

Toronto Local Appeal Body

Public Guide

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Preface

This Guide applies to the following sections of the Planning Act:

Appeals filed under:

- **Section 45** – Appeals of a Committee of Adjustment decision to approve or refuse a minor variance application or conditions imposed
- **Section 53** – Appeals of a decision to approve or refuse a consent/severance application, conditions imposed or changed for a consent/severance application or a non-decision of a consent/severance application by an approval authority

About the Toronto Local Appeal Body (TLAB)

This Public Guide has been produced to help you better understand how the TLAB works. The Public Guide provides information about the TLAB and its processes. If you are planning to appeal a decision from the Committee of Adjustment, or are looking for a general overview of the TLAB, this guide is a good place to start, giving you an overview of the process and how to interact with it.

While this guide is a valuable resource, it is not substitute for legal or professional advice. It does not replace the TLAB's Rules of Practice and Procedure, Forms, Practice Directions or Procedural By-law(s). It is, therefore, intended to be a supplementary resource that will help to familiarize you with both the TLAB and its processes, in the hopes that you will be better prepared on the day of your hearing to interact with the TLAB Panel Member.

What is the TLAB?

The Toronto Local Appeal Body (TLAB) is an independent, quasi-judicial tribunal established through the City of Toronto Municipal Code Chapter 142, City of Toronto Act, and other provincial legislation. The TLAB plays an important role in the City of Toronto's land-use planning process providing an independent public forum for the adjudication of land-use disputes related to applications under Sections 45 and 53 of the Planning Act. The matter that was before the Committee of Adjustment is heard "de novo", or as a new case and the proceedings before the TLAB are more formal than at the Committee of Adjustment.

What is the history of the TLAB?

In 2014, City of Toronto staff undertook a public consultation process to identify the opportunities, issues, and challenges associated with creating a Local Appeal Body. A set of Guiding Principles for TLAB implementation was created based on that consultation process. In February 2016, City staff submitted a report to City Council on the implementation of TLAB. City Council approved this report on March 31st, 2016 and directed the City Solicitor to bring forward the implementation by-law.

The TLAB has assumed matters under appeal for Section 45 and Section 53 under the Planning Act from the former Ontario Municipal Board (the OMB). In 2017, the Ontario Municipal Board became the Local Planning Appeal Tribunal, which was then amalgamated into the Ontario Land Tribunal on June 1, 2021. The TLAB By-law was passed by City Council on March 28, 2017 with an effective date of May 3, 2017. Following enactment, the TLAB Members formally adopted the Tribunal's Rules of Practice and Procedure and administrative policies, following a period of earlier consideration in public meetings. The TLAB Rules of Practice and Procedure ("Rules"), related Forms and administrative policies are available on the TLAB website at www.toronto.ca/tlab.

A revised set of Rules are effective May 6, 2019. Appeals commenced with a Notice of Hearing before that date are continued under the previous Rules. The TLAB website referenced above provides the current Rules.

What is a "Member"? How are they appointed to the TLAB?

The TLAB's Chair and Members are nominated by an impartial citizen-member nominating panel and recommendations for appointments are submitted to Toronto City Council. Toronto City Council appoints Members of the TLAB for a four-year term of office. There are fourteen Members of the TLAB, including the Chair and Vice-Chair. The Vice-Chair is a yearly position held by a member of the TLAB (other than the Chair) that is elected by majority vote at the last annual Business Meeting of the year for the following year.

Members are responsible for the adjudication of TLAB matters and are appointed to resolve disputes, hold hearings, and make decisions. For more information about the Toronto Local Appeal Body's Members, including their biographies, please view the Toronto Local Appeal Body website at www.toronto.ca/tlab and the latest Annual Report of the TLAB Chair.

What rules govern the TLAB and its proceedings?

The TLAB's **Rules of Practice and Procedure** provide details about the TLAB's processes and procedures.

I'm not happy about my experience at TLAB, how can I make a complaint?

Complaints about the Administrative Staff or Services

If your complaint is about an administrative staff person, you should first raise your concern directly with that person. Together, you may be able to resolve the problem without the need for a formal complaint.

If you do not wish to speak with the staff person, or if you are not satisfied with that person's response, ask to speak to the individual's supervisor. Again, the goal is to resolve your problem without the need for a formal complaint.

If your complaint relates to an administrative service, or if you have not been able to resolve your staff complaint informally, please visit the **Court Services – Complaints & Compliments** page for the process outline and contact information. In your written complaint ensure to explain the reasons for your complaint (who, what, when, where), the steps you think should be taken to resolve your complaint, and the outcome you are seeking.

Complaints about Toronto Local Appeal Body Panel (TLAB) Members

TLAB Panel Members include the Chair, Vice-Chair and Members.

TLAB will **not** consider a complaint about the merits of a decision or order issued by a TLAB Panel Member or if you are asking that the result be changed. If you feel a decision in your case is wrong and should be changed, you must follow the procedures provided in TLAB's

Rules of Practice and Procedure. See also, for this purpose, the 'Review and Leave to Appeal' section of the TLAB Public Guide, available on line at: **www.toronto.ca/tlab**.

A request for a technical correction in a Final Decision and Order will not be treated as a complaint.

To file a Member complaint with the Chair of the Toronto Local Appeal Body, send your written complaint to the TLAB administration in-person, by mail, or by email:

In Person/By Mail:

Toronto Local Appeal Body
40 Orchard View Boulevard, Suite 253
Toronto, Ontario M4B 1R9

By Email:

tlab@toronto.ca

**** Please provide the case file number, the name of the Panel Member(s), the specific reasons for your complaint (what, when, where) and the steps you think would resolve the complaint.**

Upon receipt of a complaint, TLAB administration will process the complaint and take the following steps:

- Log the complaint and issue it a tracking number
- Acknowledge receipt of the complaint with the Complainant and provide them with the assigned tracking number
- Escalate the complaint to the Chair of the Tribunal or designate for action and response

Please note that if your case is ongoing, you may be advised that action on your complaint will be postponed until the final Decision and Order is issued or the Member's involvement in the case has ended. This is to protect the fairness and impartiality of an ongoing proceeding.

