



## City of Hamilton

# AUDIT, FINANCE AND ADMINISTRATION COMMITTEE

**Meeting #:** 19-017  
**Date:** November 21, 2019  
**Time:** 9:30 a.m.  
**Location:** Council Chambers, Hamilton City Hall  
71 Main Street West

Angela McRae, Legislative Coordinator (905) 546-2424 ext. 5987

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1. **CEREMONIAL ACTIVITIES**
2. **APPROVAL OF AGENDA**  
(Added Items, if applicable, will be noted with \*)
3. **DECLARATIONS OF INTEREST**
4. **APPROVAL OF MINUTES OF PREVIOUS MEETING**
  - 4.1 November 7, 2019
5. **COMMUNICATIONS**
6. **DELEGATION REQUESTS**
7. **CONSENT ITEMS**
8. **PUBLIC HEARINGS / DELEGATIONS**
  - 8.1 Mouna Bile, Hamilton Community Legal Clinic, respecting recommendations towards the re-opening of Hamilton Anti-Racism Resource Centre (Approved November 7, 2019)
9. **STAFF PRESENTATIONS**
10. **DISCUSSION ITEMS**

- 10.1 Workplace Pet Policy and Procedure (HUR19023) (City Wide)
- 10.2 Orientation For Hearing of Complaints Made Pursuant to Subsection 20(1) of the Development Charges Act, 1997 (LS19043) (City Wide)

## **11. MOTIONS**

- 11.1 Methodology for Infrastructure Master Plans to Support Future Calculation of Variable Development Charges

## **12. NOTICES OF MOTION**

## **13. GENERAL INFORMATION / OTHER BUSINESS**

- 13.1 Amendments to the Outstanding Business List:

- 13.1.a Items to be Removed:

- Correspondence from Danny Trombetta, 610 South Service Road Inc (Gateway Ice Centre) respecting Development Charge liability for a proposed additional arena
    - Item 14.2 on the November 7, 2019 AF&A agenda
    - OBL Item: 19-O

## **14. PRIVATE AND CONFIDENTIAL**

- 14.1 November 7, 2019 - Closed Minutes (Distributed under separate cover)

- Pursuant to Section 8.1, Sub-section (e) of the City's Procedural By-law 18-270, and Section 239(2), Sub-section (e) of the Ontario Municipal Act, 2001, as amended, as the subject matter pertains to litigation or potential litigation, including matters before administrative tribunals, affecting the municipality or local board.

- 14.2 Budgeting and Forecasting (FCS19066(a)) (City Wide) (Distributed under separate cover)

- Pursuant to Section 8.1, Sub-sections (e) and (k) of the City's Procedural By-law 18-270, and Section 239(2), Sub-sections (e) and (k) of the Ontario Municipal Act, 2001, as amended, as the subject matter pertains to litigation or potential litigation, including matters before administrative tribunals, affecting the municipality or local board; and, a position, plan, procedure, criteria or instruction to be applied to any negotiations carried on or to be carried on by or on behalf of the municipality or local board.

## **15. ADJOURNMENT**



## AUDIT, FINANCE AND ADMINISTRATION COMMITTEE MINUTES 19-016

9:30 a.m.

November 7, 2019

Council Chambers

Hamilton City Hall

**Present:** Councillors C. Collins (Chair), B. Clark, M. Pearson, B. Johnson and J. Partridge

**Absent:** Councillors A. VanderBeek, L. Ferguson – Personal, Councillor M. Wilson – City Business

### THE FOLLOWING ITEMS WERE REFERRED TO COUNCIL FOR CONSIDERATION:

1. **Compassionate Grants for Laneway Houses (FCS19086) (City Wide) (Item 7.3)**

**(Pearson/Partridge)**

That Report FCS19086 respecting Compassionate Grants for Laneway Houses, be received.

**CARRIED**

2. **2019 Freedom of Information Quarterly Report (April 1 to June 30) (CL19005(a)) (City Wide) (Item 7.4)**

**(Pearson/Partridge)**

That Report CL19005(a), respecting the 2019 Freedom of Information Quarterly Report (April 1 to June 30), be received.

**CARRIED**

3. **Governance Review Sub-Committee - Clerk's Report 19-005 - October 28, 2019) (Added Item 7.5)**

**(Pearson/Partridge)**

That the Governance Review Sub-Committee – Clerk's Report 19-005, be received.

