



Minutes: June 15, 2022

Toronto Local Appeal Body Business Meeting No. 37

Toronto Local Appeal Body – Public Business

Meeting – June 15, 2022

Chair: Dino Lombardi

Contact: Tyra Dorsey, Acting Supervisor Tribunal
Operations

Phone: 416-392-4697

Meeting Date: Wednesday, June 15, 2022

Time: 9:30 am.

Email: tlab@toronto.ca

Location: Electronic Business Meeting (WebEx)

Chair: Dino Lombardi

Toronto Local Appeal Body Panel Members

Dino Lombardi (Chair)

Ana Bassios (Vice-Chair)

Sabnavis Gopikrishna

Sean Karmali

Christine Kilby

Stanley Makuch

John Tassiopoulos

Ted Yao

Gerald Swinkin

Carissa Wong

Staff Attendance

Russ Brownell

Manager

Tribunal Operations, Court Services

Tyra Dorsey

Secretary / Acting Supervisor

Toronto Local Appeal Body, Court Services

Claire Holloway

Acting Support Assistant A

Toronto Local Appeal Body, Court Services

Adrienne Mignardi

Support Assistant B

Toronto Local Appeal Body, Court Services

Kevoork Chelenkerian

Support Assistant B

Toronto Local Appeal Body, Court Services

Timothy Ally

Support Assistant B

Toronto Local Appeal Body, Court Services

Meeting started at 9:31 a.m.

Aboriginal Land Acknowledgement

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

TLAB Staff Introductions

Confirmation of Minutes – Business Meeting, March 4, 2022 and Special Business Meeting, May 4, 2022

Motion:

Motion to adopt meeting minutes of March 4, 2022. Moved by Chair Lombardi, seconded by Member Makuch (Carried).

Member Kilby made mention of a small typo in the May 4, 2022 minutes using the WebEx chat function.

Motion to adopt meeting minutes of May 4, 2022. Moved by Member Tassiopoulos, seconded by Member Kilby (Carried).

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

None.

Introduction of Member Wong by Chair Lombardi

37.1 TLAB PUBLIC GUIDE - REVISION

Summary

The TLAB Public Guide is viewed by the Tribunal and the Public as an important contribution to educating the public and those who participate in the TLAB appeals process. It is especially invaluable to self-represented parties, answering some general questions. The Guide was initially compiled by Court Services tribunal staff, updated and amended in 2019 with substantive revisions to Rule 31 of the TLAB's Rules of Practice and Procedure. In 2020, the City Clerk's office made further revisions. At December 10, 2021, Q5 Business Meeting, TLAB adopted a motion to receive those revisions.

During the Q1 2022 Business Meeting on March 4, 2022, the TLAB adopted a Motion directing that staff revise the TLAB's Public Guide in consultation with the Chair and Vice-Chair, with input and comments received from Members at that Meeting, along with suggestions put forward by FoNTRA in their letter to the Tribunal dated December 9, 2021. The Motion also directed that the revised Public Guide be tabled at the next Business Meeting.

The revised Public Guide is being brought forward to allow the TLAB Members an opportunity to review and adopt the revised document, subject to any additional comments or suggestions for Administration to incorporate if necessary.

Chair Lombardi has one comment, an addition, concerning Mediation covered in the Public Guide itself, proposing a sentence to be added. After the sentence, *"Nothing relating to the mediation..."*, Chair Lombardi proposes the wording, *"In the event that the TLAB-led mediation results in a settlement of some or all the issues in dispute, the presiding member will draft and issue a mediation summary which will outline the general flow and direction of the Mediation, and the issues resolved."*

Member Swinkin states that the whole notion behind Mediation is to create an ambiance where Parties are encouraged to speak with candour about their position and interests and to potentially compromise themselves to come to a resolution. Parties will do that if they have the comfort of knowing that the person to whom they are making these disclosures will not be the adjudicator. Member Swinkin wants to be careful about using language that puts doubt into the minds of those going to Mediation.

Acting Supervisor Dorsey recommends that the sentence not be added as the TLAB's Rules do not mention a mediation summary. Mediations are meant to be confidential, and she submits that summarizing confidential discussions at TLAB-led Mediation could be problematic.

Chair Lombardi advises that a mediation summary should be produced where there has been a settlement of the matter in dispute because, typically, there is a settlement agreement.

Member Wong stated she agrees it is important to advise parties have a right to speak freely and unaffected by the potential for the proceeding afterwards.

Vice-Chair Bassios understands the importance of creating a safe place for discussion without worrying about leaks or prejudice. However, if there is a settlement or some issues are settled, they should be memorialized.

Member Yao spoke previously to this matter, stating that there should not be any mediation summary as the power of Mediation is in the parties coming to an agreement.

Motion:

That the TLAB adopt the revised Public Guide, as amended at the June 15, 2022 Business Meeting, and that Staff be directed to upload the Guide to the TLAB website. Moved by Chair Lombardi, seconded by Member Makuch (Carried).