If your complaint is about the length of time it is taking to receive your decision, please refer to TLAB's service standards before making a formal complaint.

You can also file your Member conduct complaint with the office of the **Integrity Commissioner**. The Integrity Commissioner applies the City's Codes of Conduct, the Municipal Conflict of Interest Act and other bylaws, policies and legislation governing ethical behaviour.

Complaints may also be made to the office of the **Ombudsman Toronto**. Ombudsman Toronto listens to and investigates complaints and concerns about unfairness at the City. It is independent and impartial.

Filing an Appeal

For more information on filing an appeal, please see Rules 7 through 9 of the TLAB's **Rules of Practice and Procedure**, as well as the section of the **Planning Act** under which you would like to file your appeal.

How can I file an appeal?

The TLAB's Rules of Practice and Procedure establish the process for filing an appeal.

Please note: The Planning Act generally sets out who can appeal, how to appeal, and the deadlines for filing the different subject types of appeals. The law sets time limits on appeals. These must be respected or rights to appeal can be lost.

Appeals are from decisions of any of the four City Committee of Adjustment panels that operate within geographic areas of the City.

Should you wish to file an appeal, there are several steps you must take.

The first step is to determine if your appeal can be filed with TLAB. The only appeals that the TLAB has carriage over are appeals to Minor Variance and Consent applications, being those that fall under Sections 45 and/or 53 of the Planning Act.

If your appeal satisfies the above condition, you will proceed to the second step, namely downloading and completing a **Form 1 – Notice of Appeal**. You must submit the completed form to the Committee of Adjustment within the legislated timelines, along with your appeal fee. Please refer to the Committee of Adjustment's contact information **web page**.

Please note that although the Toronto Local Appeal Body itself is located at 40 Orchard View Blvd., a **Form 1 – Notice of Appeal** cannot be filed at this location.

What is the deadline for filing an appeal?

Regardless of the appeal you are filing, whether it is a Section 45 or Section 53 appeal, the deadline to do so is **20 calendar days** from the date that the Committee of Adjustment issues their Notice of Decision. Note that the dates for Minor Variance and Consent files can vary, as Consent decisions may be issued later. In a situation where an address has both Consent and Minor Variance applications, the filing deadline for the Minor Variance application will generally elapse earlier than that of the Consent application.

An appeal in respect of one matter applicable to an address **does not** constitute an appeal of all related matters. It is important that consideration be given to the appeal of all related matters to an address with applications of interest.

To determine what your deadline is, please check the section of the **Planning Act** under which you are filing your appeal.

Please note that should the appeal period deadline expire, you will be unable to file an appeal to the TLAB. As the appeal deadline is governed by the law, should the appeal period expire, the opportunity to appeal expires along with it.

What is the filing fee for an appeal or Review Request?

The appeal fee has been set by City Council to be \$300 per person, per appeal. For instance, if the Committee of Adjustment file is composed of one Consent application and two Minor Variance applications, the appeal fee would be \$300 for each of those appeals, totalling \$900.

The appeal fee will be paid at the time of the appeal. For details on how to pay a TLAB appeal fee, please contact the Committee of Adjustment using the information at the following **link**.

The setting of fees is the prerogative of City Council. Fees may change at any time.

How is an appeal processed once the TLAB receives it?

Once the TLAB receives the appeal from Committee of Adjustment, the case is assigned to a Case Coordinator. The Case Coordinator is the first point of contact for anything regarding that case. Prior to scheduling the file for a hearing, the Case Coordinator performs an administrative screening, where the **Form 1 – Notice of Appeal** is vetted. The Case Coordinator checks the Form for any deficiencies, and if he or she finds one, the Case Coordinator will issue a Notice of Non-Compliance. Please consult Rule 8 of TLAB's Rules of Practice and Procedure for more information.

Should you receive a Notice of Non-Compliance, you will have 5 calendar days to amend the Form, and resubmit it to the TLAB for processing. Once the file is vetted and the **Form 1 – Notice of Appeal** is found compliant, the Case Coordinator will complete a Notice of Hearing to schedule the matter within 5 business days of receiving the file. The available hearing date will be approximately 100 calendar days in the future.

The TLAB will then send you a Form 2 – Notice of Hearing, which will indicate the hearing date, submission deadlines, the name of the case coordinator, and general information about the appeals process, referring to the TLAB **Rules of Practice and Procedure**.

It is expected, and is indeed mandatory, that upon receiving this Notice of Hearing, you will browse the **Rules of Practice and Procedure**, or this Public Guide, to answer any pressing questions. As the Forms are legal documents, TLAB administrative staff cannot provide any advice or suggestion on how to complete the Forms, including what information to input. If you have any questions related to process, or the TLAB Procedure, the TLAB administrative staff will be more than willing to assist via email or telephone to the limited extent available.

NOTE: If you are the applicant and plan to make any revisions or modifications to your original application that was filed with the Committee of Adjustment, you must provide this information

by filing a **Form 3 – Applicant’s Disclosure** along with any supporting documents via email to the TLAB no later than 20 calendar days after the Notice of Hearing is issued. The due date for filing the **Form 3 – Applicant’s Disclosure** is listed on the Notice of Hearing. All revisions or modifications remain subject to a determination by the Member as to whether they are admissible. Full, timely disclosure is required.

The TLAB will post information received on its website, including the Forms, for the benefit of the public and all those interested in the appeal Case File. All documents submitted for a particular Case File are also available to the public using the **Application Information Centre website**.

All individuals providing information to the TLAB must recognize that it is their individual responsibility to ensure such documentation, including photographs, are not privileged or confidential or otherwise offensive to laws protecting privacy, libel, and slander.

All Forms referenced in this public guide are available on the TLAB website in fillable PDF format.

Participating in an Appeal

For more information on requesting party or participant status, please see Rules 12 and 13 of the TLAB’s **Rules of Practice and Procedure**, as well as the section of the **Planning Act** the appeal has been filed under.

How can neighbours and other concerned people participate?

Any individual with an interest in the matter may request party or participant status. Either of these two roles will allow an individual to be active in the hearing; however, differences exist between the two roles, as outlined below.

