



MINUTES

MISSISSAUGA APPEAL TRIBUNAL BUSINESS MEETING

THE CORPORATION OF THE CITY OF MISSISSAUGA

MONDAY, MARCH 4, 2013 – 8 A.M.

COMMITTEE ROOM A

SECOND FLOOR, CIVIC CENTRE

300 CITY CENTRE DRIVE, MISSISSAUGA, ONTARIO, L5B 3C1

www.mississauga.ca

- MEMBERS PRESENT: Lynda Ross, Citizen Member (CHAIR) (departed at 9:20 a.m.)
Rafiq Rokerya, Citizen Member (VICE-CHAIR)
Luc Laverrière, Citizen Member
Leonard Lyn, Citizen Member
- MEMBERS ABSENT: Roderick Chung, Citizen Member
- STAFF PRESENT: Mary Ellen Bench, City Solicitor
Crystal Greer, Director, Legislative Services and City Clerk
Melissa McGugan, Legal Counsel
Diana Rusnov, Manager, Legislative Services and Deputy Clerk
- OTHERS PRESENT: Marilyn Sparrow, Legal Counsel, Mississauga Appeal Tribunal

CONTACT PERSON: Julie Lavertu, Tribunal Coordinator, Mississauga Appeal Tribunal
Office of the City Clerk, Telephone: 905-615-3200, ext. 5471; Fax: 905-615-4181
Julie.Lavertu@mississauga.ca

**NOTE: The order of the Agenda was changed during the meeting.
 These Minutes reflect the order of the meeting.**

CALL TO ORDER – 8:10 a.m.

Ms. Greer called the Business Meeting to order by thanking the Citizen Members and Ms. Sparrow for attending. She noted that staff identified four matters for discussion at the Business Meeting, as indicated on the agenda.

DECLARATIONS OF DIRECT (OR INDIRECT) PECUNIARY INTEREST

APPROVAL OF AGENDA

PRESENTATIONS/ DEPUTATIONS – Nil

MATTERS CONSIDERED

1. Mississauga Appeal Tribunal's Rules of Practice and Procedure

Ms. Bench and Ms. Greer discussed the following:

- MAT's quasi-judicial status, Rules of Practice and Procedure, and the role of its external lawyer (which is provided due to the complexity of issues handled);
- The *Statutory Powers Procedure Act (SPPA)*, the need for MAT to be unbiased and ensure procedural fairness (e.g., persons making submissions before MAT should feel heard, respected, and be given the opportunity to present their case without interruption), and the importance of Ms. Sparrow providing an overview of the *SPPA* to Citizen Members in the near future;
- The Chair or Vice-Chair should advise staff during Hearings if their submissions include irrelevant information, as this will be helpful for their future submissions before MAT. Staff appearing before MAT are lawyers or paralegals who regularly appear in court and are well-versed in overall court procedures and practices;
- MAT's Hearings and Business Meetings are open to the public and, for this reason, it is inappropriate for Citizen Members to ask persons present at Hearings to identify themselves unless those persons make submissions before MAT;
- MAT's history and, specifically, the fact that Council has delegated its authority to MAT on the hearings of appeals under the City's Licensing By-laws and Animal Care and Control By-law for approximately eleven years;
- MAT does not have a court reporter, as this has not been deemed necessary thus far, but staff is reviewing Records of Proceedings for the City's quasi-judicial bodies and whether they should be more detailed due to recent happenings at the

City's Election Campaign Finance Committee. If recordings are done in the future, any parties could request these recordings and this change would also necessitate an amendment to the Rules of Practice and Procedure;

- MAT is impacted by Council's decisions (e.g., the moratorium on tow truck driver's licences). Citizen Members who have concerns about Council's decisions vis-à-vis MAT-related matters can appear before the Governance Committee;
- Amendments to the Rules of Practice and Procedure are jointly done by Citizen Members, Ms. Sparrow, and staff affiliated with MAT; and
- The City Committees of Council Structure Review did not identify any specific changes to MAT. However, Clerk's Office staff will review the Rules of Practice and Procedure and bring forward any amendments for discussion, as needed. Citizen Members are encouraged to advise the Tribunal Coordinator of any suggested amendments to the Rules of Practice and Procedure.