**CARRIED**

4. **Habitat for Humanity Hamilton's Request for Reimbursement of Fees for Habitat Developments (FCS19084) (City Wide) (Item 10.1)**

**(Johnson/Partridge)**

- (a) That Habitat for Humanity Hamilton's request for reimbursement of the City Development Charges, totalling \$130,695.25 for 12 Wickham Avenue, 2-10 Dennis Avenue and 278 Wilson Street be approved and funded from Reserve "110041 Social Housing Stabilization";

- (b) That Habitat for Humanity Hamilton's request for reimbursement of the Waterdown Special Area Development Charge of \$3,441 for 2-10 Dennis Avenue be approved and funded from Reserve "110041 Social Housing Stabilization";
- (c) That Habitat for Humanity Hamilton's request for reimbursement of the Cash in Lieu of Parkland Dedication assessed for the 12 Wickham Avenue and 278 Wilson Street, totalling \$13,500, be denied;
- (d) That Habitat for Humanity Hamilton's request for reimbursement of \$537 in Building Division fees (Building, Water and Sewer permit fees) be denied; and,
- (e) That Habitat for Humanity Hamilton's request for a reimbursement of the OPA 28 fee of \$4,341 for 2-10 Dennis Avenue be denied.

**Result: Motion CARRIED by a vote of 4 to 0, as follows:**

NOT PRESENT - Councillor Maureen Wilson  
YES - Chair Chad Collins  
YES - Councillor Judi Partridge  
NOT PRESENT - Councillor Arlene VanderBeek  
NOT PRESENT - Councillor Lloyd Ferguson  
YES - Councillor Brenda Johnson  
YES - Councillor Maria Pearson  
CONFLICT - Councillor Brad Clark

**5. Provincial Offences Administration Amending Agreement to the Software License Agreement and Software Support Agreement for Court Administration Management System CAMS (FCS19083) (City Wide) (Item 10.2)**

**(Clark/Pearson)**

- (a) That staff be authorized and directed to enter into an amending agreement between the City of Hamilton and The Regional Municipality of Niagara regarding the software license agreement and software support agreement for the Court Administration Management System (CAMS);
- (b) That the Mayor and City Clerk be authorized and directed to execute the amending agreement between the City of Hamilton and the Regional Municipality of Niagara in a form satisfactory to the City Solicitor; and,
- (c) That Council approve the single source procurement, pursuant to Procurement Policy #11 – Non-competitive Procurements, for the service agreement to provide third-party support to the Court Administration Management System (CAMS) until a suitable replacement can be found and that the General Manager, Corporate Services Department be authorized to negotiate, enter into and execute a Contract and any ancillary documents required to give effect thereto with White Acre Information Technology Services, in a form satisfactory to the City Solicitor.

**Result: Motion CARRIED by a vote of 5 to 0, as follows:**

NOT PRESENT - Councillor Maureen Wilson  
YES - Chair Chad Collins  
YES - Councillor Judi Partridge  
NOT PRESENT - Councillor Arlene VanderBeek  
NOT PRESENT - Councillor Lloyd Ferguson  
YES - Councillor Brenda Johnson  
YES - Councillor Maria Pearson  
YES - Councillor Brad Clark

**6. Appointments to the Lesbian, Gay, Bisexual, Transgender and Queer (LGBTQ) Advisory Committee for the 2018-2022 Term (Item 14.1)**

**(Clark/Pearson)**

That the recommendations for the Appointments to the Lesbian, Gay, Bisexual, Transgender and Queer (LGBTQ) Advisory Committee for the 2018-2022 Term be approved and released publicly following approval by Council.

**Result: Motion CARRIED by a vote of 5 to 0, as follows:**

NOT PRESENT - Councillor Maureen Wilson  
YES - Chair Chad Collins  
YES - Councillor Judi Partridge  
NOT PRESENT - Councillor Arlene VanderBeek  
NOT PRESENT - Councillor Lloyd Ferguson  
YES - Councillor Brenda Johnson  
YES - Councillor Maria Pearson  
YES - Councillor Brad Clark

**7. Development Charges (DC) Transition Policy (Section 41) of DC By-law 19-142 (FCS19088) (City Wide) (Item 14.2)**

**(Pearson/Clark)**

That the contents of Report FCS19088, respecting Development Charges (DC) Transition Policy (Section 41) of DC By-law 19-142, be received and remain confidential.

**CARRIED**

**FOR INFORMATION:**

**(a) CHANGES TO THE AGENDA (Item 2)**

The Committee Clerk advised of the following changes to the agenda:

**6. DELEGATION REQUEST (Item 6)**

6.1 Sergio Manchia, Urbancore Developments Inc., respecting the Development Charges liability for the proposed self storage facility at 9 Aeropark Boulevard known as Upper James Self (For today's

meeting) – Request was amended to add the subject lands located at 54 Dundas Street, Waterdown, Waterdown Mini Storage Inc abutting the L3 WesCam project

- 6.2 Mouna Bile, Hamilton Community Legal Clinic, respecting recommendations towards the re-opening of Hamilton Anti-Racism Resource Centre (For a future meeting)
- 6.3 Sean Ferris, Habitat for Humanity Hamilton, respecting Item 10.1 - Report FCS19084 - Habitat for Humanity Hamilton's Request for Reimbursement of Fees for Habitat Developments (For today's meeting)

**7. CONSENT ITEMS (Item 7)**

- 7.5 Governance Review Sub-Committee – Clerk's Report 19-005 – October 28, 2019

**12. NOTICES OF MOTION (Item 12)**

- 12.1 Methodology for Infrastructure Master Plans to Support Future Calculation of Variable Development Charges

**(Pearson/Clark)**

That the agenda for the November 7, 2019 Audit, Finance and Administration Committee meeting be approved, as amended.