What is a Party?

A Party is a person or organization who is fully involved in the proceedings before the TLAB and who qualifies for the status either by election or other action.

Under the TLAB Rules, Party status can accrue through individual election. While normally the Applicant, the Appellant and the City are considered Parties to an appeal, the Rules require that such individuals or entities, or any other persons of interest, must self-identify the status sought, through specific filings. This individual/entity who so elects must file a **Form 12 – Party Witness Statement** and present their submissions at the hearing. Parties are obligated to both receive and provide Document Disclosure, including providing copies to all other individuals in the process who elect Party status.

As distinct from the Applicants Disclosure of proposed revisions to the original application, the deadline for filing Document Disclosure and the **Form 12 – Party Witness Statement** is not later than 60 days after the Notice of Hearing has been served.

Parties also have the ability to cross-examine and question other Parties and Participants, file Motions, and request-relief of the Rules.

As well, a Party may be liable for costs, in circumstances of unreasonable conduct. For more information on Costs, please see the below section on Recovering Hearing Costs, or alternatively, Rule 28 in the **Rules of Practice and Procedure**. For more information on Motions, please see the below section on Motions, and Rule 17 in the Rules of Practice and Procedure.

How can I elect to be a Party?

To elect Party status, you must file a **Form 4 – Notice of Intention to be a Party or Participant**, ensuring that the "Party" section has been completed. This must be done no more than 30 days after the Notice of Hearing has been served. By way of insurance, the Notice of Hearing identifies the last day to elect Party status for a particular proceeding.

If you are the Appellant in a particular matter, you are a Party by right, and therefore completing the form is unnecessary. However, the full subsequent disclosure obligations under the Rules continue to apply.

NOTE: If you are the applicant of the original application at the Committee of Adjustment and you wish to appear before the TLAB, you must elect Party status through filing Form 4, in the circumstance of not also being the Appellant.

What is a Participant?

A Participant is a person or organization who elects a more limited role in a TLAB appeal. Under the TLAB Rules, Participant status accrues through individual election. The Rules require that such individuals or entities, or any other persons of interest, must self-identify the status sought, through specific filings.

Participants are required to provide a **Form 13 – Participant Witness Statement** at the proceeding and be may be subject to being cross-examined by Parties. This statement must be filed no more than 60 days after the Notice of Hearing has been served, as indicated on the Notice of Hearing. Participants are not able to cross-examine other individuals; however, they may ask clarifying questions of witnesses with approval of the presiding TLAB Member.

Please be advised that due to the more limited nature of the Participant role, Participants are unable to file Motions or institute Review Requests.

How can I request to be a Participant?

To elect Participant status, you must file a **Form 4 – Notice of Intention to be a Party or Participant**, ensuring that the "Participant" section has been completed. This must be done no more than 30 days after the Notice of Hearing has been served. By way of insurance, the Notice of Hearing identifies the last day to elect Participant status for a particular proceeding.

Are hearing events open to the public?

Yes. In general, hearings of the TLAB are open to the public. Any member of the public can appear, sign the sign-in sheet, and sit in on any hearings that are taking place. Additionally, all hearings are recorded, and any individual can request a recording of the hearing through the use of the Digital Audio Request Form. More information regarding the process will be covered later in the Public Guide.

Mediation sessions, by contrast, are confidential and not open to the public. Should a hearing enter into the mediation process, any member of the public currently listening to the hearing may be asked by the Panel Member to exit the room.

Do I need a lawyer to be a Party or Participant?

No, a lawyer is not required for hearing events before the TLAB. However, if you do not hire one, you should be prepared to:

1. Do your own research on the matter and maintain an active engagement and familiarity with the TLAB website including demonstrating familiarity with the Rules and their compliance;
2. Find the documents and information you need for your case;
3. Submit the documents to the TLAB and all Parties electronically via email (or via physical mail accompanied by an Affidavit of service, if there is no email available);
4. Speak on your own behalf at the hearing; and,
5. Present your submission at the hearing.

Legal representation is not required, but a Party may wish to hire counsel, a representative, or an agent depending on the complexity of the case. Lawyers and Representatives question witnesses and make statements and arguments based on the evidence presented.

A Representative, who can be either a lawyer or a paralegal, must have a licence under the Law Society Act to represent a party in a legal proceeding. However, an exemption exists allowing persons who are not in the business of providing legal services to occasionally provide assistance. Should you wish to have a lawyer or other individual represent you at a hearing, you must have them complete a **Form 5 – Authorized Representative**. There is no strict deadline for the submission of this form; it can be sent to the TLAB at any time before a hearing begins, up to and including the day before a hearing.

Once a Representative is appointed, communications are to and from the Representative, as a formal obligation under the Rules.

The duties of an authorized Representative are to file and receive documents electronically on your behalf before the hearing in a timely fashion and act for you during the hearing. He or she will advise you on your rights and responsibilities, as well as draft, complete or revise your documents as required.

Where a Party or Participant appoints a Representative but continues to intend to give evidence at the Hearing, a Party Witness Statement or Participant Witness Statement, as the case may be, remains a mandatory obligation on the individual, including the Representative, if he or she intends to give evidence.

What is an "Expert Witness"?

An Expert Witness is an individual who has scientific, technical, or other specialized knowledge gained through qualifications, including experience and whom the TLAB agrees is an expert. The word 'expert' in this context means that the witness is entitled to, give opinion evidence, and does not have the ordinary English meaning that 'the person has great experience', although in some cases both may be true.

An Expert Witness can support your case by answering technical questions and providing non-partisan opinion evidence. If you choose to retain an expert witness, he or she will have to prepare a **Form 6 – Acknowledgement of Expert's Duty** and a **Form 14 – Expert Witness Statement**. Both of these forms, along with any supplemental information that the Expert wishes to use or rely on, must be served on all other Parties and/or their Representatives within 60 calendar days after the Notice of Hearing is issued. For your reference, this date is listed on the Notice of Hearing.

The TLAB recognizes that 'local knowledge experts' can contribute significantly to the context of an appeal and the character of an area assessment expected and necessary in the decision evaluation process.

