

COMMITTEE AGENDA



TO **Appeals Committee**

DATE February 6, 2012

LOCATION Council Chambers

TIME 4 p.m.

DISCLOSURE OF PECUNIARY INTEREST

1. Election of Chair and Vice Chair
2. Appeals Committee Hearing Procedures Revisions

THAT the Business Licence Appeals Committee of the Corporation of the City of Guelph Hearing Procedures dated May 2, 2007 be repealed;

AND THAT the proposed Appeals Committee Hearing Procedures, as attached, be adopted.

3. Appeals Committee Hearing Training: Bruce Banting

Attached documents:

- Information for Members of Appeals Committee: Appeals Committee Acting as a Tribunal: Appeal or Hearing under Business Licensing By-law (2009)-18855
- Information for Members of Council: Council Acting as a Tribunal: Decision under Business Licensing By-law Number (2009)-18855
- Statutory Powers Procedure Act

Hearing Date: February 10, 2012 at 2 p.m.

COMMITTEE REPORT



TO **Appeals Committee**

SERVICE AREA Corporate & Human Resources
DATE February 6, 2012

SUBJECT Appeals Committee Hearing Procedures Revisions

REPORT NUMBER

SUMMARY

Purpose of Report:

To advise the Committee of housekeeping amendments to the Appeals Committee Hearing Procedures.

Committee Action:

The Committee is requested to adopt the updated Appeals Committee Hearing Procedures.

RECOMMENDATION

THAT the Business Licence Appeals Committee of the Corporation of the City of Guelph Hearing Procedures dated May 2, 2007 be repealed;

AND THAT the proposed Appeals Committee Hearing Procedures, as attached, be adopted.

BACKGROUND

In October 2006, the predecessor of the current business licence by-law was amended to provide the details of appeal mechanisms and to delegate the responsibility for appeals to a standing committee of Council. Subsequently, in May 2007 the Appeals Committee Adopted rules of Procedure to govern their hearings.

As the Appeals Committee is a hearing body, some rules of procedure will differ from the rules of Council and its standing committees. The Appeals committee will meet for the purposes of holding hearings and is bound by the provisions of the Statutory Powers Procedure Act which permits appeals committees to establish rules regulating its practices and procedures.

REPORT

Attached is the proposed by-law with highlighted changes from the existing procedures for your convenience. The changes are generally housekeeping amendments for the purpose of recognizing such things as the new Business licensing by-law and the change of the appeals committee to the Corporate Administration, Finance & Emergency Services Committee. The method of disclosure of information between parties is also being clarified.

The proposal requiring that all members, including the chair, vote on matters is consistent with the municipal act provisions which state that every member of Council shall have a vote and also in keeping with City Council voting procedures.

CORPORATE STRATEGIC PLAN

This recommendation aligns with strategic objective 5.3 :Open , Accountable and transparent conduct of municipal Business.

FINANCIAL IMPLICATIONS

N/A

DEPARTMENTAL CONSULTATION

Consultation with Legal Services staff.

COMMUNICATIONS

N/A

ATTACHMENTS

Proposed Appeals Committee Hearing Rules of Procedure.

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**BUSINESS LICENCE APPEALS COMMITTEE
OF THE CORPORATION OF THE CITY OF GUELPH
HEARING PROCEDURES**

To provide rules governing the procedures of the Appeals Committee of the City of Guelph in matters relating to City of Guelph Business Licence Bylaw (2009) –18855, as amended.

WHEREAS it is necessary and expedient that there should be rules governing the order and procedures of the Appeals Committee;

AND WHEREAS the Statutory Powers Procedure Act, R.S.O. 1990, c. S.22, as amended, authorizes the passing of rules governing practices and procedures :

The business licensing Appeals Committee adopts the following procedures to be known as the “Appeals Committee Procedures”;

1. **DEFINITIONS**

“**Act**” means the *Statutory Powers Procedure Act*, R.S.O. 1990, CHAPTER S.22 as amended from time to time or any successor thereof.

“**Appellant**” means an **Applicant or Licensee under the City of Guelph Business Licence by-law (2004)-17551** as amended from time to time or any successor thereof, their solicitor, or agent.

“**Appeals Committee**” means the Finance, Administration and Corporate Services Committee or any successor thereof as identified in the Business Licence By-law of the city of Guelph.

“**Business Licence**” means the official document issued by the City under the provisions of the City of Guelph Business Licence By-law (2004) – 17551, as amended, or any successor thereof, bearing the signature of the Clerk authorizing a person to conduct business listed in schedule “A” of the By-law within Guelph City limits.

“**Bylaw**” means City of Guelph Business Licence Bylaw (2004) – 17551, as amended from time to time, or any successor thereof.

“**City**” means the Corporation of the City of Guelph.

“City Hall” means the Civic Administration Centre, or the location held by the Corporation of the City of Guelph to conduct business from time to time.

“Clerk” means the Clerk of the City.

“Hearing” means a meeting conducted by the Appeals Committee regarding the refusal to issue or renew, or the recommendation to suspend or revoke, a City of Guelph Business Licence.

“Secretary to the Appeals Committee” means the Secretary of the Appeal Committee as set out in the By-law from time to time.

2. **CALLING OF MEETINGS**

- 1) Subject to sections 5(10), and (11), all Hearings and proceedings shall be open to the public except where the Appeals Committee is of the opinion that,
 - a) matters involving public security may be disclosed; or
 - b) intimate financial or personal matters or other matters may be disclosed at the hearing of such a nature, having regard to the circumstances, that the desirability of avoiding disclosure thereof in the interests of any person affected or in the public interest outweighs the desirability of adhering to the principle that hearings be open to the public;in which case the Appeals Committee may hold a Hearing in the absence of the public.
- 2) The Appeals Committee shall hold a hearing within thirty (30) days of the receipt of an appeal or request for a hearing submitted in accordance with the bylaw, and the hearing shall be at a time, date, and location determined by the Secretary to the Appeals Committee.
- 3) Where two (2) or more appeals are being filed within the same seven (7) day period, the Secretary to the Appeals Committee may fix consecutive hearing times.
- 4)
 - a) The Secretary of the appeals committee shall, at least 15 days prior to the hearing, send notice to the Appellant, the Clerk, any person affected thereby, and any person requesting in writing to receive notice of the hearing.
 - b) The notice shall include a copy of the Clerk’s letter refusing to issue a licence or recommending revoking/suspending or cancelling a licence, and the letter of appeal from the appellant.

3. **APPOINTMENTS**

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- 1) The members of the Appeals Committee shall be the members of the Corporate Administration, Finance & Emergency Services Committee as appointed from time to time.
 - 2) Half plus one of the total members of the Appeals Committee will constitute a quorum.
 - 3) The Appeals Committee shall elect a Chair and a Vice-Chair, to be elected at the first meeting following the appointment of the members to the Appeals Committee. The Chair shall preside at the Hearings and the Vice-Chair shall preside in the absence of the Chair.
 - 4) The Secretary to the Appeals Committee will take minutes of each hearing and will keep on file all decisions, minutes, documents and records related to the business of the Appeals Committee on a permanent basis.
 - 5) The Secretary to the Appeals Committee shall be non-aligned, autonomous and responsible to the Appeals Committee, or their successor, and be responsible for the administration of business related to the Appeals Committee.

4. **OFFICIAL BUSINESS**

- 1) The Secretary to the Appeals Committee shall compile a record of any proceeding or recommendation relating to a Hearing which shall include;
 - a) any application, complaint, reference or other document, if any, by which the Hearing was commenced;
 - b) notice(s) of the Hearing;
 - c) all documentary evidence filed with the Appeals Committee
 - d) the minutes of the oral evidence given at the Hearing; and
 - e) the "Recommendation" of the Appeals Committee, which shall be as set out in the By-law.
- 2) The Recommendation of the Appeals Committee shall be forwarded to Council in the form of a report prepared by the Secretary to the Appeals Committee as provided for in the City of Guelph's Procedural By-law" and shall include the record as set out in section 4(1) above, provided that the documentary evidence may be listed and made available in the office of the Secretary of the Appeals Committee.
- 3) The records of the proceedings of all hearings, the recommendation to Council, and the minutes of all appeals committee meetings shall be retained permanently.