**Result: Motion CARRIED by a vote of 5 to 0, as follows:**

NOT PRESENT - Councillor Maureen Wilson  
YES - Chair Chad Collins  
YES - Councillor Judi Partridge  
NOT PRESENT - Councillor Arlene VanderBeek  
NOT PRESENT - Councillor Lloyd Ferguson  
YES - Councillor Brenda Johnson  
YES - Councillor Maria Pearson  
YES - Councillor Brad Clark

**(b) DECLARATIONS OF INTEREST (Item 3)**

Councillor Clark declared an interest to Item 10.1, Report FCS19084 respecting Habitat for Humanity Hamilton's Request for Reimbursement of Fees for Habitat Developments, as he has a non-pecuniary indirect, apparent conflict under common law due to a former professional relationship with Habitat for Humanity Hamilton.

**(c) APPROVAL OF MINUTES OF PREVIOUS MEETING (Item 4)**

**(i) October 17, 2019 (Item 4.1)**

**(Johnson/Partridge)**

That the Minutes of the October 17, 2019 meeting of the Audit, Finance and Administration Committee be approved, as presented.

**Result: Motion CARRIED by a vote of 5 to 0, as follows:**

NOT PRESENT - Councillor Maureen Wilson  
YES - Chair Chad Collins  
YES - Councillor Judi Partridge  
NOT PRESENT - Councillor Arlene VanderBeek  
NOT PRESENT - Councillor Lloyd Ferguson  
YES - Councillor Brenda Johnson  
YES - Councillor Maria Pearson  
YES - Councillor Brad Clark

**(d) DELEGATION REQUESTS (Item 6)**

**(Johnson/Pearson)**

That the following Delegation Requests be approved, as follows:

- (i) Sergio Manchia, Urbancore Developments Inc., respecting the Development Charges liability for the proposed self storage facility at 9 Aeropark Boulevard known as Upper James Self Storage and the subject lands located at 54 Dundas Street, Waterdown, Waterdown Mini Storage Inc abutting the L3 WesCam project (For today's meeting) (Item 6.1)
- (ii) Mouna Bile, Hamilton Community Legal Clinic, respecting recommendations towards the re-opening of Hamilton Anti-Racism Resource Centre (For a future meeting) (Added Item 6.2)
- (iii) Sean Ferris, Habitat for Humanity Hamilton, respecting Item 10.1 - Report FCS19084 - Habitat for Humanity Hamilton's Request for Reimbursement of Fees for Habitat Developments (For today's meeting) (Added Item 6.3)

**Result: Motion CARRIED by a vote of 5 to 0, as follows:**

NOT PRESENT - Councillor Maureen Wilson  
YES - Chair Chad Collins  
YES - Councillor Judi Partridge  
NOT PRESENT - Councillor Arlene VanderBeek  
NOT PRESENT - Councillor Lloyd Ferguson  
YES - Councillor Brenda Johnson  
YES - Councillor Maria Pearson  
YES - Councillor Brad Clark

**(e) CONSENT ITEMS (Item 7)**

**(i) Advisory Committee Minutes (Item 7.1)**

**(Pearson/Partridge)**

That the following Advisory Committee Minutes, be received:

- (1) Advisory Committee for Immigrants and Refugees - March 14, 2019 (Item 7.1(a))
- (2) Committee Against Racism - January 22, 2019 (Item 7.1(b))
- (3) Hamilton Status of Women Advisory Committee - March 28, 2019 (Item 7.1(c))
- (4) Hamilton Status of Women Advisory Committee - June 27, 2019 (Item 7.1(d))
- (5) Hamilton Aboriginal Advisory Committee - May 2, 2019 (Item 7.1(e))

**CARRIED**

**(ii) Interview Sub-Committee to the Audit, Finance & Administration Committee Minutes 19-003 - October 21, 2019 (Item 7.2)**

**(Pearson/Partridge)**

That the Interview Sub-Committee to the Audit, Finance & Administration Committee Minutes 19-003 from October 21, 2019, be received.

**CARRIED**

**(f) PUBLIC HEARINGS / DELEGATIONS (Item 8)**

**(i) Sergio Manchia, Urbancore Developments Inc., respecting the Development Charges liability for the proposed self storage facility at 9 Aeropark Boulevard known as Upper James Self Storage and the subject lands located at 54 Dundas Street, Waterdown, Waterdown Mini Storage Inc abutting the L3 WesCam project (For today's meeting) (Added Item 8.1)**

Sergio Manchia, Urbancore Developments Inc., addressed the Committee respecting Development Charge liability for the proposed self storage facility at 9 Aeropark Boulevard known as Upper James Self Storage and the subject lands located at 54 Dundas Street, Waterdown, Waterdown Mini Storage Inc abutting the L3 WesCam project, with the aid of a presentation.