Break 11:00am

Resume 11:15am

37.2 – PROPOSED REVISIONS TO TLAB'S DECISION WRITING TEMPLATE

Summary

At the Q1 2022 Business Meeting on March 4, 2022, the Chair brought forward a draft decision-writing template for discussion purposes. The TLAB adopted a Motion that directed the Chair and Vice-Chair to develop a revised template.

The Chair will introduce a revised decision-writing template based on the discussion and comments/suggestions from Members received at the last Business Meeting to allow the Members an opportunity to review and adopt the revised template, subject to any additional comments or suggestions.

The goal of a revised, refreshed decision writing template is to assist Members in producing more consistent and concise decisions, reduce decision writing time commitments, and improve turnaround times to issue those decisions.

The draft template has been crafted to reflect key goals for effective decision writing as reflected in last year's Member training workshop.

SOARs workshop/training session tailored to the TLAB presented the members with practical tools and strategies to produce effective, issue-driven, point-first decision-making. Chair Lombardi shared a draft example of the proposed template on screen. Subheadings that are being proposed are:

- *Jurisdiction* has been renamed the *Policy Framework*.
- *Summary of Evidence* provides briefly and concisely the evidence that was heard.
 - In the current framework, members spend a great deal of time on evidence when it should be summarized in point form.
- *Issues and Analysis* subheading has been reworded (i.e. point form, general subheading type of format).
- *Conclusion* is a concise section summarizing the decision the Member has arrived at.

Vice-Chair Bassios stated that this template restructuring helps make the decision simpler and clearer to read and nudges us further in the direction that decisions be more adaptable to the reader, with a more straightforward writing approach.

Member Swinkin has one correction regarding the topic heading *Policy Framework*. Member Swinkin suggests it does not speak to what is done here in this section and should read '*Legislative and Policy Framework*.'

Chair Lombardi states that decisions are taking a long time to write, and the revised decision-writing template may assist Members as it incorporates training at last year's workshop.

Member Yao has had the opportunity to review OMB decisions and thinks they should put the address in the heading, not the case file number.

Manager Russ Brownell commented that Court Services Tribunal staff are happy to receive feedback from Members regarding improvements to the decision-writing template.

Member Yao suggests to the Manager of Court Services that the TLAB investigate the possibility of putting TLAB decisions on a public search engine such as CanLII.

Motion:

That the TLAB adopt the revised Decision Writing template as amended at the June 15, 2022, Business Meeting and that TLAB Staff amend the current decision writing template of the TLAB accordingly. Mover Vice-Chair Bassios, seconded Member Swinkin (Carried).

That the Manager of Court Operations - Tribunals in conjunction with TLAB Chair and Vice Chair be requested to investigate the possibility of making the body of TLAB decision since 2017 available to public legal search engines such as CanLII. Moved by Member Yao, seconded S. Makuch (Carried).

37.3 – DRAFT PRACTICE DIRECTION #7

Summary

TLAB has experienced situations where new document disclosures have been filed before the hearing date but well after the deadlines have elapsed. The TLAB has consistently discouraged this for procedural fairness and bias to those who abide by the TLAB's Rules of Practice and Procedure. In the past, Members have requested direction from the Chair on an ad-hoc and case-by-case basis, which is an inefficient and tedious approach to providing procedural guidance.

The TLAB Chair now brings forward a draft Practice Direction, prepared in consultation with Duxbury Law, to provide formal direction for staff and Members.

The proposed draft Practice Direction keeps the language as straightforward as possible, emphasizing the presiding Panel Member's discretion to decide the issue on a case-by-case basis. It also provides a new

distinction between documents entered into the record versus admitting them as exhibits. A Practice Direction is valuable in highlighting that the TLAB has established *Rules of Practice and Procedure* that must be given serious consideration when one is deciding to participate in the appeals process.

Member Swinkin suggests revising two of the paragraphs and introducing a new paragraph.

Chair Lombardi to defer this revision to the following Business Meeting.

Member Swinkin – wants to add the following new paragraph, *"In general, save for extenuating circumstances minimal non-prejudicial delay or where consented to by the other parties, late-filed material will not be admitted into the record."*

Vice-Chair Bassios supports the proposed draft Practice Direction because the Notice of Hearing sets out the dates of submissions, but they are generally taken as guidelines rather than deadlines; she finds that frustrating for preparation for the hearing.

Member Yao feels the Practice Direction is needlessly inflexible and that the optics would be seen as tightening the rules. He suggests restricting it to the Applicant's disclosure filing with a twenty-day deadline after the Notice of Hearing is distributed and then to monitor.

Member Makuch states he is there to hear everyone and does not want to restrict anyone from giving evidence. He finds Member Swinkin's proposal makes it difficult for regular folks to put disclosure in and agrees with Member Yao. The purpose of the Rule is not to make it easy for the Members but for the community and opponents to understand.

During the course of Chair Lombardi doing background research, he stated that this topic had been discussed at previous Business Meetings but was never brought forward for consideration. What precipitated moving this draft was conversations with Members who wanted clear direction from the Chair.

