestor advanced the position advanced was that all of the variances should have been considered regardless of the denial of the two variances related to number of storeys. The Requestor also failed to provide any indication as to whether the remaining 10 variances are sufficiently independent or there is no “substantial connection”¹⁷ between these variances and the denied variances. The position that by not providing analysis and reasons for denying the remaining 10 variances automatically results in breach of rules of procedural fairness is an overly broad assertion that does not adequately address the issue that variances must individually and cumulatively satisfy the four tests.
45. I find that the decision-maker did not act outside his jurisdiction when not providing a full analysis of the remaining 10 variances for the reasons stated above. The decision-maker relied on the statutory rule that the variances must individually and cumulatively satisfy the four tests. I find that the Requestor has failed to establish that the decision-maker could have separately granted the approval of one or more of the remaining 10 variances because they are independent from the two denied variances.
46. I now address the remaining submissions summarily as follows:

Tree and ravine issues

47. The Review Requestor refers to the portion of the Decision that discusses the tree and ravine issues and submits that these issues are unclear and not connected to any variances or how they relate to the four tests. I refer to the Decision, which states:

“When and if a permit is applied for to injure those trees the forestry General Manager will assume that the TLAB has reviewed all the downstream effects of any variance since the TLAB is a specialist in

¹⁶ Decision, page 11.

¹⁷ This term is taken from Chair Lord Review Request Order, pages 15- 16.

planning. These effects include the consideration of Environmental policies in the Official Plan that speak to matters such as the preservation of trees. When no arborist report is available, the TLAB is unable to perform this function.¹⁸

48. At the risk of stating the obvious, the OP environmental policies are an integral part in considering whether the proposal satisfies the general intent and purpose of the OP, and failure to consider these policies, if relevant to an application, is an abdication of jurisdiction by the decision-maker. In this matter, the Decision appropriately addresses the need for evidence (arborist report) in order to properly analyze the environmental policies. The onus is on the Applicant to provide such relevant evidence. I note that the inability to determine an OP policy because of the Applicant's failure to provide relevant evidence simply means that the Applicant failed to satisfy the general intent and purpose of the OP. As such, the Applicant's proposal would have failed based on this determination alone.

DeGasperis v. Toronto (City) Committee of Adjustment (DeGasperis) Decision

49. The Review Requestor submitted that the decision-maker erred in law because he did not analyze all four tests for approval of variances. The Review Requestor made reference to the *DeGasperis* decision, which states:

“It is incumbent on a committee of adjustment, or the Board in the event of an appeal, to consider each of these requirements and, in its reasons, set out whatever may be reasonably necessary to demonstrate that it did so and that, before any application for a variance is granted, it satisfied all of the requirements.¹⁹”

50. The phrase “these requirements” refer to the four statutory tests set out in section 45(1) of the *Planning Act*. The above statement is a confirmation that in order to **approve** an application for variance(s), the decision-maker must be satisfied that all four requirements are met. This statement does not mean that the decision-maker must continue analyzing the remaining tests when the application for variance **failed** with respect to one of the four tests. The denial of a variance requires the failure of only one of the statutory tests.
51. For the matter before me, the decision that variances 4 and 11 failed two statutory tests is not reviewable. Therefore, it is not necessary to determine whether these variances failed the remaining two tests.
52. For the remaining 10 variances, I refer to my findings in this decision. The Review Requestor has not successfully addressed the issue of the variances having to cumulatively satisfy the four tests. Therefore, reviewing each variance against the four tests would not serve any purpose other than making the decision verbose.

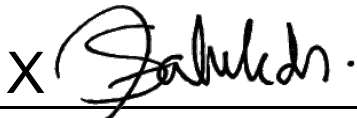
¹⁸ Decision, page 9.

¹⁹ 2005 CarswellOnt 2913, at para 11.

53. In conclusion, I find that the Review Requestor has not succeeded in providing a satisfactory basis as to why the Decision should be cancelled and a new de novo Hearing be scheduled for the 10 variances, as discussed above.

DECISION AND ORDER

54. The Review Request with respect to variances 1, 2, 3, 5, 6, 7, 8, 9, 10 and 12 is denied. The Decision of Member Yao dated February 18, 2020, and re-issued June 22, 2020, is upheld.