5. **RULES OF ORDER**

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- 1) Except as otherwise provided herein, in the By-law or by any other applicable law from time to time, in all Hearings and proceedings of the Appeals Committee, shall follow the City of Guelph Procedural Bylaw (1996)- 15200, as amended from time to time, or any successor thereof, and failing that, Bourinot's Rules of Order.
 - 2) The Clerk shall provide copies of all reports and any other relevant documents from the Clerk and any officers, inspectors, investigators, employees of the corporation or other municipal, provincial, or federal agencies, police officers or Medical Officers of Health, or persons or agencies who may be involved in the matter, and a list of witnesses to be called by the Clerk to speak at the hearing, to the Applicant, Licensee or any other Person to whom notice of the Hearing has been given, at least 7 days prior to the date of the Appeals Committee Hearing. Copies of documents and the list of witnesses shall be provided by email, personal service or courier service.
 - 3) The appellant is to provide its hearing documents, and a list of witnesses to be called by the appellant to speak at the hearing, to the Clerk at least 7 days prior to the date of the Appeals Committee Hearing. Copies of documents and the list of witnesses shall be provided by email, personal service or courier service.
 - 4) The Appeals Committee may admit at any Hearing, whether or not given or proven under oath or affirmation or admissible as evidence in a court,
 - a) any oral testimony; and
 - b) any document or other thing,where the Appeals Committee is satisfied as to its authenticity, and if it is determined to be relevant to the subject matter of the proceeding. The Appeals Committee may exclude any evidence it determines to be unduly repetitious.
 - 5) Notwithstanding section 5.5) the Appeals Committee may not admit into evidence at a hearing any evidence not admissible by law in accordance with the Statutory Powers Procedure Act, R.S.O. 1990, c. S.22, as amended from time to time, or any successor thereof ("the Act").
 - 6) The parties at the Appeals Committee Hearing may,
 - a) call and examine witnesses and present evidence and submissions;
 - b) conduct cross-examinations of witnesses at the hearing reasonably required for a full and fair disclosure of all matters relevant to the issues in the proceeding; and
 - c) ask questions of any person presenting evidence, relating to the evidence presented, or of any author of a report submitted to the Appeals Committee relevant to the said issue.
 - 7) The Appeals Committee may at any Hearing,
 - a) ask questions of any witness and reasonably limit further examination or cross-examination of a witness where it is satisfied that the evidence is unduly repetitious or that the evidence is irrelevant to the issues in the proceeding.

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- b) ask questions of any person presenting evidence, relating to the evidence presented, or of any author of a report submitted to the Appeals Committee relevant to the said issue.
- 8) Unless the Appeals Committee directs otherwise, all hearings shall be conducted in the following order of presentation:
 - a) The Clerk or his or her designate may make an opening address;
 - b) The Appellant may make an opening address;
 - c) The Clerk or designate may then adduce evidence, including calling and directly examining any witnesses;
 - d) The Appellant may cross examine each witness called and directly examined by the Clerk or designate;
 - e) After the Clerk or designate has adduced all of his/her evidence, the Appellant may then adduce evidence, including calling and directly examining any witnesses;
 - f) The Clerk or designate may cross examine each witness called and directly examined by the Appellant;
 - g) After the Appellant has adduced all of his/her evidence, the Clerk or designate may adduce any proper reply evidence; and
 - h) After all of the evidence has been adduced by the parties and before the Appeals Committee makes a decision, the Applicant may make a closing address, followed by the closing address of the Clerk or designate if he/she decides to do so.
 - 9) None of the provisions herein are intended to supercede any requirements of the Act, the Municipal Act, S.O, 2001, c. 25, as amended from time to time, or any successor thereof, or the City of Guelph Business Licence Bylaw (2004)-17551, as amended from time to time, or any successor thereof, or of any other applicable law, and in the event of a direct conflict between any applicable legislation and the Appeals Committee Procedures, the legislation shall apply.
 - 10) Without limiting sub-section 5(9) of these procedures, the provisions of the Act, except sections 17, 17.1, 18 and 19, shall apply to all Hearings conducted by the Appeals Committee and shall form part of these Appeals Committee Procedures, and that in the event of any direct conflict between the Act and any of the Appeals Committee Procedures set out herein, the Act shall supercede.
 - 11) The recommendation of the Appeals Committee to refuse, suspend or revoke a Business Licence, shall be made by the majority of the members of the Appeals Committee present in the form of a motion and be determined by a recorded vote in open session stating the reasons therefor.
 - 12) All members of the Appeals Committee present at the hearing, including the Chair shall vote on a recommendation to Council.

13) A resolution of the Committee shall be passed by a majority vote. A tie is not deemed to result in a decision.

14) Members of the City of Guelph's Appeals Committee have a duty to conduct themselves in an impartial and objective manner and in accordance with the principles of natural justice. It is understood that members of the Committee will perform their duties in such a way as to promote public confidence and trust in the integrity, objectivity and impartiality of the Committee. All members shall decide on each Hearing fairly and objectively and without bias.

Appeals Committee Procedures adopted by Appeals Committee on the 6th day of February, 2012.

Information for Members of Appeals Committee:

Appeals Committee Acting as a Tribunal:

Appeal or Hearing under Business Licensing By-law Number (2009)-18855

Background

City By-law Number (2009)-18855, as amended, establishes a business licensing system for the City. The by-law permits an applicant for a business licence or a person to whom a business licence has been issued (an “Appellant”) to:

- Appeal a refusal by the City Clerk to issue or renew a business licence; and
- Request a hearing regarding a recommendation of the City Clerk to suspend or revoke a business licence.

Such an appeal or hearing is held by a City tribunal called the “Appeals Committee”.

The procedures of the Appeals Committee are governed by the *Statutory Powers Procedure Act* (the “Act”), the City’s Business Licensing By-law, and the Appeals Committee Procedures adopted by the Committee itself. The Act makes the Appeals Committee a “tribunal”. A tribunal is required to try a case in a fair, objective, unbiased and court-like manner. The Appeals Committee members are specifically obliged to conduct themselves in an impartial and objective manner in accordance with the principles of natural justice, and to perform their duties in such a way as to promote public confidence and trust in their integrity, objectivity and impartiality. As in typical court-like proceedings, there are two opposing sides (two parties) in a Licensing By-law appeal or hearing: the Appellant and the City Clerk. The Appeals Committee must treat these two equally.

The Appeals Committee’s special status as a tribunal means that it must act differently than other Council Committees. This paper is intended to highlight the unique procedures members of the Appeals Committee should adopt in dealing with an appeal or hearing under the Business Licensing By-law.

Prior to the hearing

The Appeals Committee must be constituted before it can hold a hearing. At its first meeting it must elect its Chair and a Vice Chair to preside in the Chair’s absence. Quorum is one-half plus one of the total number of members.

One of the unique aspects of a proceeding where a Council Committee is a tribunal is that the Committee must go out of its way to be independent, fair, impartial and unbiased in its consideration of the matter. Not only should the Committee actually be independent, fair, impartial and unbiased, it should also be seen to be so.

This means that the Appeals Committee and its members must deal with the appeal or hearing only within the context of the proceeding itself. Only then can the process be open, public and accountable.

The principal implication of this for members of the Appeals Committee is that they should receive and disseminate information relevant to the appeal or hearing, only within the context of the official proceeding process. Outside the hearing, members should not communicate about the matter with anyone:

- The Appellant;
- Any officers, directors or staff of the Appellant;
- Any legal, or other, representatives of the Appellant;
- City staff (Clerk, by-law enforcement, finance, economic development, planning and building, etc.);
- Any legal, or other, representatives of the City Clerk;
- The public; or
- Any other members of the Appeals Committee or Council.

There are only two exceptions to this general rule. First is the Secretary to the Appeals Committee (a City staff member), who will manage the scheduling and administrative support for the proceeding. This individual will be acting independently from the City Clerk and the staff of the City Clerk's office involved in the ordinary enforcement of the Business Licensing By-law. The second exception is the lawyer from Legal Services assigned to act as Legal Counsel to the Appeals Committee for the proceeding. Note that a different lawyer from Legal Services will be assigned to represent the City Clerk as a party to the proceeding. Members of the Appeals Committee should not communicate with this latter lawyer regarding the appeal. The two lawyers from Legal Services will not communicate with each other regarding the subject matter of the proceeding.

In order to preserve the integrity of the appeal/hearing process, any member of the Appeals Committee who (inadvertently or otherwise), prior to the hearing, communicates with either of the parties or their representatives regarding the proceeding, should disqualify himself or herself from the tribunal for the balance of the proceeding, on the ground of potential bias. It would be unfair for a member of the tribunal to receive information from or about one party without the other party being able to receive the same information and provide its response. It would also be unfair for any member of the tribunal to receive any information that is not received by all other members of the tribunal. Despite such a disqualification, such member should nevertheless avoid any further communication with anyone regarding the proceeding.

If a member of the Appeals Committee becomes disqualified, he or she should immediately notify the Chair of the Appeals Committee as well as the Appeals Committee's Legal Counsel. Such a disqualified member could simply not attend at the hearing. Alternatively, he or she could attend, rise at the very beginning of the hearing, declare a potential bias because of communication outside of the hearing process, immediately vacate his/her seat at the Committee table and take no part in any other aspect of the proceeding.

If information or material relevant to the hearing (such as affidavits or other documents) is distributed by the Secretary to the Appeals Committee prior to the hearing, members of the Committee should review that information or material and be prepared to consider it at the hearing.

In general, the hearing will likely unfold as outlined below.

At the hearing

(a) Introductory portion

The Chair of the Appeals Committee will provide initial comments, introduce the members of the Committee and the Committee's Legal Counsel, and ask the representatives for the respective parties to introduce themselves. The representative of the City Clerk and then the representative of the Appellant will provide their opening statements.

If the Appellant or any representative of the Appellant fails to attend at the appointed time for the hearing, the Committee may proceed with the hearing anyway.