A person seeking recognition as a 'local knowledge expert' is required, as are all witnesses, to file within the requisite limitation period, a Witness Statement setting out, among other matters,

the nature of the local knowledge expertise. As with all claimed areas of expertise, all witnesses are subject to having the limits of their professed area of expertise challenged. However, this is more usefully done during the testimony phase rather than the qualification phase. This is the difference between 'admissibility' and 'relevance'.

Can I speak to or correspond with the Member?

All correspondence submitted to the TLAB is considered public and is eligible to be posted on the TLAB website and become a part of the file documentation available for the Member's review, as well as the public.

During the hearing, Parties and Participants may speak to the presiding Member on any matter. However, attempting to contact the Member outside the meeting with uninvited correspondence is improper and not permitted by the TLAB's Rules of Practice and Procedure. Uninvited correspondence includes, but is not limited to, unrelated questions regarding a matter, complaints about the conduct of a Party/Participant or the Member at the hearing, or for purposes of praise/complaint/ridicule of a Member's decision.

Any correspondence that is deemed to be critical or deals with the conduct of a Member directly in the hearing, will be forwarded to the Chair or Vice-Chair for review and action.

The TLAB has prepared a 'complaints' protocol to be made public on the TLAB website. In addition, the City provides the Offices of Ombudsman and Integrity Commissioner as locations for selected types of complaints or charges requiring consideration.

Remedies respecting the merits of a Decision and Order are dealt with elsewhere in this Public Guide under the discussion of Rule 31, 'review requests'.

If you have any issues or concerns, please contact the TLAB directly via email. The Case Coordinator will address your correspondence as appropriate.

How do I get a document in front of the Member?

All documents must be sent to the TLAB by email in PDF format unless specifically requested otherwise. These documents are then posted on the TLAB website for public consumption. The Member has access to these files through both the public website and the City server, and will be able to access these files to familiarize themselves with the matter before hearing it. Any documents that were not submitted to the TLAB through the proper channels may be attempted to be brought to the hearing; however, there is a chance that documents provided in this way may not be accepted, or may in fact be challenged by other Parties involved in the hearing.

Submissions to the TLAB are to be in an 'all-electronic' format. Paper documentation is not acceptable. The TLAB administrative staff may be able to assist in a conversion of paper documentation where admitted and on the instruction of the Member.

There are submission deadlines that are outlined on the Notice of Hearing, which explicitly set out the length of time you have to submit your documents. Documents submitted after the deadline are stamped 'late' and prejudice caused by a late filing can be brought to the attention of the presiding Member.. Should a Party want to challenge any late submission, that may occur by filing a Motion or where not available, by rising, to be heard at the beginning of the hearing. Either circumstance will put the Member in the position of deciding whether or not a given piece of evidence can be made or remain as part of the case. For more information on Motions, please see the below section entitled "Motions".

It is for these reasons that the TLAB strongly recommends adhering to the submission deadlines as outlined on the Notice of Hearing; it is the only way to ensure that the evidence you intend to rely on remains available to you at all times.

Mediation

For more information on mediation, please see Rule 20 of the TLAB's Rules of Practice and Procedure.

What is mediation?

The TLAB actively encourages alternative dispute resolution; it provides the opportunity for Member led discussions in an informal setting to identify and resolve differences.

During mediation, the Member(s) help parties reach a voluntary and mutually acceptable solution on some or all of the issues in dispute. This process is conducted on a confidential basis. A settlement may be reached that can then be presented to the TLAB at a settlement hearing.

Please note that the TLAB conducted mediation is **separate** from mediation undertaken by the municipality/initial approval authority and/or between parties.

When is mediation available?

Once a Notice of Hearing is received, you may consider mediation as a means of addressing possible settlement of the dispute. Unless the TLAB directs otherwise, mediation cannot occur any later than 15 days before the hearing date. Unlike a hearing, a mediation is voluntary and includes only the parties to a matter (or those directed by the TLAB to attend). Parties should first contact each other and agree to mediation before requesting it from the TLAB. However, the TLAB Rules provide that TLAB may order non-binding mediation in circumstances it deems appropriate. If the TLAB appoints or agrees to mediation, a TLAB Member will mediate with the parties in an effort to reach an agreement on some or all of the issues in dispute.

If the dispute is resolved, the TLAB may schedule a settlement hearing on an earlier available date. If an agreement is not reached at mediation, a hearing will occur as outlined in the Notice of Hearing.

How do I request mediation?

To request mediation, you must submit your request via email to the TLAB. This request will be forwarded to the presiding Member, who will determine whether a mediation of the matter shall proceed.

If a date for mediation is set, the TLAB will send notice to all involved Parties. If the TLAB decides not to mediate the matter or the mediation is unsuccessful, a factual report memorandum or Decision will be issued, and the hearing will proceed on the scheduled hearing date in front of a different Member.

Is mediation open to the public?

No, mediation is not open to the public. All documents and anything said in mediation is also confidential, and shall not be disclosed or entered into evidence in any subsequent proceeding without the express permission of the Parties. Any notes the Member has made are likewise confidential, and the mediation is not recorded.

How can I prepare for mediation?

To prepare for mediation, you should review the TLAB's **Rules of Practice and Procedure**, as well as the section of the **Planning Act** under which the appeal has been filed. You may also wish to review the Provincial Policy Statement and related provincial plans and municipal documents, such as by-laws or official plans. The Member may request and specify the exchange of 'Mediation Briefs', setting out the intended objectives/interests of the parties.

What can I expect during the mediation?

During mediation, all Parties are to try to reach a settlement in order to avoid or shorten a hearing. At the beginning of the mediation, the Member will accept submissions and advise parties on how the mediation will proceed and set out the ground rules. The Member guiding the mediation helps make the discussion of the issues easier and may offer new solutions.

What if an agreement is reached at mediation?

If the dispute is resolved, the TLAB can have the scheduled hearing date converted to a settlement hearing usually after perfected Minutes of Settlement have been signed and forwarded to the TLAB.

What if an agreement is not reached at mediation?

If mediation does not resolve the issues, the TLAB will proceed with the scheduled hearing. If this occurs, the TLAB Rules provide that a new Member or the same Member on consent of the Parties, may preside.