Ms. Sparrow said that MAT often reviews its Rules of Practice and Procedure and the *SPPA* during Hearings and noted that she would contact Citizen Members to schedule an overview session on the *SPPA* prior to the next Hearing or at another time in the near future. She discussed the importance of ensuring that persons making submissions before MAT feel heard and the need for MAT to be unbiased towards unrepresented appellants. Ms. Sparrow discussed a past Hearing involving a tow truck driver with numerous trucks, staff's decision to proceed with enforcement based on MAT's oral decision due to public safety concerns, the challenges of MAT providing thorough written decisions on the same day as Hearings, and Rule 14.12 (1) stating that the Tribunal Coordinator has 14 days after the Hearing to forward MAT's decision to affected parties.

Ms. Greer and Ms. Bench discussed the past Hearing referenced by Ms. Sparrow and the importance of improving communication and procedures between Citizen Members, Ms. Sparrow, Legal staff, and Enforcement staff on MAT-related matters.

Committee members discussed oral versus written decisions and associated issues, the possibility of implementing a process involving the Chair and Vice-Chair for Rule 5 (Pre-Hearing Conference) in order to narrow issues prior to Hearings, provide direction to appellants about supplying certain documents to MAT, streamline Hearings, and improve overall processes, the value of providing a brief document to appellants regarding MAT's operations, the value of the Chair providing a brief overview of MAT prior to Hearings, MAT's appropriate role vis-à-vis staff and unrepresented appellants, and the importance of the Chair providing indulgences and reasonable accommodations (e.g., allowing photocopies to be made at the last minute) to appellants and representatives, as required.

In response to the suggested changes to Rule 5, Ms. Greer said that staff would review this matter. Ms. Bench said that some quasi-judicial tribunals give guidance to appellants regarding how Hearings are conducted and appellants' obligations. She suggested that Ms. McGugan draft a one-page summary for Ms. Sparrow's review and that it could eventually be posted on MAT's web page and distributed to appellants prior to Hearings. In response to MAT's appropriate role vis-à-vis unrepresented appellants, Ms. Bench said

that MAT is a quasi-judicial tribunal, like the Ontario Municipal Board, with Rules of Practice and Procedure that do not grant special treatment to unrepresented appellants.

Ms. Sparrow discussed a past Hearing where an appellant's lawyer was unprepared and required a brief recess at the start of the Hearing to organize their papers. She emphasized the need for representatives to be prepared for Hearings to avoid delays. Ms. Bench said that the Chair should decide whether to grant a recess in such cases and that such requests could be granted for a first instance, but refused for second and subsequent instances.

Certified Copies of By-Laws Provided to Citizen Members and their Legal Counsel

Ms. Sparrow discussed the need for the Tribunal Coordinator to obtain one certified copy of the relevant by-law for Hearings so that it can be entered into evidence. She added that the certified copy of the by-law should also be photocopied for Citizen Members and herself for reference purposes during Hearings. Ms. Sparrow added that the Tribunal Coordinator collects the reference binders and notes of Citizen Members after each Hearing, but that her materials are not collected, as she is MAT's Legal Counsel.

In response to Ms. Sparrow, Ms. Greer said that the Tribunal Coordinator could collect the reference binders from Citizen Members after each Hearing and ensure that they are up-to-date and contain the appropriate information (e.g., by-laws) for the next Hearing.

Citizen Members discussed the importance of having one certified copy of the relevant by-law for Hearings so that MAT considers the most up-to-date by-law, the need to enter a certified copy of the by-law into evidence during Hearings, and the efficiencies from typing, rather than handwriting and transcribing, MAT's decisions. Mr. Lyn and Mr. Rokerya said that the Tribunal Coordinator only collects the Documents Briefs from Citizen Members after each Hearing. Ms. Bench said that Citizen Members can retain Hearing-related materials (e.g., Documents Briefs) after Hearings if they wish to do so.

3. The Role of Counsel to the Mississauga Appeal Tribunal

Ms. Bench discussed the importance of providing Counsel to MAT due to the complexity of their work, the various issues raised, and the potentially serious ramifications to appellants' livelihoods. She also discussed the role of Counsel which is to help Citizen Members interpret by-laws and to conduct research on MAT-related matters. Ms. Bench noted that Citizen Members are responsible for preparing MAT's decisions, asked Citizen Members to provide staff with any feedback regarding MAT's operations, and suggested that Ms. Sparrow provide an overview to Citizen Members regarding the *SPPA*.

2. City of Mississauga's Respectful Workplace Corporate Policy and Procedure 01-03-04

Ms. Bench discussed the above-noted Corporate Policy and Procedure and its application to Citizen Members. She said that Citizen Members must treat appellants, staff, the public, and others with respect at all times and that her staff had concerns about this

Procedure will be included in the City's new Codes of Conduct for Citizen Members. Citizen Members discussed the January 2013 Hearing and the reluctance of some staff to identify themselves as requested by the Chair and the importance of scheduling meetings with Citizen Members and staff affiliated with MAT to discuss issues as they arise.