Any special arrangements regarding the structure or sequence of the hearing will be addressed at this introductory stage. For example, the Committee should enquire as to whether anyone in attendance at the hearing, other than the two parties (and their representatives and witnesses), has an interest in the matters under discussion and wishes to participate in the hearing by presenting evidence relevant to the issue before the Appeals Committee. If so, such individuals will be scheduled to provide their evidence and be cross-examined after both parties' witnesses have been heard from. If no new evidence will be called beyond the written evidence already submitted, the parties' representatives may, with the approval of the Committee, launch right into their oral submissions/closing addresses. If necessary, the Committee may determine the procedures and practices it will employ in the hearing and may make orders with respect to those procedures and practices. The Committee may make interim orders and may adjourn the hearing from time to time. The Committee may close part or all of the hearing to the public to avoid disclosure of public security, intimate financial, personal or other sensitive matters. Except where the unique aspects of holding a hearing require otherwise, the Committee's procedure will follow the City's Procedural By-law.

(b) The parties' cases

The City Clerk's case will be heard first, followed by the Appellant's case, followed by the City Clerk's reply case (if the City Clerk wishes to present new evidence (not previously submitted) to reply to evidence introduced by the Appellant).

Ordinarily, each side will present its case by calling witnesses, generally one at a time.

(c) Witnesses

The party who calls a witness will ask questions of the witness first. This is called “examination-in-chief”. Then the other party is permitted to ask questions. This is called “cross-examination”. If new evidence emerges under cross-examination, which did not come out during examination-in-chief, the initial party is entitled to ask questions relating to that new information, but relating only to that new information. This is called “re-examination”.

After examination-in-chief, cross-examination and any re-examination by the parties, members of the Committee will be permitted to ask questions of the witness. Once again, the hearing is a completely different type of matter than all other Council or Council Committee proceedings. In order for the Appeals Committee to maintain its impartial, tribunal role, its members should ask only clarification questions. Members should avoid addressing new areas not already covered by the witness and should definitely avoid stating their own views, ideas or opinions. Members should not argue with witnesses or debate with other members of the Committee. Members should not try to influence or convince witnesses. Remember that it is the role of each of the representatives for the two parties to bring out his/her case and convince the Committee that his/her case is better than the opponent’s. It is not the role of the Committee to be an inquisitor.

If the Committee has asked any questions of the witness, the two parties’ representatives will be permitted to ask any further questions that arise out of the answers the witness gave.

Once all this has occurred, the witness will step down and the next witness will be called.

Through-out the hearing, members of the Committee should feel free to take whatever personal notes they feel may be of assistance in the deliberations that will follow.

(d) Submissions/Closing Addresses

After all witnesses have been called by both parties, their representatives will make their oral submissions/arguments/addresses. The sequence will be: the Appellant’s submissions and then the City Clerk’s submissions. After each representative finishes his/her submissions, the Committee may ask him/her questions. Again, these questions must be seeking clarification only, be relating to areas already addressed, be true questions rather than statements of member views, ideas or opinions and be non-argumentative.

It may be particularly useful for Committee to hear each representative’s submissions relating to specific conditions that might be attached to the Committee’s eventual recommendation. If the hearing arose from a recommendation by the City Clerk to suspend a business licence, then submissions relating to the length of the suspension would be important.

(e) Deliberation

After the representatives’ closing submissions, Committee will retire to the Caucus Room to deliberate. Only the Secretary to the Appeals Committee will accompany the members. The Committee is obliged to make its eventual recommendation as soon as practicable. If, during the deliberation, a serious question should emerge that requires resolution before the Committee can continue, then the

Committee may return to the public Chamber and consult the representatives of the two parties on the issue. As in all other aspects of the hearing, both parties' representatives must be given equal opportunity to hear and make submissions on every issue. With the new input in hand, the Committee could return to the Caucus Room.

If it would be appropriate for conditions to be attached to Committee's recommendation, then those conditions should be deliberated upon, so they can be spelled out in the recommendation. If the hearing arose from a recommendation by the City Clerk to suspend a business licence, and the Committee decides to support such recommendation, then the length of the suspension must be addressed.

Although "straw votes" are permitted during the deliberation, the only vote which will count will be the recorded public vote later in the public Chamber. The Committee must reach a majority decision on its recommendation after a hearing. The current Committee Procedures (as of January 29) provide that the Chair of the Committee does not vote unless there is a tie.

One approach that the Committee might consider is a two-step process, whereby it crafts a draft recommendation and reasons in private, returns to the public Chamber, reads its draft recommendation and reasons (emphasizing that it is only a draft) and solicits input from Committee's Legal Counsel and the two parties' representatives to ensure that the decision is legally sound. This would not be an opportunity for the representatives to re-argue any aspects of their cases. Based on the input, the Committee could return to the Caucus Room, agree on any editing, and then emerge with the final wording.

In general, the Committee can, in the public Chamber, at any time, seek the input of the two parties' representatives on any procedural issues that arise. Alternatively, the Committee may consult its own Legal Counsel, but again, such consultation must be in public, with both parties' representatives being permitted to hear and respond to Legal Counsel's answers. Every aspect of the hearing, except the Committee's internal deliberation, must be public.

(f) Recommendation

After deliberation is complete, the Committee should re-enter the public Chamber, where the Chair reads aloud the final wording of the recommendation and reasons. The recommendation and reasons must be in writing, in the form of a report to Council as provided for in the City's Procedural By-law.

The Committee must, in its written report, include all the following:

- The application, complaint, reference or other document by which the proceeding was commenced;
- The notice of the hearing;
- A listing of the documentary evidence filed with the Appeals Committee;
- A summary of the oral evidence presented at the hearing;
- A summary of the arguments presented at the hearing;

- A statement of the Appeals Committee's findings of fact;
- The recommendation of the Appeals Committee;
- The grounds or basis (reasons) for the recommendation; and
- The date, time and location of the Council meeting at which the recommendation will be considered by Council.

The report must set out a logical basis for reaching the decision that was reached. The recommendation should be clear, coherent and concise.

Once back in the public Chamber, the Committee must conduct a formal motion and recorded vote on the recommendation and reasons. The vote must be carried by a majority. Once again, the current Committee Procedures provide that the Chair may only vote to break a tie.

After the vote, the hearing adjourns.

After the hearing

After the hearing, the Appeals Committee, as a tribunal, just like a court, is done with the matter. Members should not discuss the case, and particularly not the deliberations that led to the final recommendation and reasons.

The Secretary to the Appeals Committee will take the administrative actions required in connection with distributing the report and forwarding it to Council for consideration and the final decision. When the report eventually comes forward to Council, members of the Appeals Committee will be entitled to vote as ordinary members of Council.

Information for Members of Council:

Council Acting as a Tribunal:

Decision under Business Licensing By-law Number (2009)-18855

Background

City By-law Number (2009)-18855, as amended, establishes a business licensing system for the City. The by-law permits an applicant for a business licence or a person to whom a business licence has been issued (an “Appellant”) to:

- Appeal a refusal by the City Clerk to issue or renew a business licence; and
- Request a hearing regarding a recommendation of the City Clerk to suspend or revoke a business licence.

Such an appeal or hearing is held by a City tribunal called the “Appeals Committee”. Although the Appeals Committee will conduct the hearing, it will be Council which must make the final decision.

The procedures of the Appeals Committee and Council are governed by the *Statutory Powers Procedure Act* (the “Act”), the City’s Business Licensing By-law, and the Appeals Committee Procedures adopted by the Committee itself. The Act constitutes the Appeals Committee and Council as “tribunals”. A tribunal is required to try a case in a fair, objective, unbiased and court-like manner. As in typical court-like proceedings, there are two opposing sides (two parties) in a Licensing By-law appeal: the Appellant and the City Clerk. The Appeals Committee and Council must treat these two equally.

Council’s special status as a tribunal for purposes of Licensing By-law appeal decisions means that it must act differently than when it is not acting as a tribunal. This paper is intended to highlight the unique procedures members of Council should adopt in dealing with a decision following an appeal or hearing under the Business Licensing By-law.

Prior to Council’s involvement

One of the unique aspects of a proceeding where Council is a tribunal is that Council must go out of its way to be independent, fair, impartial and unbiased in its consideration of the matter. Not only should Council actually be independent, fair, impartial and unbiased, it should also be seen to be so.

This means that Council and its members must deal with the appeal recommendation only within the context of the proceeding itself. Only then can the process be open, public and accountable.

The principal implication of this for members of Council is that they should receive and disseminate information relevant to the appeal, only within the context of the official proceeding process. Outside that process, members should not communicate about the matter with anyone:

- The Appellant;
- Any officers, directors or staff of the Appellant;
- Any legal, or other, representatives of the Appellant;
- City staff (Clerk, by-law enforcement, finance, economic development, planning and building, etc.);
- Any legal, or other, representatives of the City Clerk;
- The public; or
- Any other members of the Appeals Committee or Council.