A handwritten signature in black ink, appearing to read "S. Talukder", is written over a horizontal line. To the left of the signature is a large "X" mark.

Shaheynoor Talukder

Chair, Toronto Local Appeal Body

Schedule A

Variations Requested for Approval in the Decision

Table 1. Variations sought for 347 Cortleigh			
		Required	Proposed
Variations from Zoning By-law 569-2013			
1	Lot coverage	35%	39%
2	Building height	10 m	10.525 m
3	Height side main walls	7.5 m	7.91 m
4	Number of storeys	2 stories	3 stories
5	Building length	17 m	22.71 metres.
6	Building depth	19 m	22 metres.
7	Front yard setback	10.59 m.	9.86 metres.
8	Side yard setback	1.8 m	West side, building and front porch: 1.23 metres; East side, building and front porch: 1.22 metres
9	Front platform landing	10.59 m.	Encroaches 3.75 m into the front yard setback;
Variations from Zoning By-law 7625¹			
10	Building height	8.8 m	11.76 m
11	Number of storeys	2 stories	3 stories
12	Finished first floor height	1.5 m	3.37 m

Schedule B
Applicable TLAB Rules for Review Request

31. REVIEW OF FINAL DECISION OR FINAL ORDER

A Party may Request a Review

31.1 A Party may request of the Chair a Review of a Final Decision or final order of the TLAB.

Chair May Designate Any Member

31.2 The Chair may in writing designate any Member to conduct any or all of the Review process and make a decision in accordance with the Rules.

Review Request does not Operate as a Stay

31.3 A Review shall not operate as a stay, unless the Chair orders otherwise. A Party requesting that a Final Decision or final order be stayed shall do so at the same time the request for Review is made.

No Motions Except with Leave

31.4 No Motion may be brought with respect to a Review or request for Review except with leave of the TLAB

Deadline for, and Service of, Review Request

31.5 A Review request shall be Served on all Parties and Filed with the TLAB within 30 Days of the Final Decision or final order, unless the Chair directs otherwise.

Contents of a Review Request

31.6 A Party's Review request shall be in writing and be accompanied by an Affidavit which contains a concise summary of the facts and reasons for the requested Review, with specific reference to any relevant evidence. The Review request shall also contain:

- a) a copy of the Final Decision or final order at issue;
- b) a statement that explains the relevant grounds listed in Rule 31.25 that apply to the requested Review;

- c) a concise written argument containing numbered paragraphs that includes applicable law and authorities;
- d) copies of the referenced case law and authorities; and
- e) a statement as to the requested remedy.

Transcripts

31.7 If any Party wishes to refer to any oral evidence presented at the Hearing that Party shall, if that oral evidence is contested and a recording thereof is available, have the relevant portion of the proceeding transcribed and certified by a qualified court reporter, Serve it on all other Parties, and File same with the TLAB forthwith and at that Party's sole expense.

Fee for Filing Review

31.8 A Party shall at the same time as Filing a Review request pay to the TLAB the required fee.

Early Response Accepted

31.9 Notwithstanding the timeline provided in Rule 31.20, a Responding Party may choose to respond immediately, once Served with a Review request.

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.

Notice of Administrative Screening

31.11 The TLAB shall give a Party who has submitted a Review request that appears deficient a Notice of Non-compliance which includes:

- a) the reasons the TLAB will not process the submitted Review request; and
- b) the requirements for resuming processing of the Review request, if applicable.

31.12 Except in the case of Rule 31.10(b), where requirements for resuming processing of a Review request apply, processing shall resume if the Party complies within 5 Days with the requirements set out in the Notice of Non-compliance.

31.13 After the expiry of the time period provided in Rule 31.12, the TLAB shall refer the matter for adjudicative screening under Rule 31.15.

Notice of Review Request Deemed Filed on Original Date

31.14 If a documentary or technical defect set out in a Notice of Non-compliance is corrected in accordance with the Rules the Review request is deemed to have been properly Filed on the Day it was first submitted, rather than on the Day the defect was cured.