Lunch 12:20 pm

Return 1:20 pm

Motion:

That the TLAB go into a closed session, pursuant to the TLAB's procedure Bylaw 1-2017, s.11 (1)(a) to receive advice that is subject to solicitor-client privilege including communications necessary for that purpose. Moved by Member Chair, seconder Member Yao (Carried).

Motion to return to public session. Moved by Member Makuch, seconded by Member Kilby (carried).

That the TLAB adopt draft Practice Direction #7 as amended at the June 15, 2022 Business Meeting.

Moved by Chair Lombardi, seconded by Member Wong (carried).

Opposed/Dissent – Member Swinkin

Opposed/Dissent – Member Gopikrishna

Opposed/Dissent – Member Makuch

37.4 – CHAIR'S UPDATE

Summary

a) Proposed Update to the City of Toronto Code of Conduct for Boards and Tribunals

Circulated documentation by Ontario Commissioner.

The Code of Conduct is an integral part of the COT accountability framework. As a result of a plain language revision to make the Codes of Conduct easier to read and gender-neutral, the Integrity Commissioner is proposing two substantive amendments that affect the TLAB and TLAB members:

1. A specific rule against engaging in activity that is a real or apparent conflict of interest.
2. A strengthened discernible conduct rule to clarify that derogatory conduct and remarks are contrary to the Codes of Conduct.

The Integrity Commissioner is now reporting to the City Council this week with proposed changes, and the survey can be found on the City of Toronto's 'Meeting Monitor' website. The Integrity Commissioner will update the Chair once the Council considers his suggestion.

b) Status of the TLAB Chair's 2021 Annual Report

The TLAB Chair's 2021 Annual Report includes information about the impact of the ongoing COVID-19 pandemic, the restrictions on the TLAB operations, and how they have dealt with these challenges. It also gives a snapshot of the year 2021 and makes a series of recommendations covering topics related to communication, timely member appointments, compensation, succession planning and staff administrative improvements.

The Annual Report will be considered at the City Planning and Housing Committee meeting on July 5 and brought forward to City Council at its meeting on July 19th/20th. Chair Lombardi plans to attend to produce the report and answer any questions at the Planning and Housing committee meeting.

The Chair was recently made aware that a City Staff report will be submitted in conjunction with the Chair's report at the Planning and Housing Committee meeting. The Chair's 2021 Annual Report will be added as an Agenda Item at the next Business Meeting to be received and for discussion.

The Chair has been exploring opportunities for training workshops for the members and is considering the next session to be mediation focussed. The Chair welcomes input from the members as the half-day training session details are worked out.

c) Appointment of Additional New TLAB Members in 2022

Council has appointed four new Panel Members whose terms should commence on August 1st, 2022, bringing the total TLAB Member complement to 14.

d) Chair & Vice-Chair's Meeting with the Deputy City Manager

Motion:

Motion to receive the updates from the Chair. Moved by Member Tassiopoulos, seconded by Vice-Chair Bassios (Carried).

37.5 – SUPERVISOR AND MANAGER'S UPDATE

Summary

Members will be canvassed regarding interests in receiving a City issued laptop to conduct TLAB-related business. As such, sign-off on the Acceptable Use Policy is required in addition to completing an Online Cyber Security training program. IT support will be provided for any issues arising from the City issued hardware or software. Any City device issued must be returned at the end of a member's appointment.

Court Services has begun supporting in-person hearings for the Administrative Penalty Tribunal located at the 40 Orchard View Blvd office.

Court Services requests that members be mindful and pause the WebEx recordings during recess to minimize the large digital files.

Per City policies, masks are no longer mandatory; however, they are strongly encouraged for staff and the public.

Motion:

That the TLAB receive the update from the Supervisor and Manager of Court Operations, Tribunals. Moved by Vice-Chair Bassios, seconded by Member Makuch (Carried).

Break 2:55 pm

Resume 3:10 pm

37.6 – MEMBER ACCOUNTABILITY (IN-CAMERA)

Summary

The TLAB will go into a closed session to discuss an issue regarding an identified Member as permitted by S.11(1)(c) of the Tribunal's Procedure By-law 1-2017.

Motion:

Motion to move into closed session. Moved by Member Makuch, seconded by Member Wong (Carried).

4:12pm – return

Motion:

Motion to return to public session. Moved by Chair Lombardi, seconded by Member Makuch (Carried).

37.7 – SCHEDULE OF TLAB BUSINESS MEETINGS – 2022

Chair Lombardi is looking at a half-day workshop in November.

Motion:

That the TLAB confirm that the remaining Business Meetings in 2022 will be scheduled for September 16, October 19, and December 16 and that TLAB staff canvass the Members for their availability for a half-day education and training session in November 2022. Moved by Member Makuch, seconded by Member Wong (Carried).

37.8 – CLOSING BUSINESS & REMARKS

None.

Meeting adjourned at 4:23 pm