

## ATTACHMENT

### Rule 31 (Review Request)

#### Background and Context

The Toronto Local Appeal Body (TLAB) exercises the Review Request empowerment provision included in its *Rules of Practice and Procedure*, under the *Statutory Powers Procedures Act*, included since its inception, providing for a Member's decision to be reviewed by the Tribunal, on terms.

From its inception, the attitude and approach of the TLAB have been to permit Review Requests without undue circumscription, or expense. However, Review Requests constitute a considerable burden on Tribunal resources.

Currently, there is no fee charged to institute a Review Request; their disposition involves full attention to all previous findings, the decision of the Member and the potentially voluminous submissions of the Parties in the conduct of a Review including reviewing the DAR recordings.

The opportunity to question a Member's decision is governed only by the language of the *Rule*.

Beginning in 2018, the Annual Reports of the Chair sought, from Council, the addition of a Review Request filing fee, to be incorporated within the City's Charges, Fees and Levies By-law. This was recommended to introduce 'gravitas' to the consideration of filing a Review Request with the intent of potentially helping cull or deter frivolous, ill-advised, or speculative Review Requests. To date, the City has not recommended nor adopted the TLAB Chair's recommendation to add a fee for this process by amending its By-law.

In 2019, *Rule 31* was revised to include a very extensive administrative and adjudicative vetting and consideration process for Review Requests. A further revision was undertaken and authorized in December 2020. That revision constituted a compromise between the initial latitude and an appropriate balancing of notice and filing/support obligations. It also removed from the remedies available to the reviewer of the statutory empowerment provisions to "vary or suspend" the decision of the Member, if the reviewer felt such was warranted.

As indicated above, Review Requests have employed some repeated descriptive phraseology to educate the public as to his parameters. This has served to demonstrate that the TLAB, on a Review Request, is not inquiring into and examining the merits of the Member's decision but, rather, whether an error has been made on any of the listed grounds set out in the *Rule*.

To date, of the decisions issued by the TLAB since 2018, Review Requests represent about 5% of all decisions or 45 in total. Of the 45 review request decisions

issued, 33 (or 74%) confirmed the Member's final decision, and of those, the majority of the review requests (31) were filed by the proponent in the appeal matter.

The Toronto Local Appeal Body intends to evaluate the benefit of continuing the option of a Request to Review a final Decision. Some of the factors which have precipitated this initiative are the diversion of Member capacity away from pending appeal cases, the cost to the City and the Parties of the Review Request process, the speculative nature of many of the Review Requests, and the significant delay the process causes to the final resolution of cases.

## **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 the Review 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 except with leave of the Chair.

### **Deadline for, and Service of, Review Request**

- 31.5 A Review request shall be provided to all Parties and the TLAB by Service 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 request for Review shall be entitled "Review Request" and shall contain the following:
- a) a table of contents, listing each document contained in the Review Request and describing each document by its nature and date;
  - b) an overview of the Review Request not to exceed 2 pages that identifies the grounds listed in Rule 31.17 that apply;
  - c) if the Review Request includes grounds based upon Rule 31.17 (c), a list of all alleged errors of fact or law;
  - d) a concise written argument contained in numbered paragraphs. The Review Request shall provide, avoiding repetition, the concise written

arguments regarding each listed matter from Rule 31.17 in the same order and include the following:

- i. the applicable section of the Planning Act or other legislative basis, if any, for the argument advanced;
- ii. the wording of the applicable policy, By-law or authority, if any, in support of the argument advanced;
- iii. the applicable transcript or other evidence and exhibit attachments, if any, in support of the argument advanced;
- iv. a clear demonstration of how in the case of grounds asserted under Rule 31.17 c), d) and e), each would likely have resulted in a different Final Decision or final order;
- v. copies of the referenced case law and authorities; and
- vi. a statement as to the requested remedy.

### **Review Request not to Exceed 20 Pages**

31.7 Excluding the table of contents, case law and transcripts, by-laws, exhibits and other supporting Documents, the Review Request shall not exceed 20 pages, double spaced, and written in 12-point font.

### **Transcripts**

31.8 If any Party wishes to refer to any oral evidence presented at the Hearing and if that oral evidence is contested and a recording thereof is available, the relevant portion of the proceeding shall be transcribed and certified by a qualified court reporter and provided to all Parties and the TLAB by Service forthwith and at that Party's sole expense.

### **Administrative Screening**

31.9 The TLAB shall, upon the filing of a request for Review, review it for compliance and advise the Parties if:

- a) it does not relate to a Final Decision or final order; or
- b) it was not received within 30 Days after the Final Decision or final order was made, unless the Chair directs otherwise; or

- c) it failed to provide the requisite fee.

### **Response to Review Request**

31.10 Despite Rule 31.9, if a Party needs to respond to the Review Request the Responding Party shall by Service on all Parties and the TLAB provide a Response to Review Request no later than 20 Days from the Date of Service pursuant to Rule 31.5, unless the Chair directs otherwise.

### **Contents of a Response to Review Request**

31.11 A Responding Party's response to Review Request shall be entitled "Response to Review Request" and shall contain the following:

- a) a table of contents, listing each document contained in the Response to Review Request and describing each document by its nature and date;
- b) an overview of the Response to Review Request not to exceed 2 pages that contains specific reference to the Review Request's overview;
- c) a concise written argument contained in numbered paragraphs, giving a response to each argument in the Review Request, and include the following :
  - i. the applicable transcript or other evidence and exhibit attachments, if any, in support;
  - ii. any other applicable legislation, policy documents, By-laws or other material that is not provided for in the Review Request; and
  - iii. any other applicable authorities and copies thereof; and
  - iv. a statement as to the remedy requested.

### **Response to Review Request not to Exceed 20 Pages**

31.12 Excluding the table of contents, case law and authorities, transcripts, by-laws, exhibits and other supporting Documents, a Response to Review Request shall not exceed 20 pages, double spaced, and written in 12-point font.

### **Responding Party Not to Raise New Issues**

31.13 A Responding Party shall not raise any issues beyond those issues raised in the Review Request.

### **Reply to Response to Review Request**

31.14 If the Requesting Party needs to reply to a Response to Review Request, that Party shall provide by Service on the Parties and the TLAB a Reply to Response to Review Request not to exceed 5 pages, double spaced, and written in 12-point font and no later than 5 Days from the Date of Service pursuant to Rule 31.10, unless the Chair directs otherwise.

### **Contents of a Reply to Response to Review Request**

31.15 A Reply to Response to Review Request shall contain the following:

- a) a reply to facts, matters and Documents raised in the Response to Review Request;
- b) list and attach the Documents used in the Reply to the Response to Review Request relating to those matters addressed in the Reply, including any case law or authorities raised in support.

### **Chair Authority**

31.16 Following the timeline for the Service on all Parties and the TLAB of any Review Request, Response to Review Request and Reply to Response to Review Request, the Chair may do the following:

- a) seek further written submissions from the Parties;
- b) confirm the Final Decision or final order and dismiss the Review Request, with reasons;
- c) cancel the Final Decision or final order, with reasons, and, where appropriate, direct a de novo Oral Hearing before a different TLAB Member.

### **Grounds for Review**

31.17 In considering whether to grant any remedy the Chair 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;
- 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**

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