There are only two exceptions to this general rule. First is the Secretary to the Appeals Committee (a City staff member), who will manage the scheduling and administrative support for the proceeding. This individual will be acting independently from the City Clerk and the staff of the City Clerk's office involved in the ordinary enforcement of the Business Licensing By-law. The second exception is the lawyer from Legal Services assigned to act as Legal Counsel to Council for the proceeding. Note that a different lawyer from Legal Services will be assigned to represent the City Clerk as a party to the proceeding. Members of Council should not communicate with this latter lawyer regarding the appeal. The two lawyers from Legal Services will not communicate with each other regarding the subject matter of the proceeding.

In order to preserve the integrity of the appeal and decision-making process, any member of Council who (inadvertently or otherwise), prior to the ultimate Council meeting, communicates with either of the parties or their representatives regarding the proceeding, should disqualify himself or herself from the tribunal for the balance of the proceeding, on the ground of potential bias. It would be unfair for a member of the tribunal to receive information from or about one party without the other party being able to receive the same information and provide its response. It would also be unfair for any member of the tribunal to receive any information that is not received by all other members of the tribunal. Despite such a disqualification, such member should nevertheless avoid any further communication with anyone regarding the proceeding.

If a member of Council becomes disqualified, he or she should immediately notify the Mayor as well as Council's Legal Counsel. Such a disqualified member could simply not attend at the portion of Council's eventual meeting when the appeal is addressed. Alternatively, he or she could attend, rise at the very beginning of Council's consideration of the appeal, declare a potential bias because of communication outside of the formal appeal process, immediately vacate his/her seat at the Council table, and take no part in any other aspect of the appeal proceeding.

A licensing appeal proceeding that reaches Council will have begun as follows.

An Appellant will have submitted an appeal under the Business Licensing By-law. Staff and the Appeals Committee will have dealt with the appeal initially. Members of Council not on the Appeals Committee will have had no role at all in these initial phases of the appeal process and will not have participated in any communication regarding it. The Appeals Committee will have held a hearing, and, at the

conclusion of the hearing, will have made a recommendation to Council as to the resolution of the appeal.

Council's involvement

The recommendation of the Appeals Committee will come to Council in the form of a Report pursuant to Council's usual Procedural By-law procedures. Members can receive and review the Report, as well as any other information or material relevant to the matter (such as affidavits or other documents) that may be distributed to Council by the Secretary to the Appeals Committee. But members of Council should continue not to communicate about the matter in any other way.

At the Council meeting when the Report is considered, the two parties will be permitted to submit written materials and make oral presentations (all subject to Council's ordinary procedural requirements and restrictions). However, Council will not be holding a hearing. Council may debate and deal with the Report as it would with any other Report. After its consideration, Council may make any decision that it could have made if it had held the hearing itself, including accepting or rejecting the recommendation of the Appeals Committee in whole or in part or with any changes Council sees fit to make in accordance with the Business Licensing By-law. Council will pass a final motion on the appeal, in whatever form it chooses.

This will conclude the matter. Staff will implement Council's decision.



Français

Statutory Powers Procedure Act

R.S.O. 1990, CHAPTER S.22

Consolidation Period: From June 1, 2011 to the e-Laws currency date.

Last amendment: 2009, c. 33, Sched. 6, s. 87.

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Interpretation

1. (1) In this Act,

“electronic hearing” means a hearing held by conference telephone or some other form of electronic technology allowing persons to hear one another; (“audience électronique”)

“hearing” means a hearing in any proceeding; (“audience”)

“licence” includes any permit, certificate, approval, registration or similar form of permission required by law; (“autorisation”)

“municipality” has the same meaning as in the *Municipal Affairs Act*; (“municipalité”)

“oral hearing” means a hearing at which the parties or their representatives attend before the tribunal in person; (“audience orale”)

“proceeding” means a proceeding to which this Act applies; (“instance”)

“representative” means, in respect of a proceeding to which this Act applies, a person authorized under the *Law Society Act* to represent a person in that proceeding; (“représentant”)

“statutory power of decision” means a power or right, conferred by or under a statute, to make a decision deciding or prescribing,

(a) the legal rights, powers, privileges, immunities, duties or liabilities of any person or party, or

(b) the eligibility of any person or party to receive, or to the continuation of, a benefit or licence, whether the person is legally entitled thereto or not; (“compétence légale de décision”)

“tribunal” means one or more persons, whether or not incorporated and however described, upon which a statutory power of decision is conferred by or under a statute; (“tribunal”)

“written hearing” means a hearing held by means of the exchange of documents, whether in written form or by electronic means. (“audience écrite”) R.S.O. 1990, c. S.22, s. 1 (1); 1994, c. 27, s. 56 (1-3); 2002, c. 17, Sched. F, Table; 2006, c. 21, Sched. C, s. 134 (1, 2).

Meaning of “person” extended

(2) A municipality, an unincorporated association of employers, a trade union or council of trade unions who may be a party to a proceeding in the exercise of a statutory power of decision under the statute conferring the power shall be deemed to be a person for the purpose of any provision of this Act or of any rule made under this Act that applies to parties. R.S.O. 1990, c. S.22, s. 1 (2).

Liberal construction of Act and rules

2. This Act, and any rule made by a tribunal under subsection 17.1 (4) or section 25.1, shall be liberally construed to secure the just, most expeditious and cost-effective determination of every proceeding on its merits. 1999, c. 12, Sched. B, s. 16 (1); 2006, c. 19, Sched. B, s. 21 (1).

Application of Act

3. (1) Subject to subsection (2), this Act applies to a proceeding by a tribunal in the exercise of a statutory power of decision conferred by or under an Act of the Legislature, where the tribunal is required by or under such Act or otherwise by law to hold or to afford to the parties to the proceeding an opportunity for a hearing before making a decision. R.S.O. 1990, c. S.22, s. 3 (1); 1994, c. 27, s. 56 (5).

Where Act does not apply

- (2) This Act does not apply to a proceeding,
- (a) before the Assembly or any committee of the Assembly;
 - (b) in or before,
 - (i) the Court of Appeal,
 - (ii) the Superior Court of Justice,
 - (iii) the Ontario Court of Justice,
 - (iv) the Family Court of the Superior Court of Justice,
 - (v) the Small Claims Court, or
 - (vi) a justice of the peace;
 - (c) to which the Rules of Civil Procedure apply;
 - (d) before an arbitrator to which the *Arbitrations Act* or the *Labour Relations Act* applies;
 - (e) at a coroner’s inquest;
 - (f) of a commission appointed under the *Public Inquiries Act, 2009*;
 - (g) of one or more persons required to make an investigation and to make a report, with or without recommendations, where the report is for the information or advice of the person to whom it is made and does not in any way legally bind or limit that person in any decision he or she may have power to make; or
 - (h) of a tribunal empowered to make regulations, rules or by-laws in so far as its power to make regulations, rules or by-laws is concerned. R.S.O. 1990, c. S.22, s. 3 (2); 1994, c. 27, s. 56 (6); 2006, c. 19, Sched. C, s. 1 (1, 2, 4); 2009, c. 33, Sched. 6, s. 87.

Waiver**Waiver of procedural requirement**

4.1Any procedural requirement of this Act, or of another Act or a regulation that applies to a proceeding, may be waived with the consent of the parties and the tribunal. 1997, c. 23, s. 13 (1).

Same, rules

2Any provision of a tribunal's rules made under section 25.1 may be waived in accordance with the rules. 1994, c. 27, s. 56 (7).

Disposition without hearing

4.1If the parties consent, a proceeding may be disposed of by a decision of the tribunal given without a hearing, unless another Act or a regulation that applies to the proceeding provides otherwise. 1997, c. 23, s. 13 (2).

Panels, certain matters

4.21A procedural or interlocutory matter in a proceeding may be heard and determined by a panel consisting of one or more members of the tribunal, as assigned by the chair of the tribunal. 1994, c. 27, s. 56 (8).

Assignments

2In assigning members of the tribunal to a panel, the chair shall take into consideration any requirement imposed by another Act or a regulation that applies to the proceeding that the tribunal be representative of specific interests. 1997, c. 23, s. 13 (3).

Decision of panel

3The decision of a majority of the members of a panel, or their unanimous decision in the case of a two-member panel, is the tribunal's decision. 1994, c. 27, s. 56 (8).

Panel of one, reduced panel

Panel of one

4.2.11The chair of a tribunal may decide that a proceeding be heard by a panel of one person and assign the person to hear the proceeding unless there is a statutory requirement in another Act that the proceeding be heard by a panel of more than one person.

Reduction in number of panel members

2Where there is a statutory requirement in another Act that a proceeding be heard by a panel of a specified number of persons, the chair of the tribunal may assign to the panel one person or any lesser number of persons than the number specified in the other Act if all parties to the proceeding consent. 1999, c. 12, Sched. B, s. 16 (2).

Expiry of term

4.3If the term of office of a member of a tribunal who has participated in a hearing expires before a decision is given, the term shall be deemed to continue, but only for the purpose of participating in the decision and for no other purpose. 1997, c. 23, s. 13 (4).

Incapacity of member

4.41If a member of a tribunal who has participated in a hearing becomes unable, for any reason, to complete the hearing or to participate in the decision, the remaining member or members may complete the hearing and give a decision. 1994, c. 27, s. 56 (9).