**(Pearson/Clark)**

That Sergio Manchia be permitted additional time, beyond the permitted 5 minutes, to continue with his presentation.

**CARRIED**



**(Clark/Pearson)**

That the delegation from Sergio Manchia, Urbancore Developments Inc., respecting Development Charge liability for the proposed self storage facility at 9 Aeropark Boulevard known as Upper James Self Storage and the subject lands located at 54 Dundas Street, Waterdown, Waterdown Mini Storage Inc abutting the L3 WesCam project, be received.

**CARRIED**

A copy of the presentation is available on the City's website at [www.hamilton.ca](http://www.hamilton.ca) or through the Office of the City Clerk.

**(Partridge/Clark)**

That staff be directed to report back to the Audit, Finance & Administration Committee respecting the Development Charges liability at 54 Dundas Street, Waterdown, Waterdown Mini Storage Inc and other properties that would fall under the same category.

**Result: Motion CARRIED by a vote of 5 to 0, as follows:**

NOT PRESENT - Councillor Maureen Wilson  
YES - Chair Chad Collins  
YES - Councillor Judi Partridge  
NOT PRESENT - Councillor Arlene VanderBeek  
NOT PRESENT - Councillor Lloyd Ferguson  
YES - Councillor Brenda Johnson  
YES - Councillor Maria Pearson  
YES - Councillor Brad Clark

**(ii) Sean Ferris, Habitat for Humanity Hamilton, respecting Item 10.1 - Report FCS19084 - Habitat for Humanity Hamilton's Request for Reimbursement of Fees for Habitat Developments (Added Item 8.2)**

Sean Ferris, Habitat for Humanity Hamilton, addressed the Committee respecting Item 10.1 - Report FCS19084 - Habitat for Humanity Hamilton's Request for Reimbursement of Fees for Habitat Developments.

**(Partridge/Johnson)**

That the delegation from Sean Ferris, Habitat for Humanity Hamilton, respecting Item 10.1 - Report FCS19084 - Habitat for Humanity Hamilton's Request for Reimbursement of Fees for Habitat Developments, be received.

**CARRIED**

For disposition of the matter refer to Item 4.

**(g) NOTICES OF MOTION (Item 12)**

**(i) Methodology for Infrastructure Master Plans to Support Future Calculation of Variable Development Charges (Item 12.1)**

As Councillor Wilson was not in attendance to introduce her Notice of Motion, will be considered as a Motion at the November 21, 2019 Audit, Finance & Administration Committee meeting.

**(h) GENERAL INFORMATION / OTHER BUSINESS (Item 13)**

**(i) Amendments to the Outstanding Business List (Item 13.1)**

**(Partridge/Johnson)**

That the following amendments to the Outstanding Business List, be approved:

**(a) Items to be Removed (Item 13.1(a)):**

Compassionate Grant – Laneway Houses Prior to June 13, 2019

Item 7.3 on today's agenda - Compassionate Grants for Laneway Houses (FCS19086) (City Wide)

OBL Item: 19-M(a)

Request for Development Charge and Parkland Dedication Reimbursement to Habitat for Humanity Hamilton

Item 10.1 on today's agenda - Habitat for Humanity

Hamilton's Request for Reimbursement of Fees for Habitat Developments (FCS19084) (City Wide)

OBL Item: 19-K

**Result: Motion CARRIED by a vote of 5 to 0, as follows:**

NOT PRESENT - Councillor Maureen Wilson

YES - Chair Chad Collins

YES - Councillor Judi Partridge

NOT PRESENT - Councillor Arlene VanderBeek

NOT PRESENT - Councillor Lloyd Ferguson

YES - Councillor Brenda Johnson

YES - Councillor Maria Pearson

YES - Councillor Brad Clark

**(i) PRIVATE AND CONFIDENTIAL (Item 14)**

**(i) Appointments to the Lesbian, Gay, Bisexual, Transgender and Queer (LGBTQ) Advisory Committee for the 2018-2022 Term (Item 14.1)**

Committee determined that discussion of Item 14.1 was not required in Closed Session, so the item was addressed in Open Session.

For further disposition of this matter, refer to Item 6.

**(Clark/Pearson)**

That Committee move into Closed Session respecting Item 14.2, pursuant to Section 8.1, Sub-section (e) of the City's Procedural By-law 18-270, and Section 239(2), Sub-section (e) of the *Ontario Municipal Act, 2001*, as amended, as the subject matter pertains to litigation or potential litigation, including matters before administrative tribunals, affecting the municipality or local board.