Ms. McGugan said that staff was not testing the Chair's request to have attendees identify themselves during the January 2013 Hearing, but that many new staff affiliated with MAT were present and surprised by the request. Ms. Greer said that the identification of attendees has been an issue for the City's Property Standards Committee and that staff advised the Committee that this practice is inappropriate and needed to cease.

Mr. Rokerya suggested that the Tribunal Coordinator could advise Citizen Members about who is present at Hearings, instead of the Chair or Vice-Chair asking attendees to identify themselves. Ms. Bench responded that MAT cannot ask attendees at Hearings to identify themselves unless they make submissions before MAT, that staff may attend portions of Hearings as part of their training as new employees, and that the media may sometimes attend high-profile Hearings. She added that there are several new staff affiliated with MAT, including the Director of Enforcement, the Manager of Mobile Licensing Enforcement, the Legal Counsel, and the Tribunal Coordinator, among others.

Ms. Greer added that the Tribunal Coordinator will ensure that security staff attends Hearings if there are any safety-related issues identified. She added that Citizen Members concerned about their safety during Hearings should advise Ms. Sparrow or the Tribunal Coordinator for appropriate action. Ms. Bench said that security staff attended a Property Standards Committee Hearing in 2012 due to safety-related issues identified by staff.

Ms. Sparrow discussed a past Hearing where the appellant advised staff that many of his supporters would be attending, as the Hearing dealt with many licences and tow trucks, and that such situations could lead to safety-related concerns. She requested that staff advise her if they are aware of media and/or other attendees present for Hearings so that she can advise Citizen Members accordingly. Ms. Greer said that Citizen Members and Ms. Sparrow would be apprised if security staff are present for their information.

Ms. Bench asked Citizen Members if they required additional support or training vis-à-vis their roles and requested that they follow up with her or other staff on this matter. Ms. Sparrow added that Citizen Members could advise her by email or telephone if they wanted additional training, information, and/or research on MAT-related matters and that she would be pleased to assist in providing them with the tools necessary for their roles.

4. Local Board Codes of Conduct and Complaint Protocol

A Corporate Report dated February 8, 2013 from the Integrity Commissioner to the Chair and Members of the Governance Committee entitled "Local Board Codes of Conduct and Complaint Protocol" is attached for information.

Ms. Bench and Ms. Greer discussed the following:

- The City's Integrity Commissioner and Governance Committee and their roles;
- The draft proposed Codes of Conduct and complaint protocol and, specifically, the Code of Conduct for Adjudicative Boards which will apply to MAT, upcoming meetings with the Integrity Commissioner and Citizen Members of the City's Committees and Boards on this matter, and the importance of Citizen Members sharing their feedback on the draft proposed Codes of Conduct;
- The Code of Conduct for Adjudicative Boards and, specifically, Rule No. 15 (Failure to Adhere to Council Policies and Procedures) and the ability of Citizen Members to obtain free and confidential advice from the Integrity Commissioner regarding the Code of Conduct and potential violations; and
- The possibility of staff scheduling annual Business Meetings with MAT Citizen Members to review the Rules of Practice and Procedure, the *SPPA*, and new or revised City policies and information relevant to MAT and its Citizen Members.

Ms. Sparrow expressed interest in attending an upcoming meeting with the Integrity Commissioner to learn more about the draft proposed Codes of Conduct for her own information and continuing legal education. Ms. Bench responded that Ms. Sparrow did not need to attend the Integrity Commissioner's upcoming meetings with Citizen Members, but could attend for her information because of her close connection to MAT.

Committee members discussed the value of scheduling annual Business Meetings with staff and the importance of providing Citizen Members with feedback as required.

Ms. Ross departed at 9:20 a.m.

Ms. Bench asked Citizen Members to contact her to discuss any issues regarding staff and overall MAT operations. Ms. Sparrow encouraged Citizen Members to discuss any MAT-related questions or concerns with the Tribunal Coordinator, Ms. McGugan, or herself by telephone or email so that they can be promptly addressed.

Ms. Sparrow said that she would contact Citizen Members to set up a date for a Legal Meeting to review the Rules of Practice and Procedure, the *SPPA*, and other MAT-related matters. Citizen Members advised that afternoons and evenings would be most convenient for the Legal Meeting due to their work and personal obligations.

OTHER BUSINESS – Nil

DATE OF NEXT MEETING – To be determined

ADJOURNMENT – 9:24 a.m. (L. Laverrière)