Other Acts and regulations

2Subsection (1) does not apply if another Act or a regulation specifically deals with the issue of what takes place in the circumstances described in subsection (1). 1997, c. 23, s. 13 (5).

Decision not to process commencement of proceeding

4.5(1) Subject to subsection (3), upon receiving documents relating to the commencement of a proceeding, a tribunal or its administrative staff may decide not to process the documents relating to the commencement of the proceeding if,

- (a) the documents are incomplete;
- (b) the documents are received after the time required for commencing the proceeding has elapsed;
- (c) the fee required for commencing the proceeding is not paid; or
- (d) there is some other technical defect in the commencement of the proceeding.

Notice

(2) A tribunal or its administrative staff shall give the party who commences a proceeding notice of its decision under subsection (1) and shall set out in the notice the reasons for the decision and the requirements for resuming the processing of the documents.

Rules under s. 25.1

(3) A tribunal or its administrative staff shall not make a decision under subsection (1) unless the tribunal has made rules under section 25.1 respecting the making of such decisions and those rules shall set out,

- (a) any of the grounds referred to in subsection (1) upon which the tribunal or its administrative staff may decide not to process the documents relating to the commencement of a proceeding; and
- (b) the requirements for the processing of the documents to be resumed.

Continuance of provisions in other statutes

(4) Despite section 32, nothing in this section shall prevent a tribunal or its administrative staff from deciding not to process documents relating to the commencement of a proceeding on grounds that differ from those referred to in subsection (1) or without complying with subsection (2) or (3) if the tribunal or its staff does so in accordance with the provisions of an Act that are in force on the day this section comes into force. 1999, c. 12, Sched. B, s. 16 (3).

Dismissal of proceeding without hearing

4.6(1) Subject to subsections (5) and (6), a tribunal may dismiss a proceeding without a hearing if,

- (a) the proceeding is frivolous, vexatious or is commenced in bad faith;
- (b) the proceeding relates to matters that are outside the jurisdiction of the tribunal; or
- (c) some aspect of the statutory requirements for bringing the proceeding has not been met.

Notice

(2) Before dismissing a proceeding under this section, a tribunal shall give notice of its intention to dismiss the proceeding to,

- (a) all parties to the proceeding if the proceeding is being dismissed for reasons referred to in clause (1) (b); or
- (b) the party who commences the proceeding if the proceeding is being dismissed for any

other reason.

Same

(3) The notice of intention to dismiss a proceeding shall set out the reasons for the dismissal and inform the parties of their right to make written submissions to the tribunal with respect to the dismissal within the time specified in the notice.

Right to make submissions

(4) A party who receives a notice under subsection (2) may make written submissions to the tribunal with respect to the dismissal within the time specified in the notice.

Dismissal

(5) A tribunal shall not dismiss a proceeding under this section until it has given notice under subsection (2) and considered any submissions made under subsection (4).

Rules

(6) A tribunal shall not dismiss a proceeding under this section unless it has made rules under section 25.1 respecting the early dismissal of proceedings and those rules shall include,

- (a) any of the grounds referred to in subsection (1) upon which a proceeding may be dismissed;
- (b) the right of the parties who are entitled to receive notice under subsection (2) to make submissions with respect to the dismissal; and
- (c) the time within which the submissions must be made.

Continuance of provisions in other statutes

(7) Despite section 32, nothing in this section shall prevent a tribunal from dismissing a proceeding on grounds other than those referred to in subsection (1) or without complying with subsections (2) to (6) if the tribunal dismisses the proceeding in accordance with the provisions of an Act that are in force on the day this section comes into force. 1999, c. 12, Sched. B, s. 16 (3).

Classifying proceedings

4.7 A tribunal may make rules under section 25.1 classifying the types of proceedings that come before it and setting guidelines as to the procedural steps or processes (such as preliminary motions, pre-hearing conferences, alternative dispute resolution mechanisms, expedited hearings) that apply to each type of proceeding and the circumstances in which other procedures may apply. 1999, c. 12, Sched. B, s. 16 (3).

Alternative dispute resolution

4.8(1) A tribunal may direct the parties to a proceeding to participate in an alternative dispute resolution mechanism for the purposes of resolving the proceeding or an issue arising in the proceeding if,

- (a) it has made rules under section 25.1 respecting the use of alternative dispute resolution mechanisms; and
- (b) all parties consent to participating in the alternative dispute resolution mechanism.

Definition

(2) In this section,

“alternative dispute resolution mechanism” includes mediation, conciliation, negotiation or

any other means of facilitating the resolution of issues in dispute.

Rules

(3) A rule under section 25.1 respecting the use of alternative dispute resolution mechanisms shall include procedural guidelines to deal with the following:

1. The circumstances in which a settlement achieved by means of an alternative dispute resolution mechanism must be reviewed and approved by the tribunal.
2. Any requirement, statutory or otherwise, that there be an order by the tribunal.

Mandatory alternative dispute resolution

(4) A rule under subsection (3) may provide that participation in an alternative dispute resolution mechanism is mandatory or that it is mandatory in certain specified circumstances.

Person appointed to mediate, etc.

(5) A rule under subsection (3) may provide that a person appointed to mediate, conciliate, negotiate or help resolve a matter by means of an alternative dispute resolution mechanism be a member of the tribunal or a person independent of the tribunal. However, a member of the tribunal who is so appointed with respect to a matter in a proceeding shall not subsequently hear the matter if it comes before the tribunal unless the parties consent.

Continuance of provisions in other statutes

(6) Despite section 32, nothing in this section shall prevent a tribunal from directing parties to a proceeding to participate in an alternative dispute resolution mechanism even though the requirements of subsections (1) to (5) have not been met if the tribunal does so in accordance with the provisions of an Act that are in force on the day this section comes into force. 1999, c. 12, Sched. B, s. 16 (3).

Mediators, etc.: not compellable, notes not evidence

Mediators, etc., not compellable

4.9(1) No person employed as a mediator, conciliator or negotiator or otherwise appointed to facilitate the resolution of a matter before a tribunal by means of an alternative dispute resolution mechanism shall be compelled to give testimony or produce documents in a proceeding before the tribunal or in a civil proceeding with respect to matters that come to his or her knowledge in the course of exercising his or her duties under this or any other Act.

Evidence in civil proceedings

(2) No notes or records kept by a mediator, conciliator or negotiator or by any other person appointed to facilitate the resolution of a matter before a tribunal by means of an alternative dispute resolution mechanism under this or any other Act are admissible in a civil proceeding. 1999, c. 12, Sched. B, s. 16 (3).

Parties

5. The parties to a proceeding shall be the persons specified as parties by or under the statute under which the proceeding arises or, if not so specified, persons entitled by law to be parties to the proceeding. R.S.O. 1990, c. S.22, s. 5.

Written hearings

5.1(1) A tribunal whose rules made under section 25.1 deal with written hearings may hold a written hearing in a proceeding. 1997, c. 23, s. 13 (6).

Exception

(2) The tribunal shall not hold a written hearing if a party satisfies the tribunal that there is good reason for not doing so.

Same

(2.1) Subsection (2) does not apply if the only purpose of the hearing is to deal with procedural matters. 1999, c. 12, Sched. B, s. 16 (4).

Documents

(3) In a written hearing, all the parties are entitled to receive every document that the tribunal receives in the proceeding. 1994, c. 27, s. 56 (10).

Electronic hearings

5.2(1) A tribunal whose rules made under section 25.1 deal with electronic hearings may hold an electronic hearing in a proceeding. 1997, c. 23, s. 13 (7).

Exception

(2) The tribunal shall not hold an electronic hearing if a party satisfies the tribunal that holding an electronic rather than an oral hearing is likely to cause the party significant prejudice.

Same

(3) Subsection (2) does not apply if the only purpose of the hearing is to deal with procedural matters.

Participants to be able to hear one another

(4) In an electronic hearing, all the parties and the members of the tribunal participating in the hearing must be able to hear one another and any witnesses throughout the hearing. 1994, c. 27, s. 56 (10).

Different kinds of hearings in one proceeding

5.2.1 A tribunal may, in a proceeding, hold any combination of written, electronic and oral hearings. 1997, c. 23, s. 13 (8).

Pre-hearing conferences

5.3(1) If the tribunal's rules made under section 25.1 deal with pre-hearing conferences, the tribunal may direct the parties to participate in a pre-hearing conference to consider,

- (a) the settlement of any or all of the issues;
- (b) the simplification of the issues;
- (c) facts or evidence that may be agreed upon;
- (d) the dates by which any steps in the proceeding are to be taken or begun;
- (e) the estimated duration of the hearing; and
- (f) any other matter that may assist in the just and most expeditious disposition of the proceeding. 1994, c. 27, s. 56 (11); 1997, c. 23, s. 13 (9).

Other Acts and regulations

(1.1) The tribunal's power to direct the parties to participate in a pre-hearing conference is subject to any other Act or regulation that applies to the proceeding. 1997, c. 23, s. 13 (10).

Who presides

(2) The chair of the tribunal may designate a member of the tribunal or any other person to preside at the pre-hearing conference.

Orders

(3) A member who presides at a pre-hearing conference may make such orders as he or she considers necessary or advisable with respect to the conduct of the proceeding, including adding parties.