**Result: Motion CARRIED by a vote of 5 to 0, as follows:**

NOT PRESENT - Councillor Maureen Wilson  
YES - Chair Chad Collins  
YES - Councillor Judi Partridge  
NOT PRESENT - Councillor Arlene VanderBEEK  
NOT PRESENT - Councillor Lloyd Ferguson  
YES - Councillor Brenda Johnson  
YES - Councillor Maria Pearson  
YES - Councillor Brad Clark

**(ii) Development Charges (DC) Transition Policy (Section 41) of DC By-law 19-142 (FCS19088) (City Wide) (Item 14.2)**

For further disposition of this matter, refer to Item 7.

**(j) ADJOURNMENT (Item 15)**

**(Pearson/Clark)**

That, there being no further business, the Audit, Finance and Administration Committee, be adjourned at 10:46 a.m.

**CARRIED**

Respectfully submitted,

Councillor Collins, Chair  
Audit, Finance and Administration  
Committee

Angela McRae  
Legislative Coordinator  
Office of the City Clerk



**Form: Request to Speak to Committee of Council**

Submitted on Thursday, October 31, 2019 - 3:56 pm

==Committee Requested==

**Committee:** Audit, Finance & Administration

==Requestor Information==

**Name of Individual:** Mouna Bile

**Name of Organization:** Hamilton Community Legal Clinic

**Contact Number:**

**Email Address:**

**Mailing Address:**

**Reason(s) for delegation request:** To present a set of recommendations towards the re-opening of Hamilton Anti-Racism Resource Centre.

**Will you be requesting funds from the City?** Yes

**Will you be submitting a formal presentation?** Yes



### **Recommendations for funders re: HARRC**

On February 14<sup>th</sup>, 2019, the 3-year Hamilton Anti-Racism Resource Centre (HARRC), which was designed to address racism and hate crimes in Hamilton, was put on 'pause' less than a year into its mandate. The sudden closure – without any public consultation – was disconcerting as racism in Hamilton has definitely not been paused, as hatemongers grow shriller in their vile work, and as Hamilton continues to lead the country in the number of reported hate crimes.

While the news release indicated that this “pause” could be up to a 12-months interruption, there were few details to explain why this was deemed necessary, other than vague references to the need of community consultations because the number of cases reported were deemed to be too low by the Oversight Committee. This project involved two community-based committees: The City of Hamilton Committee Against Racism (CAR) and the HARRC Steering Committee. Neither committee was consulted prior to the 'pause'. We believe the City's actions not only show a disregard to these two groups but also poor judgement and lack of respect.

The Oversight Committee is the entity in the City's initial press release that said the case numbers were too low. From our numerous discussions on this point with CAR members and, most importantly, with people from racialized communities around this city, they have not felt the same sentiment. The resounding comment they have made independent of each other, yet collectively, has been, "One report of racism is one too many".

Blatant acts of racism and hate in Hamilton have increased. Our City needs HARRC, with guarantees that it will not be paused again.

On April 4<sup>th</sup>, 2018, HARRC officially launched its services to the City of Hamilton. It was introduced as a three-year pilot project meant to offer support, referrals, and resources to individuals experiencing racism. The launch was met with excitement and much anticipation from stakeholders, partners, and most importantly, the residents of Hamilton. Not only was the launch a celebratory moment after several decades of tireless efforts to implement a resource Centre, it instilled a sense of hope among community members and victims of racism and hate.

This hope was driven by the belief that concerns regarding racism and hate crimes would finally be heard and dealt with appropriately. It also projected hope because the initiative was supported by powerful, dedicated, community stakeholders who had endeavored to take concrete steps to tackle racism and hate; who experience racism and hate crimes (past and present) and know far too well the impact racism and hate have in the City of Hamilton. These are stakeholders who need a fulsome response in a timely and effective manner.

Although we were told that an insufficient number of people used the services, during the course of HARRC's nine months in operation, 73 brave Hamiltonians came forward to reveal and share their personal, heartfelt experiences of racism and hate occurring right here in this

City. We view this as a significant number of people with the courage to come forward and share their difficult stories of trauma believing that participation would lead to change. By halting the process, the City is neglecting its duty and accountability to these individuals as the pause provokes legitimate concerns about transparency and questions about the City's genuine commitment to addressing racism and hate.

There's no need to re-invent the wheel. The community formulated recommendations set out in the 2004 "Report on the Symposium on the Reality of Anti-racism Work in Hamilton" are still relevant and we urge you to consider them in concert with the following recommendations.

## **RECOMMENDATIONS**

### **Salient Issues**

- a. We acknowledge and commend the contribution of the funding partners in implementing this initiative. It is essential to honour the work of the community and ensure that HARRC becomes an autonomous, community-based entity with its own board of directors.
- b. Ensure sufficient funding so that proper structures, processes, financial management (including the capacity to fundraise) and partnerships are in place to enable HARRC to reliably fulfill its mandate.
- c. Engage the community to ensure that HARRC's work draws from the benefit of the decades of experience in Hamilton.
- d. Ensure permanent funding, with built in reviews and annual reports.
- e. Acquire a location for HARRC that is safe, accessible (both by HSR and for people who have disabilities), and is welcoming to all Hamiltonians.
- f. Prioritize the re-opening of HARRC.