Nothing relating to the mediation, except those matters that have been agreed to, can be revealed to the new Member presiding at the hearing.

In the event that the TLAB led Mediation results in a settlement of some or all the issues of the dispute, the Presiding Member will draft and issue a Mediation Summary which will outline the issues resolved.

Do I need a lawyer/representative for mediation?

No, a lawyer is not required for hearing events before the TLAB. However, if you do not hire one, you should be prepared to:

1. Do your own research on the matter;
2. Find the documents and information you need for your case;
3. Submit the documents to the TLAB and all Parties electronically via email (or via physical mail accompanied by an Affidavit of service, if there is no email available);
4. Speak on your own behalf at the hearing; and,
5. Present your submissions at the hearing.

Can I speak to or correspond with the Mediator?

During the mediation, you may speak to the presiding Member on any matter. If you have any issues or concerns after the mediation has ended, you may contact the Case Coordinator. The Case Coordinator may forward your correspondence to the Member as appropriate.

What if I have accessibility requirements for a mediation?

If you have any accessibility requirements, please contact the Accessibility Coordinator as soon as possible by email at tribunalaccess@toronto.ca, or by phone at 416-392-4697. This will be routed to the TLAB, and we will do our utmost to be able to accommodate your accessibility needs.

Hearings

For more information on hearings, please see the TLAB's **Rules of Practice and Procedure**, as well as the section of the **Planning Act** the appeal has been filed under.

Who can take part in a hearing?

For information on participating in a hearing, please see the "Participating in an Appeal" section of this guide.

Where do hearings take place?

Hearings are either held remotely via Webex or in-person at the Toronto Local Appeal Body headquarters, at 40 Orchard View Boulevard. For in-person hearings, should the number of people to be present exceed the capacity that the Hearing Rooms can hold, the hearing may be scheduled at an offsite location, usually one of the Civic Centres in the City of Toronto. This includes East York Civic Centre, North York Civic Centre, York Civic Centre, and Scarborough Civic Centre.

Are hearings open to the public?

Yes, hearings are open to the public, and anyone can attend and watch a hearing. All that is required is that they sign the sign-in sheet for record keeping purposes. For remote hearings, the party/participant list on Webex is the attendance log for the hearing. The hearings are also recorded and available for public listening. To request a recording, you must complete a Digital Audio Request Form, found on our website, and submit it to the TLAB via email. There is currently no fee associated with obtaining a recording.

How do I get notified of a hearing?

The TLAB distributes the Form 2 – Notice of Hearing when the hearing is scheduled. This document is sent to all individuals who indicated that they had an interest in the given matter when it was at the Committee of Adjustment. This is sent to the individuals via email, if they provided one to the Committee, or via regular mail if they did not. Afterwards, this document is posted online on the TLAB website, and can be accessed by any member of the public.

The Notice of Hearing will indicate the time, place, and location of the hearing. If the hearing is to be held remotely via Webex, the remote connection information will be provided.

How can I prepare for a hearing?

To prepare for your hearing, you should review the TLAB's **Rules of Practice and Procedure**, as well as the section of the **Planning Act** under which the appeal has been filed. You may also wish to review the Provincial Policy Statements and related provincial plans and municipal documents, such as by-laws or official plans and the Notice of Decision. This Public Guide may also be of use, when preparing for your hearing.

With regards to the organization of the hearing itself and the structure of the day, this is up to the discretion of the presiding Member, and they will make that decision on the hearing date.

Hearings are scheduled for a discrete interval and are expected to be completed within that timeframe or authorized extensions.

Do I need a lawyer/representative for the hearing?

No, a lawyer or representative is not required for the hearing. For more information on this, please see the above section on **Legal Representation**.

Can I speak to or correspond with the Member(s)?

During the hearing, you may speak to the presiding Member on any matter. However, it is inappropriate to contact them outside of the hearing room as doing so could compromise, or

appear to compromise, the neutrality and independence of the TLAB and its Members, and their ability to provide natural justice. For more information, please see the section on **Corresponding with Members** above.

What if I have accessibility requirements for a hearing?

If you have any accessibility requirements, please contact the Accessibility Coordinator as soon as possible by email at tribunalaccess@toronto.ca, or by phone at 416-392-4697. This will be routed to the TLAB, and we will do our utmost to be able to accommodate your accessibility needs.

Will the hearing be recorded?

Yes, TLAB hearings are recorded. In fact, any individual can request a recording of the Hearing through the use of the Digital Audio Request Form, which can be found on our website. Simply complete this form, and email it back to the TLAB as a PDF attachment, and the Case Coordinator will prepare the audio file to send to you digitally. It will be sent to you as a downloadable link, through the City of Toronto's Secure File Transfer system. If you so desire, a physical version of the audio can be prepared for you instead, on CD. This must be picked up from the TLAB directly at 40 Orchard View Blvd.

Currently, there is no cost associated with requesting an audio recording of a hearing. For Webex recordings, only the audio portion will be released.

Adjournment Requests

For more information on adjournments, please see Rule 23 of the TLAB's Rules of Practice and Procedure.

Can I adjourn a hearing?

Yes. If you want to change the date of a hearing, and have good reasons for doing so, you may ask the TLAB to postpone your hearing. Adjournments without setting a date for reconvening are rare as the TLAB is mandated to reach a decision on matters appealed to it.

NOTE: After the appeal is filed, you should be prepared for the hearing to proceed on the date that the TLAB has scheduled. If the request to delay the hearing is denied, the hearing will go ahead as scheduled and you will be expected to attend.

How do I request an adjournment?

In order to request an adjournment of a hearing, you must first send an email to the TLAB indicating you wish to file a Motion. The TLAB will then forward along to you the **Form 7 – Notice of Motion**, and the **Form 10 – Affidavit**, with service instructions. More information on these forms will be found in the next section on "Motions", and the subsequent section on "Affidavits". By default, as per **Practice Direction 2**, all Motion requests for adjournment are to be heard in writing. This means that there will be no attendance necessary on the Motion date. Instead, the Motion decision will be rendered and distributed on or around that date.