Disqualification

(4) A member who presides at a pre-hearing conference at which the parties attempt to settle issues shall not preside at the hearing of the proceeding unless the parties consent. 1994, c. 27, s. 56 (11).

Application of s. 5.2

(5) Section 5.2 applies to a pre-hearing conference, with necessary modifications. 1997, c. 23, s. 13 (10).

Disclosure

5.4(1) If the tribunal's rules made under section 25.1 deal with disclosure, the tribunal may, at any stage of the proceeding before all hearings are complete, make orders for,

- (a) the exchange of documents;
- (b) the oral or written examination of a party;
- (c) the exchange of witness statements and reports of expert witnesses;
- (d) the provision of particulars;
- (e) any other form of disclosure. 1994, c. 27, s. 56 (12); 1997, c. 23, s. 13 (11).

Other Acts and regulations

(1.1) The tribunal's power to make orders for disclosure is subject to any other Act or regulation that applies to the proceeding. 1997, c. 23, s. 13 (12).

Exception, privileged information

(2) Subsection (1) does not authorize the making of an order requiring disclosure of privileged information. 1994, c. 27, s. 56 (12).

Notice of hearing

6.(1) The parties to a proceeding shall be given reasonable notice of the hearing by the tribunal. R.S.O. 1990, c. S.22, s. 6 (1).

Statutory authority

(2) A notice of a hearing shall include a reference to the statutory authority under which the hearing will be held.

Oral hearing

(3) A notice of an oral hearing shall include,

- (a) a statement of the time, place and purpose of the hearing; and
- (b) a statement that if the party notified does not attend at the hearing, the tribunal may proceed in the party's absence and the party will not be entitled to any further notice in the proceeding. 1994, c. 27, s. 56 (13).

Written hearing

(4) A notice of a written hearing shall include,

- (a) a statement of the date and purpose of the hearing, and details about the manner in

which the hearing will be held;

- (b) a statement that the hearing shall not be held as a written hearing if the party satisfies the tribunal that there is good reason for not holding a written hearing (in which case the tribunal is required to hold it as an electronic or oral hearing) and an indication of the procedure to be followed for that purpose;
- (c) a statement that if the party notified neither acts under clause (b) nor participates in the hearing in accordance with the notice, the tribunal may proceed without the party's participation and the party will not be entitled to any further notice in the proceeding. 1994, c. 27, s. 56 (13); 1997, c. 23, s. 13 (13); 1999, c. 12, Sched. B, s. 16 (5).

Electronic hearing

(5)A notice of an electronic hearing shall include,

- (a) a statement of the time and purpose of the hearing, and details about the manner in which the hearing will be held;
- (b) a statement that the only purpose of the hearing is to deal with procedural matters, if that is the case;
- (c) if clause (b) does not apply, a statement that the party notified may, by satisfying the tribunal that holding the hearing as an electronic hearing is likely to cause the party significant prejudice, require the tribunal to hold the hearing as an oral hearing, and an indication of the procedure to be followed for that purpose; and
- (d) a statement that if the party notified neither acts under clause (c), if applicable, nor participates in the hearing in accordance with the notice, the tribunal may proceed without the party's participation and the party will not be entitled to any further notice in the proceeding. 1994, c. 27, s. 56 (13).

Effect of non-attendance at hearing after due notice

7.(1)Where notice of an oral hearing has been given to a party to a proceeding in accordance with this Act and the party does not attend at the hearing, the tribunal may proceed in the absence of the party and the party is not entitled to any further notice in the proceeding. R.S.O. 1990, c. S.22, s. 7; 1994, c. 27, s. 56 (14).

Same, written hearings

(2)Where notice of a written hearing has been given to a party to a proceeding in accordance with this Act and the party neither acts under clause 6 (4) (b) nor participates in the hearing in accordance with the notice, the tribunal may proceed without the party's participation and the party is not entitled to any further notice in the proceeding.

Same, electronic hearings

(3)Where notice of an electronic hearing has been given to a party to a proceeding in accordance with this Act and the party neither acts under clause 6 (5) (c), if applicable, nor participates in the hearing in accordance with the notice, the tribunal may proceed without the party's participation and the party is not entitled to any further notice in the proceeding. 1994, c. 27, s. 56 (15).

Where character, etc., of a party is in issue

8.Where the good character, propriety of conduct or competence of a party is an issue in a

proceeding, the party is entitled to be furnished prior to the hearing with reasonable information of any allegations with respect thereto. R.S.O. 1990, c. S.22, s. 8.

Hearings to be public; maintenance of order

Hearings to be public, exceptions

9.1(1)An oral hearing shall be open to the public except where the tribunal is of the opinion that,

- (a) matters involving public security may be disclosed; or
- (b) intimate financial or personal matters or other matters may be disclosed at the hearing of such a nature, having regard to the circumstances, that the desirability of avoiding disclosure thereof in the interests of any person affected or in the public interest outweighs the desirability of adhering to the principle that hearings be open to the public,

in which case the tribunal may hold the hearing in the absence of the public. R.S.O. 1990, c. S.22, s. 9 (1); 1994, c. 27, s. 56 (16).

Written hearings

(1.1)In a written hearing, members of the public are entitled to reasonable access to the documents submitted, unless the tribunal is of the opinion that clause (1) (a) or (b) applies. 1994, c. 27, s. 56 (17).

Electronic hearings

(1.2)An electronic hearing shall be open to the public unless the tribunal is of the opinion that,

- (a) it is not practical to hold the hearing in a manner that is open to the public; or
- (b) clause (1) (a) or (b) applies. 1997, c. 23, s. 13 (14).

Maintenance of order at hearings

(2)A tribunal may make such orders or give such directions at an oral or electronic hearing as it considers necessary for the maintenance of order at the hearing, and, if any person disobeys or fails to comply with any such order or direction, the tribunal or a member thereof may call for the assistance of any peace officer to enforce the order or direction, and every peace officer so called upon shall take such action as is necessary to enforce the order or direction and may use such force as is reasonably required for that purpose. R.S.O. 1990, c. S.22, s. 9 (2); 1994, c. 27, s. 56 (18).

Proceedings involving similar questions

9.1(1)If two or more proceedings before a tribunal involve the same or similar questions of fact, law or policy, the tribunal may,

- (a) combine the proceedings or any part of them, with the consent of the parties;
- (b) hear the proceedings at the same time, with the consent of the parties;
- (c) hear the proceedings one immediately after the other; or
- (d) stay one or more of the proceedings until after the determination of another one of them.

Exception

(2)Subsection (1) does not apply to proceedings to which the *Consolidated Hearings Act*

applies. 1994, c. 27, s. 56 (19).

Same

(3) Clauses (1) (a) and (b) do not apply to a proceeding if,

- (a) any other Act or regulation that applies to the proceeding requires that it be heard in private;
- (b) the tribunal is of the opinion that clause 9 (1) (a) or (b) applies to the proceeding. 1994, c. 27, s. 56 (19); 1997, c. 23, s. 13 (15).

Conflict, consent requirements

(4) The consent requirements of clauses (1) (a) and (b) do not apply if another Act or a regulation that applies to the proceedings allows the tribunal to combine them or hear them at the same time without the consent of the parties. 1997, c. 23, s. 13 (16).

Use of same evidence

(5) If the parties to the second-named proceeding consent, the tribunal may treat evidence that is admitted in a proceeding as if it were also admitted in another proceeding that is heard at the same time under clause (1) (b). 1994, c. 27, s. 56 (19).

Right to representation

10. A party to a proceeding may be represented by a representative. 2006, c. 21, Sched. C, s. 134 (3).

Examination of witnesses

10.1 A party to a proceeding may, at an oral or electronic hearing,

- (a) call and examine witnesses and present evidence and submissions; and
- (b) conduct cross-examinations of witnesses at the hearing reasonably required for a full and fair disclosure of all matters relevant to the issues in the proceeding. 1994, c. 27, s. 56 (20).

Rights of witnesses to representation

11. (1) A witness at an oral or electronic hearing is entitled to be advised by a representative as to his or her rights, but such representative may take no other part in the hearing without leave of the tribunal. 2006, c. 21, Sched. C, s. 134 (4).

Idem

(2) Where an oral hearing is closed to the public, the witness's representative is not entitled to be present except when that witness is giving evidence. R.S.O. 1990, c. S.22, s. 11 (2); 1994, c. 27, s. 56 (22); 2006, c. 21, Sched. C, s. 134 (5).

Summonses

12. (1) A tribunal may require any person, including a party, by summons,

- (a) to give evidence on oath or affirmation at an oral or electronic hearing; and
- (b) to produce in evidence at an oral or electronic hearing documents and things specified by the tribunal,

relevant to the subject-matter of the proceeding and admissible at a hearing. R.S.O. 1990, c. S.22, s. 12 (1); 1994, c. 27, s. 56 (23).

Form and service of summons

(2) A summons issued under subsection (1) shall be in the prescribed form (in English or French) and,

- (a) where the tribunal consists of one person, shall be signed by him or her;
- (b) where the tribunal consists of more than one person, shall be signed by the chair of the tribunal or in such other manner as documents on behalf of the tribunal may be signed under the statute constituting the tribunal. 1994, c. 27, s. 56 (24).