### **Positioning HARRC for Success**

- a. Embed comprehensive principles and framework of anti-oppression and anti-racism in the establishment and operation of HARRC.
- b. Finance HARRC to enable it to support 'best practice' standards, community oversight, appropriate office space, staffing levels and service delivery.
- c. Consider satellite locations that rotate, including at existing agencies, faith communities, etc.
- d. Promote community awareness of HARRC, the services it provides, and where to access its services.
- e. Commit to an administrative position to support HARRC staff.



**Excellence in Human Resources**

- a. Employ extensive processes for recruitment, hiring and attention to retention that take into account, but are not limited to, management skills, lived experience of racism and hate crimes, communication skills, ability to engage various communities, experience working with volunteers.
- b. Implement best practices for all HR matters that include a job description, duties and responsibilities, clear lines of communication, clear/consistent reporting lines, regular evaluation and feedback, etc.

**CONCLUSION**

We submit these recommendations to REAFFIRM and RESUME operations of Hamilton Anti-Racism Resource Centre and send a powerful message about Hamilton's commitment to anti-racism and to quell hate crimes.

**HARRC Recommendations endorsement**

<b>Number</b>	<b>Name</b>	<b>Contact info</b>	<b>Organisation affiliation</b>
1.	Anne Patenaude-Dlugosz	<a href="mailto:annepatenaudedlugosz@gmail.com">annepatenaudedlugosz@gmail.com</a>	Board of Director HCLC
2.	Susie O'Brien	<a href="mailto:susieobrien09@gmail.com">susieobrien09@gmail.com</a>	
3.	Terry k. Atkinson	<a href="mailto:atkinsonterry@hotmail.com">atkinsonterry@hotmail.com</a>	Community member
4.	Gary Warner	<a href="mailto:warner@mcmaster.ca">warner@mcmaster.ca</a>	
5.	Paul Angelini	<a href="mailto:ubaldo@rogers.com">ubaldo@rogers.com</a>	
6.	Constanza Durán	<a href="mailto:unamaranta56@gmail.com">unamaranta56@gmail.com</a>	Community activist, Paralegal
7.	Doreen Johnson	<a href="mailto:hooper.johnson@cogeco.ca">hooper.johnson@cogeco.ca</a>	Founding member, Mayor's Race Relations Committee, City of Hamilton 1987- 2004.

8.	Marlene A S Thomas	<a href="mailto:marlene.thomas7@gmail.com">marlene.thomas7@gmail.com</a>	Co-Chair & member, Mayor's Committee Against Racism + Discrimination 1990- 2000
9.	The Executive Committee of CCAR	<a href="mailto:ccar@cogeco.ca">ccar@cogeco.ca</a>	Community Coalition Against Racism (CCAR)
10.	Lance Dingman	<a href="mailto:dingmanlance@gmail.com">dingmanlance@gmail.com</a>	
11.	Ian Sloan	<a href="mailto:ianbsloan@gmail.com">ianbsloan@gmail.com</a>	Community Activist
12.	Darren Green	<a href="mailto:darreng55@hotmail.com">darreng55@hotmail.com</a>	Hamilton Steelworkers Area Council and their executive
13.	Darren Green	<a href="mailto:darreng55@hotmail.com">darreng55@hotmail.com</a>	As an individual as well
14.	Tom Walsh	<a href="mailto:walsh@usw.ca">walsh@usw.ca</a>	
15.	Peter Ridehalgh USW local 4153 President	<a href="mailto:targanewf@gmail.com">targanewf@gmail.com</a>	
16.	Olivia O'Connor	<a href="mailto:hamilton@acorncanada.org">hamilton@acorncanada.org</a>	On behalf of Hamilton Acorn
17.	Evan Jamieson-Eckel	<a href="mailto:jamieset@mcmaster.ca">jamieset@mcmaster.ca</a>	
18.	Hussein A. Hamdani, M.A. LL.B.	<a href="mailto:HusseinH@simpsonwigle.com">HusseinH@simpsonwigle.com</a>	NASR
19.	Lily Tekkle	<a href="mailto:lily_tekle@hotmail.com">lily_tekle@hotmail.com</a>	Barrister & Solicitor
20.	Rabbi Lucía Pizarro	<a href="http://jelithin.ca/">http://jelithin.ca/</a>	Jewish Liberation Theology Institute
21.	Henry Evans-Tenbrinke	<a href="mailto:henryevansten@sympatico.ca">henryevansten@sympatico.ca</a>	
22.	Evan Jamieson-Eckel	<a href="mailto:jamieset@mcmaster.ca">jamieset@mcmaster.ca</a>	On behalf of MISCA
23.	Eshan Merali	<a href="mailto:eshan.merali98@gmail.com">eshan.merali98@gmail.com</a>	