The completed **Form 7 – Notice of Motion** and **Form 10 – Affidavit** is to be sent to every Party via email, and the TLAB is to be copied on that email. The **Form 7 – Notice of Motion** will contain the request, and the **Form 10 – Affidavit** is the sworn statement detailing the issues supporting your request. Should a Party not have an email address, they must be served by regular mail, and a second **Form 10 – Affidavit** must be submitted outlining each individual that had to be served by regular mail.

Adjournment requests can be challenged in accordance with the "Motions" Rule.

When can I request an adjournment?

The deadline for submitting a Motion is no later than 15 days from the hearing date.

If your Motion is requested any closer to the hearing date than the 15 day limit, the hearing date will default as the Motion date, and the Motion will be heard orally at the beginning of the hearing.

If someone objects to the adjournment request, they may file the appropriate response, the **Form 8 – Response to Notice of Motion**. For written Motions, this is due 11 calendar days from

the date that the Form 7 – Notice of Motion was served. This document will be forwarded to the Member, and it will be used as an argument against the request for adjournment. For more information on Motions, please see the "Motions" section of this guide.

What happens after I send in my request to adjourn?

The TLAB may decide to:

- Deny the request (the hearing will go ahead as originally scheduled); or,
- Grant the request and reschedule the hearing.

If the adjournment is granted, the TLAB will generally provide the requestor with three (3) dates for the Parties to choose from to reconvene the hearing. Should the requestor advise the TLAB that none of those dates be agreeable, the TLAB may reschedule the hearing adjournment without further consultation.

How does the TLAB decide adjournment requests?

The decision for an adjournment is at the Member's discretion. Please consult the **Rules of Practice and Procedure** for more information.

What if I need to postpone the hearing event because of an emergency?

In an emergency, the TLAB may grant last minute adjournments for emergencies such as the sudden illness of a Member, Representative or witness so close to the hearing that a replacement cannot be found.

Motions

For more information on Motions, please see Rule 17 of the TLAB's **Rules of Practice and Procedure**.

What is a Motion?

Motions are different types of hearing that allow you to ask the TLAB to make an order for relief of the Rules on a matter before or during the hearing process. At the Motion, you will be asked to give reasons for your request.

Some samples of types of Motion hearings include requesting:

- An adjournment;
- A dismissal of the matter;
- Directions on a procedure that applies to the case.

As directed by the TLAB, Motions may be heard and determined in writing, via teleconference or in a formal hearing.

How do I request a Motion?

To request a Motion, you must send the TLAB an email, requesting a Motion date. Once the TLAB receives this email, the Case Manager will provide you with instructions for, the **Form 7 – Notice of Motion**, and the **Form 10 – Affidavit**. The **Form 7 – Notice of Motion** will contain the specific relief that you are requesting, and the **Form 10 – Affidavit** is the sworn statement detailing the issues supporting your request. Once these are complete, they are to be served on the Parties and the TLAB to meet the deadline date that was set out in the email response to the Motion request. Should a Party not have an email address, they must be served by regular mail, and a second **Form 10 – Affidavit** must be submitted outlining each individual that had to be served by regular mail.

NOTE: A Motion date cannot be requested when there is less than 15 calendar days remaining before the scheduled hearing. The Motion deadline is provided on the Notice of Hearing, by way of reference. Any Motion request coming after this deadline defaults to being heard on the hearing date instead, before the hearing begins. Please be advised that this may delay the completion of your hearing, and may require the scheduling of additional hearing dates.

Where will the Motion hearing be held?

Motion hearings, unless for adjournments or specifically requested to be in writing or electronic, are held in-writing. This is in accordance with a Practice Direction from the TLAB.

When do I deliver a Notice of Motion?

The **Form 7 – Notice of Motion** and the **Form 10 – Affidavit** must be served on all Parties and the TLAB no later than 15 days before the Motion hearing date in order to have a perfected Motion. If this deadline is missed, the Motion becomes invalid, and a new Motion date must be requested from the TLAB.

Can a party respond to a Notice of Motion?

Yes, a party can respond to a Notice of Motion. If another Party objects, for example to the adjournment request, they may file the appropriate response, the **Form 8 – Response to Notice of Motion**, no later than 7 days before the scheduled Motion date. Furthermore, should the Party who initiated the Motion request have a rebuttal to the Response, there is the option to file a **Form 9 – Reply to Response to Notice of Motion**, which will all be forwarded to the presiding Member in order to make an informed decision on the Motion. On the Motion date, all of the submissions will be before the Member, and the Member will rule on the Motion.

Can a Motion be made at the beginning of a hearing?

If a Motion is requested out of the 15 day timeline, or if an issue arises before the hearing that requires a Motion to be dealt with, the TLAB may permit Motions to be heard and/or made at the beginning of the hearing, at the discretion of the presiding Member. If you intend to bring a Motion before the hearing starts, and it was not an unplanned motion, the TLAB requests that you bring with you a **Form 7 – Notice of Motion** in person to present to the Member.

Affidavits

What is an affidavit?

An affidavit is a written statement of facts and/or evidence that you affirm or swear by oath is true. The **Form 10 – Affidavit** is required with the submission of several of the TLAB Forms.

Please see the **Rules of Practice and Procedure** for more information on which Forms require an Affidavit.

Why do I need an affidavit?

An affidavit is necessary because it is a sworn statement that contains facts or opinions that may be in dispute before the TLAB. The TLAB requires that an affidavit of service also accompany any Forms that require other Parties to be served, to ensure that the appropriate Parties have been given the correct information, and to ensure that the Rules of Practice and Procedure are being followed.

Who can sign and notarize my affidavit?

The **Form 10 – Affidavit** can only be signed and notarized by certain people. Your local municipal office may have a person on staff who can sign your affidavit. Someone who is a commissioner or notary public (a person who is able to affirm and/or swear to a written statement by law) may also be able to sign your affidavit. You may also seek out a lawyer or paralegal, who will also be able to sign your affidavit. Please note, there may be a cost associated with notarizing an affidavit.

What information needs to be included in my affidavit?