Same

(3) The summons shall be served personally on the person summoned. 1994, c. 27, s. 56 (24).

Fees and allowances

(3.1) The person summoned is entitled to receive the same fees or allowances for attending at or otherwise participating in the hearing as are paid to a person summoned to attend before the Superior Court of Justice. 1994, c. 27, s. 56 (24); 2006, c. 19, Sched. C, s. 1 (1).

Bench warrant

(4) A judge of the Superior Court of Justice may issue a warrant against a person if the judge is satisfied that,

- (a) a summons was served on the person under this section;
- (b) the person has failed to attend or to remain in attendance at the hearing (in the case of an oral hearing) or has failed otherwise to participate in the hearing (in the case of an electronic hearing) in accordance with the summons; and
- (c) the person's attendance or participation is material to the ends of justice. 1994, c. 27, s. 56 (25); 2006, c. 19, Sched. C, s. 1 (1).

Same

(4.1) The warrant shall be in the prescribed form (in English or French), directed to any police officer, and shall require the person to be apprehended anywhere within Ontario, brought before the tribunal forthwith and,

- (a) detained in custody as the judge may order until the person's presence as a witness is no longer required; or
- (b) in the judge's discretion, released on a recognizance, with or without sureties, conditioned for attendance or participation to give evidence. 1994, c. 27, s. 56 (25).

Proof of service

(5) Service of a summons may be proved by affidavit in an application to have a warrant issued under subsection (4). 1994, c. 27, s. 56 (26).

Certificate of facts

(6) Where an application to have a warrant issued is made on behalf of a tribunal, the person constituting the tribunal or, if the tribunal consists of more than one person, the chair of the tribunal may certify to the judge the facts relied on to establish that the attendance or other participation of the person summoned is material to the ends of justice, and the judge may accept the certificate as proof of the facts. 1994, c. 27, s. 56 (26).

Same

(7) Where the application is made by a party to the proceeding, the facts relied on to

establish that the attendance or other participation of the person is material to the ends of justice may be proved by the party's affidavit. 1994, c. 27, s. 56 (26).

Contempt proceedings

13.(1) Where any person without lawful excuse,

- (a) on being duly summoned under section 12 as a witness at a hearing makes default in attending at the hearing; or
- (b) being in attendance as a witness at an oral hearing or otherwise participating as a witness at an electronic hearing, refuses to take an oath or to make an affirmation legally required by the tribunal to be taken or made, or to produce any document or thing in his or her power or control legally required by the tribunal to be produced by him or her or to answer any question to which the tribunal may legally require an answer; or
- (c) does any other thing that would, if the tribunal had been a court of law having power to commit for contempt, have been contempt of that court,

the tribunal may, of its own motion or on the motion of a party to the proceeding, state a case to the Divisional Court setting out the facts and that court may inquire into the matter and, after hearing any witnesses who may be produced against or on behalf of that person and after hearing any statement that may be offered in defence, punish or take steps for the punishment of that person in like manner as if he or she had been guilty of contempt of the court. R.S.O. 1990, c. S.22, s. 13; 1994, c. 27, s. 56 (27).

Same

(2) Subsection (1) also applies to a person who,

- (a) having objected under clause 6 (4) (b) to a hearing being held as a written hearing, fails without lawful excuse to participate in the oral or electronic hearing of the matter; or
- (b) being a party, fails without lawful excuse to attend a pre-hearing conference when so directed by the tribunal. 1997, c. 23, s. 13 (17).

Protection for witnesses

14.(1) A witness at an oral or electronic hearing shall be deemed to have objected to answer any question asked him or her upon the ground that the answer may tend to criminate him or her or may tend to establish his or her liability to civil proceedings at the instance of the Crown, or of any person, and no answer given by a witness at a hearing shall be used or be receivable in evidence against the witness in any trial or other proceeding against him or her thereafter taking place, other than a prosecution for perjury in giving such evidence. R.S.O. 1990, c. S.22, s. 14 (1); 1994, c. 27, s. 56 (28).

(2) Repealed: 1994, c. 27, s. 56 (29).

Evidence

What is admissible in evidence at a hearing

15.(1) Subject to subsections (2) and (3), a tribunal may admit as evidence at a hearing, whether or not given or proven under oath or affirmation or admissible as evidence in a court,

- (a) any oral testimony; and
- (b) any document or other thing,

relevant to the subject-matter of the proceeding and may act on such evidence, but the tribunal may exclude anything unduly repetitious.

What is inadmissible in evidence at a hearing

(2) Nothing is admissible in evidence at a hearing,

- (a) that would be inadmissible in a court by reason of any privilege under the law of evidence; or
- (b) that is inadmissible by the statute under which the proceeding arises or any other statute.

Conflicts

(3) Nothing in subsection (1) overrides the provisions of any Act expressly limiting the extent to or purposes for which any oral testimony, documents or things may be admitted or used in evidence in any proceeding.

Copies

(4) Where a tribunal is satisfied as to its authenticity, a copy of a document or other thing may be admitted as evidence at a hearing.

Photocopies

(5) Where a document has been filed in evidence at a hearing, the tribunal may, or the person producing it or entitled to it may with the leave of the tribunal, cause the document to be photocopied and the tribunal may authorize the photocopy to be filed in evidence in the place of the document filed and release the document filed, or may furnish to the person producing it or the person entitled to it a photocopy of the document filed certified by a member of the tribunal.

Certified copy admissible in evidence

(6) A document purporting to be a copy of a document filed in evidence at a hearing, certified to be a copy thereof by a member of the tribunal, is admissible in evidence in proceedings in which the document is admissible as evidence of the document. R.S.O. 1990, c. S.22, s. 15.

Use of previously admitted evidence

15.1(1) The tribunal may treat previously admitted evidence as if it had been admitted in a proceeding before the tribunal, if the parties to the proceeding consent. 1994, c. 27, s. 56 (30).

Definition

(2) In subsection (1),

“previously admitted evidence” means evidence that was admitted, before the hearing of the proceeding referred to in that subsection, in any other proceeding before a court or tribunal, whether in or outside Ontario.

Additional power

(3) This power conferred by this section is in addition to the tribunal’s power to admit evidence under section 15. 1997, c. 23, s. 13 (18).

Witness panels

15.2 A tribunal may receive evidence from panels of witnesses composed of two or more persons, if the parties have first had an opportunity to make submissions in that regard. 1994, c. 27, s. 56 (31).

Notice of facts and opinions

16.A tribunal may, in making its decision in any proceeding,

- (a) take notice of facts that may be judicially noticed; and
- (b) take notice of any generally recognized scientific or technical facts, information or opinions within its scientific or specialized knowledge. R.S.O. 1990, c. S.22, s. 16.

Interim decisions and orders

16.1(1)A tribunal may make interim decisions and orders.

Conditions

(2)A tribunal may impose conditions on an interim decision or order.

Reasons

(3)An interim decision or order need not be accompanied by reasons. 1994, c. 27, s. 56 (32).

Time frames

16.2 A tribunal shall establish guidelines setting out the usual time frame for completing proceedings that come before the tribunal and for completing the procedural steps within those proceedings. 1999, c. 12, Sched. B, s. 16 (6).

Decision; interest

Decision

17.(1)A tribunal shall give its final decision and order, if any, in any proceeding in writing and shall give reasons in writing therefor if requested by a party. R.S.O. 1990, c. S.22, s. 17; 1993, c. 27, Sched.

Interest

(2)A tribunal that makes an order for the payment of money shall set out in the order the principal sum, and if interest is payable, the rate of interest and the date from which it is to be calculated. 1994, c. 27, s. 56 (33).

Costs

17.1 (1) Subject to subsection (2), a tribunal may, in the circumstances set out in rules made under subsection (4), order a party to pay all or part of another party's costs in a proceeding. 2006, c. 19, Sched. B, s. 21 (2).

Exception

- (2)** A tribunal shall not make an order to pay costs under this section unless,
- (a) the conduct or course of conduct of a party has been unreasonable, frivolous or vexatious or a party has acted in bad faith; and
 - (b) the tribunal has made rules under subsection (4). 2006, c. 19, Sched. B, s. 21 (2).

Amount of costs

(3) The amount of the costs ordered under this section shall be determined in accordance with the rules made under subsection (4). 2006, c. 19, Sched. B, s. 21 (2).

Rules

- (4)** A tribunal may make rules with respect to,
- (a) the ordering of costs;
 - (b) the circumstances in which costs may be ordered; and

- (c) the amount of costs or the manner in which the amount of costs is to be determined. 2006, c. 19, Sched. B, s. 21 (2).

Same

(5) Subsections 25.1 (3), (4), (5) and (6) apply with respect to rules made under subsection (4). 2006, c. 19, Sched. B, s. 21 (2).

Continuance of provisions in other statutes

(6) Despite section 32, nothing in this section shall prevent a tribunal from ordering a party to pay all or part of another party's costs in a proceeding in circumstances other than those set out in, and without complying with, subsections (1) to (3) if the tribunal makes the order in accordance with the provisions of an Act that are in force on February 14, 2000. 2006, c. 19, Sched. B, s. 21 (2).