24.	Denise Brooks	<a href="mailto:dbrooks@hucchc.com">dbrooks@hucchc.com</a>	Executive Director, Hamilton Urban Core Community Health Centre
25.	Jane Mulkewich	<a href="mailto:jmulkewich@sympatico.ca">jmulkewich@sympatico.ca</a>	Human Rights lawyer, Hamilton
26.	Malcolm Buchanon	<a href="mailto:macbuchanon@rogers.com">macbuchanon@rogers.com</a>	President of Congress of Union Retirees of Canada, Hamilton branch
27.	Joan Brooks	<a href="mailto:joan_brooks@hotmail.com">joan_brooks@hotmail.com</a>	
28.	Angie Perez	<a href="mailto:biotec.girl1986@gmail.com">biotec.girl1986@gmail.com</a>	
29.	Kevin Mackay	<a href="mailto:kevin@skydragon.org">kevin@skydragon.org</a>	The Sky Dragon Community Development Co- operative
30.	Josie Rudderham	<a href="mailto:josie@cakeandloaf.ca">josie@cakeandloaf.ca</a>	Cake and Loaf Bakery
31.	Fred Ernst	<a href="mailto:nsoiofcanada@gmail.com">nsoiofcanada@gmail.com</a>	National Security Oversight Institute of Canada
32.	Pauline Kajjura	<a href="mailto:pkajjura@hotmail.com">pkajjura@hotmail.com</a>	Former Chair, Hamilton Anti-Racism Advisory Committee, City of Hamilton 2002 - 2004
33.	Ange Bitwayiki	<a href="mailto:bitwaya@mcmaster.ca">bitwaya@mcmaster.ca</a>	
34.	Madeleine Verhovsek, BSc, MD, FRCPC	<a href="mailto:verhovm@mcmaster.ca">verhovm@mcmaster.ca</a>	Associate Professor, Division of Hematology and Thromboembolism, Faculty Health Sciences, McMaster University
35.	Ameil Joseph	<a href="mailto:ameilj@mcmaster.ca">ameilj@mcmaster.ca</a>	Associate Professor, Department of Social Work, McMaster University
36.	Ike Agbassi	<a href="mailto:agbassi@HHSC.CA">agbassi@HHSC.CA</a>	President of the Nigerian Canadian Association Hamilton

37.	Hamilton Community Legal Clinic	<a href="http://www.hamiltonjustice.ca">www.hamiltonjustice.ca</a>	On behalf of staff
38.	Advisory committee for Together We Rise	<a href="mailto:twr.see.hclc@gmail.com">twr.see.hclc@gmail.com</a>	On behalf of committee
39.	Terri Bedminster	<a href="http://www.newcomerhealth.ca">www.newcomerhealth.ca</a>	Executive Director REFUGE - Newcomer Health
40.	Bonaventure Otshusi	<a href="mailto:Bonaventure.Otshudi@cschn.ca">Bonaventure.Otshudi@cschn.ca</a>	Director, Settlement program; Centre de santé communautaire Hamilton/Niagara



## CITY OF HAMILTON

City Manager's Office  
Human Resources

<b>TO:</b>	Chair and Members Audit, Finance and Administration Committee
<b>COMMITTEE DATE:</b>	November 21, 2019
<b>SUBJECT/REPORT NO:</b>	Workplace Pet Policy and Procedure (HUR19023) (City Wide)
<b>WARD(S) AFFECTED:</b>	City Wide
<b>PREPARED BY:</b>	Aine Leadbetter (905) 546-2424 Ext. 6667 David Lindeman (905) 549-2424 Ext. 5657
<b>SUBMITTED BY:</b>	Lora Fontana Executive Director Human Resources
<b>SIGNATURE:</b>	

### RECOMMENDATION

- (a) That the Workplace Pet Policy attached as Appendix A to Report HUR19023 and the Workplace Pet Procedure attached as Appendix B to Report HUR19023, be approved.

### EXECUTIVE SUMMARY

As a workplace wellness initiative for employees of the City of Hamilton and to further position the City as an employer of choice, staff is recommending that the City adopt the Workplace Pet Policy and Procedure that would allow for the inclusion of pets, specifically dogs and cats, in City workplaces where appropriate, supported and approved.

The policy and procedure provide criteria for determining the suitability of pets within the individual City workplaces as well as guidelines for implementing a City workplace program for ensuring that the needs of all City workplace parties and the public are met. A total of 27 City workplaces have been assessed and deemed as being suitable as potential sites for bringing pets to work.

### ***Alternatives for Consideration –Not Applicable***

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*OUR Mission: To provide high quality cost conscious public services that contribute to a healthy, safe and prosperous community, in a sustainable manner.*

*OUR Culture: Collective Ownership, Steadfast Integrity, Courageous Change, Sensational Service, Engaged Empowered Employees.*

**FINANCIAL – STAFFING – LEGAL IMPLICATIONS**

Financial: None

Staffing: None

Legal: To avoid legal ramifications for the City of Hamilton that could arise from incidents involving pets in City workplaces, the City will require pet owners to provide proof of insurance, including liability coverage. In addition, pet owners participating in the program will be required to sign a waiver indicating that the pet owner accepts all responsibility for the actions of the pet, that they hold the City of Hamilton harmless from any property damage or bodily injury that may arise from the pet, and that the City is in no way responsible for any injuries or mishap that may arise from having their pet in a City workplace.