Adjudicative Screening by Chair

31.15 The Chair may, on notice to all Parties, propose to dismiss all or part of a Review request without holding a Hearing on the grounds that:

- a) the reasons set out in the Review request do not disclose any grounds upon which the TLAB could allow all or part of the requested relief;
- b) the Review request is frivolous, vexatious or not commenced in good faith;
- c) the Review request is made only for the purpose of delay;
- d) the Requesting Party has persistently and without reasonable grounds commenced Proceedings that constitute an abuse of process;
- e) the Requesting Party has not provided written reasons and grounds for the Review request;
- f) the Requesting Party has not paid the required fee;
- g) the Requesting Party has not complied with the requirements provided pursuant to Rule 31.11(b) within the time period specified in Rule 31.12;
- h) the Review request relates to matters or grounds which are outside the jurisdiction of the TLAB; or

i) the submitted Review request could not be processed and the matter was referred, pursuant to Rule 31.13, for adjudicative screening.

Requesting Party may Make Submissions in Screening Process

31.16 A Requesting Party, and any other Party wishing to make written submissions on the Notice of Proposed Dismissal of a Review request, shall File those submissions with the TLAB and Serve all Parties within 10 Days of receiving a Notice of Proposed Dismissal under Rule 31.15.

31.17 Upon receiving written submissions, or, if no written submissions are received pursuant to Rule 31.16, the Chair may dismiss the Review request or make any other order.

31.18 Where the Chair dismisses all or part of a Review request, or is advised that the Review request is withdrawn, any fee paid shall not be refunded.

TLAB shall give Notice of Review

31.19 Where a Review request has not been dismissed under Rule 31.17, the TLAB shall give a Notice of Review to all Parties.

Response to Review

31.20 If a Party needs to respond to the Review the Responding Party shall Serve a Notice of Response to Review on all Parties and File same with the TLAB no later than 20 Days from the Date the Notice of Review is issued, unless the TLAB directs otherwise.

Contents of a Notice of Response to Review

31.21 A Responding Party's Notice of Response to Review shall be in writing and be accompanied by an Affidavit which contains a concise summary of the facts and reasons relied upon in opposition to the Review, with specific reference to any relevant evidence. The Notice of Response to Review shall also contain:

a) a statement that explains how the relevant grounds listed in Rule 31.25 do not apply;

b) a concise written argument containing numbered paragraphs that includes applicable law and authorities;

c) copies of the referenced case law and authorities; and

- d) a statement as to the requested remedy.

Reply to Notice of Response to Review

31.22 If the Requesting Party needs to reply to any new issues, facts or Documents raised in a Notice of Response to Review that Party shall Serve on all Parties a Reply to Notice of Response to Review and File same with the TLAB no later than 25 Days from the Date the Notice of Review is issued, unless the TLAB directs otherwise.

Contents of a Reply to Response to Review

31.23 A Requesting Party's Reply to Notice of Response to Review shall be in writing and be accompanied by an affidavit and shall:

- a) only address new issues, facts and Documents raised in the Responding Party's Notice of Response to Review; and

- b) list and attach the Documents used in the Reply to Notice of Response to Review relating to those matters addressed in the Notice of Response to Review, and include any case law and authorities in support of the Reply.

Chair may seek Further Submissions, Dismiss, or Direct an Oral Hearing

31.24 Following the timeline for the Service and Filing of any Notice of Response to Review and any Reply to Notice of Response to Review the Chair may do any of the following:

- a) seek further written submissions from the Parties;

- b) dismiss the Review, with reasons; or

- c) direct an oral Hearing before a different TLAB Member and where one or more of the grounds in Rule 31.25 is established, the Member may confirm, vary, suspend or cancel the Final Decision or final order.

Grounds for Review

31.25 In considering whether to grant any remedy or make any other order the TLAB shall consider whether the reasons and evidence provided by the Requesting Party are compelling and demonstrate the TLAB:

- a) acted outside of its jurisdiction;

- b) violated the rules of natural justice or procedural fairness;

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c) made an error of law or fact which would likely have resulted in a different Final Decision or final order;

d) was deprived of new evidence which was not available at the time of the Hearing but which would likely have resulted in a different Final Decision or final order; or

e) heard false or misleading evidence from a Person, which was only discovered after the Hearing, but which likely resulted in the Final Decision or final order which is the subject of the Review.

No Further Review Permitted

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