Transition

(7) This section, as it read on the day before the effective date, continues to apply to proceedings commenced before the effective date. 2006, c. 19, Sched. B, s. 21 (2).

Same

(8) Rules that are made under section 25.1 before the effective date and comply with subsection (4) are deemed to be rules made under subsection (4) until the earlier of the following days:

1. The first anniversary of the effective date.
2. The day on which the tribunal makes rules under subsection (4). 2006, c. 19, Sched. B, s. 21 (2).

Definition

(9) In subsections (7) and (8),

“effective date” means the day on which section 21 of Schedule B to the *Good Government Act, 2006* comes into force. 2006, c. 19, Sched. B, s. 21 (2).

Notice of decision

18. (1) The tribunal shall send each party who participated in the proceeding, or the party's representative, a copy of its final decision or order, including the reasons if any have been given,

- (a) by regular lettermail;
- (b) by electronic transmission;
- (c) by telephone transmission of a facsimile; or
- (d) by some other method that allows proof of receipt, if the tribunal's rules made under section 25.1 deal with the matter. 1994, c. 27, s. 56 (34); 1997, c. 23, s. 13 (19); 2006, c. 21, Sched. C, s. 134 (6).

Use of mail

(2) If the copy is sent by regular lettermail, it shall be sent to the most recent addresses known to the tribunal and shall be deemed to be received by the party on the fifth day after the day it is mailed. 1994, c. 27, s. 56 (34).

Use of electronic or telephone transmission

(3) If the copy is sent by electronic transmission or by telephone transmission of a

facsimile, it shall be deemed to be received on the day after it was sent, unless that day is a holiday, in which case the copy shall be deemed to be received on the next day that is not a holiday. 1994, c. 27, s. 56 (34).

Use of other method

(4) If the copy is sent by a method referred to in clause (1) (d), the tribunal's rules made under section 25.1 govern its deemed day of receipt. 1994, c. 27, s. 56 (34).

Failure to receive copy

(5) If a party that acts in good faith does not, through absence, accident, illness or other cause beyond the party's control, receive the copy until a later date than the deemed day of receipt, subsection (2), (3) or (4), as the case may be, does not apply. 1994, c. 27, s. 56 (34).

Enforcement of orders

19. (1) A certified copy of a tribunal's decision or order in a proceeding may be filed in the Superior Court of Justice by the tribunal or by a party and on filing shall be deemed to be an order of that court and is enforceable as such. 1994, c. 27, s. 56 (35); 2006, c. 19, Sched. C, s. 1 (1).

Notice of filing

(2) A party who files an order under subsection (1) shall notify the tribunal within 10 days after the filing. 1994, c. 27, s. 56 (35).

Order for payment of money

(3) On receiving a certified copy of a tribunal's order for the payment of money, the sheriff shall enforce the order as if it were an execution issued by the Superior Court of Justice. 1994, c. 27, s. 56 (35); 2006, c. 19, Sched. C, s. 1 (1).

Record of proceeding

20. A tribunal shall compile a record of any proceeding in which a hearing has been held which shall include,

- (a) any application, complaint, reference or other document, if any, by which the proceeding was commenced;
 - (b) the notice of any hearing;
 - (c) any interlocutory orders made by the tribunal;
 - (d) all documentary evidence filed with the tribunal, subject to any limitation expressly imposed by any other Act on the extent to or the purposes for which any such documents may be used in evidence in any proceeding;
 - (e) the transcript, if any, of the oral evidence given at the hearing; and
 - (f) the decision of the tribunal and the reasons therefor, where reasons have been given.
- R.S.O. 1990, c. S.22, s. 20.

Adjournments

21. A hearing may be adjourned from time to time by a tribunal of its own motion or where it is shown to the satisfaction of the tribunal that the adjournment is required to permit an adequate hearing to be held. R.S.O. 1990, c. S.22, s. 21.

Correction of errors

21.1 A tribunal may at any time correct a typographical error, error of calculation or similar

error made in its decision or order. 1994, c. 27, s. 56 (36).

Power to review

21.2(1)A tribunal may, if it considers it advisable and if its rules made under section 25.1 deal with the matter, review all or part of its own decision or order, and may confirm, vary, suspend or cancel the decision or order. 1997, c. 23, s. 13 (20).

Time for review

(2)The review shall take place within a reasonable time after the decision or order is made.

Conflict

(3)In the event of a conflict between this section and any other Act, the other Act prevails. 1994, c. 27, s. 56 (36).

Administration of oaths

22.A member of a tribunal has power to administer oaths and affirmations for the purpose of any of its proceedings and the tribunal may require evidence before it to be given under oath or affirmation. R.S.O. 1990, c. S.22, s. 22.

Powers re control of proceedings

Abuse of processes

23. (1) A tribunal may make such orders or give such directions in proceedings before it as it considers proper to prevent abuse of its processes. R.S.O. 1990, c. S.22, s. 23 (1).

Limitation on examination

(2) A tribunal may reasonably limit further examination or cross-examination of a witness where it is satisfied that the examination or cross-examination has been sufficient to disclose fully and fairly all matters relevant to the issues in the proceeding. 1994, c. 27, s. 56 (37).

Exclusion of representatives

(3) A tribunal may exclude from a hearing anyone, other than a person licensed under the *Law Society Act*, appearing on behalf of a party or as an adviser to a witness if it finds that such person is not competent properly to represent or to advise the party or witness, or does not understand and comply at the hearing with the duties and responsibilities of an advocate or adviser. 2006, c. 21, Sched. C, s. 134 (7).

Notice, etc.

24.(1)Where a tribunal is of the opinion that because the parties to any proceeding before it are so numerous or for any other reason, it is impracticable,

(a) to give notice of the hearing; or

(b) to send its decision and the material mentioned in section 18,

to all or any of the parties individually, the tribunal may, instead of doing so, cause reasonable notice of the hearing or of its decision to be given to such parties by public advertisement or otherwise as the tribunal may direct.

Contents of notice

(2)A notice of a decision given by a tribunal under clause (1) (b) shall inform the parties of the place where copies of the decision and the reasons therefor, if reasons were given, may be obtained. R.S.O. 1990, c. S.22, s. 24.

Appeal operates as stay, exception

25.(1)An appeal from a decision of a tribunal to a court or other appellate body operates as

a stay in the matter unless,

- (a) another Act or a regulation that applies to the proceeding expressly provides to the contrary; or
- (b) the tribunal or the court or other appellate body orders otherwise. 1997, c. 23, s. 13 (21).

Idem

(2) An application for judicial review under the *Judicial Review Procedure Act*, or the bringing of proceedings specified in subsection 2 (1) of that Act is not an appeal within the meaning of subsection (1). R.S.O. 1990, c. S.22, s. 25 (2).

Control of process

25.0.1 A tribunal has the power to determine its own procedures and practices and may for that purpose,

- (a) make orders with respect to the procedures and practices that apply in any particular proceeding; and
- (b) establish rules under section 25.1. 1999, c. 12, Sched. B, s. 16 (8).

Rules

25.1 (1) A tribunal may make rules governing the practice and procedure before it. 1994, c. 27, s. 56 (38).

Application

(2) The rules may be of general or particular application. 1994, c. 27, s. 56 (38).

Consistency with Acts

(3) The rules shall be consistent with this Act and with the other Acts to which they relate. 1994, c. 27, s. 56 (38).

Public access

(4) The tribunal shall make the rules available to the public in English and in French. 1994, c. 27, s. 56 (38).

Legislation Act, 2006, Part III

(5) Rules adopted under this section are not regulations as defined in Part III (Regulations) of the *Legislation Act, 2006*. 1994, c. 27, s. 56 (38); 2006, c. 21, Sched. F, s. 136 (1).

Additional power

(6) The power conferred by this section is in addition to any power to adopt rules that the tribunal may have under another Act. 1994, c. 27, s. 56 (38).

Regulations

26. The Lieutenant Governor in Council may make regulations prescribing forms for the purpose of section 12. 1994, c. 27, s. 56 (41).

Rules, etc., available to public

27. A tribunal shall make any rules or guidelines established under this or any other Act available for examination by the public. 1999, c. 12, Sched. B, s. 16 (9).

Substantial compliance

28. Substantial compliance with requirements respecting the content of forms, notices or

documents under this Act or any rule made under this or any other Act is sufficient. 1999, c. 12, Sched. B, s. 16 (9).

29.-31. Repealed: 1994, c. 27, s. 56 (40).

Conflict

32. Unless it is expressly provided in any other Act that its provisions and regulations, rules or by-laws made under it apply despite anything in this Act, the provisions of this Act prevail over the provisions of such other Act and over regulations, rules or by-laws made under such other Act which conflict therewith. R.S.O. 1990, c. S.22, s. 32; 1994, c. 27, s. 56 (42).

33., 34. Repealed: 1994, c. 27, s. 56 (43).

FORMS 1, 2 Repealed: 1994, c. 27, s. 56 (44).

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