The **Form 10 – Affidavit** will include a clear statement of facts or opinions that you are swearing or affirming are true. Unfortunately, as this is a legal document, the TLAB cannot provide any advice or suggestion of what to include. As a general rule of thumb, include any facts or details that you are prepared to swear are true, and any information that will be required for your case, as necessary.

Summons for a Witness

For more information on summons, please see Rule 25 of the TLAB's **Rules of Practice and Procedure**.

What is a summons?

A summons is a document that compels whoever is named in that summons to appear before the TLAB and give evidence at a hearing. The summons will tell witnesses that they must attend the hearing, the details of the hearing, and what documents they need to bring to the hearing.

How do I request a summons?

Only Parties can make a request for summons. To request a summons, please follow the steps below:

- Submit a **Form 11 – Request for Summons** to the TLAB by email. There is currently no fee to request a summons. A copy of the form is available on the "**Forms**" section of the TLAB website.
- If approved, the TLAB will sign and issue the summons to you with instructions on service to follow.
- Please serve the summons and accompanying 'conduct' (travel expense) money on to the witness no later than 30 days before the hearing. The witness must receive the summons in person – you cannot mail or courier it.
- As soon as the summons is delivered, the Party who initiated the summons must serve a copy of the **Form 11 – Request for Summons**, along with the summons itself, and all documents and related correspondence on every Party by email, copying the TLAB.

What if my request is denied?

If your summons request is denied, the TLAB will notify you of the denial by email. At that time, there is no valid summons.

Do I have to pay the witness I have summoned?

If you summons a witness, you are responsible for their costs.

These fees are set out in the **Courts of Justice Act, Rules of Civil Procedure Tariff A (Part II – Disbursements)**. Payment must be made to the witness when the summons is delivered.

What if someone doesn't attend a hearing after receiving a summons?

If someone is served with a summons, they are obligated to appear before the TLAB and give evidence. Should they not appear, you may ask the Member to compel the individual to appear before the TLAB and give their required evidence. The failure to respond to a summons is contempt.

Conversely, it is a serious matter to summons a person, particularly without a reasonable expectation that the summonsed person has evidence relevant to the hearing.

Recovering Hearing Costs

For more information on recovering hearing costs, please see Rule 28 of the TLAB's **Rules of Practice and Procedure**.

Can I recover my hearing costs?

If you believe that another Party involved in your matter acted unreasonably, frivolously or in bad faith, you may ask the TLAB to order that party to pay some or all of your expenses or costs.

Costs do not include economic loss.

It is unusual for the TLAB to order an award of costs against another Party. Unlike the Courts, costs awards are not routinely granted. However, this does not preclude you from filing a Motion for Costs.

Before the TLAB can consider an award, please keep in mind the following:

- You **must** be a Party in the matter;
- You **must** request a Motion asking for compensation or an award of costs; and,
- The Party being asked to pay demonstrated conduct at the hearing that was reprehensible and worthy of sanction.

Some examples of improper activities include:

- Missing a hearing event without excuse;
- Not co-operating repetitively during a hearing event;
- Changing a material position without notice;
- Being unprepared for a hearing;
- Not complying with a specified TLAB directive;
- Causing unnecessary delays;
- Presenting false evidence;
- Continuing to deal with inappropriate issues; or,
- Not making efforts to combine similar submissions.

Notwithstanding the above, the party being asked to pay will be given a chance to respond at the hearing for the Motion for Costs. By default, Cost Motions are heard in writing.

How do I request to recover my hearing costs?

1. Send the TLAB a written request for a Motion date for an award of costs no later than 30 days after the Decision and Order is issued, by email. The TLAB will respond accordingly, and assign you a Motion date, as found in the above section entitled "Motions".
2. Prepare your written submission or notice of Motion. You must include:
 - The reasons for your request;
 - The amount requested;
 - An estimate of the extra preparation or hearing time caused by the misconduct;
 - Copies of supporting invoices or a sworn statement (an affidavit) verifying the expenses; and,
 - A **Form 10 – Affidavit** verifying that the expenses were necessary and that your statements being made are true.

In accordance with the provision for Written Motions (expanded on above in the section entitled "Adjournments"), the opposing Party will have the opportunity to respond before the Motion date, within 11 calendar days of the Motion service date given to you by the TLAB.

What expenses can I include in my request for costs?

The TLAB may order that you receive payment for your unwarranted expenses from preparing for and attending a hearing event. These expenses may include lawyers' preparation and hearing time, and consultant and witness fees, where justified.

However, regardless of the expenses you include in your Motion for Costs, a Member shall not order Costs unless the Member is satisfied that the Party against whom costs are claimed has engaged in a course of conduct, which is clearly unreasonable, frivolous, vexatious or in bad faith.

Decisions and Orders

For more information on decisions, please see Rules 29 to 31 of the TLAB's **Rules of Practice and Procedure**.

When will the TLAB make a decision?

Generally, TLAB decisions are issued within a target of 21 calendar days of the final hearing date. However, matters requiring more complexity may cause the decision to take longer to issue. TLAB administrative staff are unable to comment on the length of time a decision takes to be issued, and Members take as much time as is necessary to complete a decision.

How can I get a copy of a decision?

When a decision is reached, it will be distributed to all interested Parties and Participants registered for the hearing via email or regular mail. It will also be posted on the website for public consumption. Decisions once issued are available on the TLAB website: **www.toronto.ca/tlab**, accessed by municipal address.

How are decisions enforced?

When issuing decisions, the TLAB and the City expect that parties will respect and comply with the decision.

Permitted construction arising from a TLAB decision is subject to the review process of the City Buildings Department in accordance with the Ontario Building Code Act.

If a Party or group feels a decision is not being adhered to, the Party will be able to access City enforcement agencies, including Building Inspections and the Chief Building Official or seek direction through the office of the local Councillor. The TLAB has no enforcement branch. Its decisions and Orders have the force of law and are enforceable pursuant to the Provincial Offences Act.

I don't agree with the TLAB's decision – can I ask that it be reviewed?

For the TLAB to consider a review of a decision, you need to prove that it made an error that, if known, may have changed the decision resulting from the hearing.

The availability of a request to review a final Decision and Order of a TLAB Member (Review Request) engages an internal reconsideration and administrative process. It is just for Parties, who must comply with the provisions of Rule 31 of the TLAB **Rules of Practice and Procedure**.

A Review Request is formal; available only for 30 days after the final decision and Order. It is a serious matter.

A Review Request must address only the stated grounds found in the Rule. It is not an opportunity to simply re-argue a Decision and Order that the Party objects to. The procedures and remedies are set out in the Rule, which must be the basis for a Review Request. One must comply exactly with the requirements of Rule 31.

For specific terms, procedures and the provisions related to the conduct of a Review Request, please consult Rule 31 of the TLAB Rules of Practice and Procedure.

You would need to provide proof that the TLAB:

- Acted outside its jurisdiction;

- Violated the rules of natural justice;
- Made a material error of fact or of law;
- Heard false or misleading information that could have changed the decision; or,
- Should consider new information not available at the time of the hearing that could have changed the decision.

If you want to request that the TLAB reviews its decision, you must:

1. Be a Party. Only Parties can initiate Review Requests under Rule 31 of the Rules of Practice and Procedure;
2. Send the TLAB Chair a sworn statement (through the use of a **Form 10 – Affidavit**) outlining your reasons and explains the relevant grounds listed under Rule 30 of the TLAB's Rules of Practice and Procedure that apply to the requested Review, and include any documents you want to use as proof. This must go to the TLAB directly, at **tlab@toronto.ca**, and it will be forwarded to the Chair;
3. Ensure the request is made within 30 days of the issuance of the decision; and,
4. Ensure that all Parties are served with your Request for Review.

A parallel administrative and adjudicative filter assessment process is in place, similar in kind to the initiation of the original appeal. Rights of participation by the Parties exist at every stage of a Review Request, but are not required until such time as the TLAB issues a Notice of Review Request. At that point, a time regimented period for submissions begins.

After considering the Request for Review, the Chair may direct the matter for a hearing or may reject the request entirely. The Request for Review will be turned down if:

- The request relies upon the same evidence or re-argues the same issues that were covered at the hearing;
- A non-party makes the request;
- It is filed more than 30 days after the decision was issued;
- The requester does not supply the information required; or,
- It is a request to review a decision that has already undergone a review.

Can I appeal the TLAB's decision?

You can also make an application for 'Leave to Appeal' to the Divisional Court, on a question of law, from final TLAB decisions. If you think that the TLAB made a substantive error on a question of law or jurisdiction in its decision, you may bring a Motion for Leave to Appeal to the Divisional Court for an order of the Court to allow the appeal to proceed. This must be done within 15 days of the TLAB decision being issued.

It is a two- step process where a single judge of the Divisional Court will first examine whether there are matters of law that warrant the attention of the court. If the judge so decides, an aspect may be allowed to proceed to a Hearing before a three member panel of the Divisional Court. The application for leave to appeal is also **time limited** and subject to the Rules of Court known as the *Rules of Civil Procedure*.

It is the responsibility of the Party to determine whether to pursue one or both routes [Request for Review or Leave to Appeal to Divisional Court]. The issues in dispute and the remedies available may overlap. Since both are time limited and must be applied for, the decision to proceed can have significant consequences.

The attitudinal approach of the courts, generally, is to expect that a Party is to exhaust all available, effective remedies before convening formal consideration by the Divisional Court. In practical terms, this often involves delaying a properly constituted judicial consideration on a requested Leave to Appeal application, pending the result of any administrative (TLAB) Review Request.

A Party wishing to pursue a remedy following a final TLAB Decision and Order is advised to seek legal counsel on these rights at the very earliest opportunity.

Glossary

Please note that many of these terms, as well as additional terms, are defined in the TLAB's **Rules of Practice and Procedure**.

Adjournment – When a hearing event will be postponed until a later date.

Affidavit – A written statement made under oath that can be presented as evidence at a hearing.

Applicant – The person or corporation that made the original application at the Committee of Adjustment.

Appellant – The person or corporation that made an appeal to the TLAB.

Authorized Representative – An agent who has been authorized, in writing, to represent a party or participant at a TLAB proceeding.

Case Coordinator: Toronto Court Services administrative staff assigned to coordinate a particular TLAB case file.

Decision – A record issued by the Member, which may contain orders or directions. A decision is final unless stated otherwise to be "Interim", or subject to conditions of fulfillment.

Electronic Hearing – A hearing that is held by telephone conference or some other form of technology.

Hearing – Any form of proceeding that takes place before the TLAB.

Mediation – A process where a Member facilitates a discussion in order to aid parties in reaching a voluntary and mutually acceptable solution on some or all of the issues in dispute.

Motion – A written request made to the TLAB to obtain direction made by a Party before or during a hearing, asking for relief of the Rules in some way (e.g. A person may ask for certain documents to be presented, ask to have clarification on a procedure, or ask to have the proceedings dismissed). If the request to hold a Motion hearing is granted, a Motion hearing will be held either in person, writing or by telephone conference.

Oral Hearing – A hearing with in-person attendance by the parties or their representatives.

Participant – An individual, group or corporation that has more limited involvement in a TLAB hearings.

Party – An individual, group or corporation that is fully involved in a TLAB proceeding.

Review Request – The TLAB exercises the empowerment provision, under the *Statutory Powers Procedures Act* and its *Rules of Practice and Procedure (Rules)*, providing for a decision of a Member to be reviewed by the Tribunal. The TLAB, on a Review Request, is not inquiring into and examining the merits of the Member's decision, but whether an error has been made on any of the listed grounds set out in the *Rules*

Settlement Hearing – A hearing held with the intent of putting forward an agreed-upon settlement of the matter with all Parties.

Teleconference – A hearing that is held over the telephone.

Visual Evidence – Type of evidence that can be introduced at a hearing event, including computer-generated images, photographs, maps, videos, plans, surveys, models and overlays.

Written Evidence/Materials – Type of evidence that can be introduced at a hearing event, including reports, letters, charts, graphs, books of account, and information recorded or stored by means of any devices.

Written Hearing – A hearing event that is held by exchanging documents in written form (hard copy) or electronic form.