**HISTORICAL BACKGROUND (Chronology of events)**

The practice of permitting pets in some City of Hamilton workplaces has been in place informally since before 2003. Around this same time wherein the City assumed responsibilities for Animal Services, the practice of allowing employees to bring their dogs into the workplace had been established. This practice has continued, and since 2003, there have been very few issues reported. Any issue raised has been largely related to damage of personal items as a result of not following established rules. The environment of the shelter where Animal Services is located is conducive to the inclusion of personal pets, and as such, no additional challenges due to allergies or legislated restrictions have been identified.

In February 2017, the City began to explore the possibility of extending the workplace pet policy to other workplaces within the City of Hamilton. A Bring Your Dog to Work Program was launched at the Lister Block as a workplace wellness initiative and pilot project for staff working out of that building. Staff developed a procedure and documentation to outline rules and responsibilities for pet owners participating in the program. This included a requirement that agreement amongst the work teams had to be achieved prior to the program being implemented in a workplace. Since the program's implementation in 2017, feedback from staff at Lister Block, both dog owners and non-dog owners, has been overwhelmingly positive. The program has been modified over time to address issues that have arisen, including ensuring that any employee with animal-related allergies was not exposed to pets in the workplace. No negative impacts on operations have been identified. Employees have expressed their appreciation that the program is available at their workplace and have indicated that it has had a positive impact on their mental health and well-being. The program continues today, and the experience and lessons learned from the pilot in Lister Block has helped to inform the development of the corporate-wide policy and procedure.

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**POLICY IMPLICATIONS AND LEGISLATED REQUIREMENTS**

The Workplace Pet Policy and Procedure specifically excludes areas where animals are legislatively barred, such as food preparation areas. Similarly, animals that are banned through by-law or provincial legislation are specifically excluded from participation in the program.

In drafting the policy and procedure, staff considered potential employee concerns that could arise through the implementation of the policy, including health and safety, allergies and fear of animals. To account for and address these concerns, language has been included in the policy to ensure that the workplace pet policy will not be approved for implementation in any work area where there is a bona fide concern expressed from any employee that cannot be satisfactorily addressed. Employees may express concern to their supervisor, or alternately, they can confidentially and anonymously disclose their concerns to the appropriate section with Human Resources. Concerns can be identified at any time, and leaders are responsible for checking in with employees to ensure that the implementation of the workplace pet policy continues to be supported by all team members. To address health and safety and other related concerns, staff have included direction in the policy and procedure to ensure that animals accepted into the workplace pet program are healthy, up to date on all vaccinations, and are kept under control at all times. Where an animal shows aggression of any kind or is disruptive to the work environment, they will be immediately removed.

Measures have also been included within the Workplace Pet Policy and Procedure to address potential concerns from citizens and/or visiting staff regarding the inclusion of pets within City workplaces. This includes ensuring that the primary location where pets are housed is not directly accessible to the public, and additionally, ensuring that if pets might be in areas that are open to the public and other visitors, such as reception areas and meeting and conference rooms, that there is clear signage identifying their presence and the opportunity for visitors to request that the pet be removed from the space. In addition, where citizens, outside contractors, and/or other City staff are expected to be in a City facility where pets are present, they are to be informed in advance and given the opportunity to identify concerns and request an alternate meeting location, if required.

**RELEVANT CONSULTATION**

Staff consulted with the Corporate Policy Review Group, Legal and Risk Management Services, and the Senior Leadership Team in the creation of this policy and procedure.

Staff also conducted a review of the practices of our municipal partners and found that while there are no other Ontario municipalities that currently have an approved workplace pet policy in place outside of service animals, there was great interest in pursuing this policy area. At present, the City of Greater Sudbury and the Town of Whitby advised that

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they are currently in the process of drafting workplace pet policies, and a number of municipalities identified informal practices that currently allow pets in the workplace.

A best practice review of relevant literature was conducted, and staff additionally reviewed policies from post-secondary institutions and private sector workplaces.

**ANALYSIS AND RATIONALE FOR RECOMMENDATION**

The inclusion of animals in the workplace has well documented benefits for employees and workplaces. Studies have shown that these programs have a positive impact on stress and anxiety levels of employees, including the pet owner and employees within the work area housing an animal (Pohherber & Matchock, 2014). In addition, the inclusion of pets in the workplace has been shown to enhance work-life balance, increase positive social interactions between employees, and has been reported to improve workplace culture and build camaraderie among team members (University of Southern California, 2017).

Studies have also shown that employers who have introduced programs to include pets in the workplace have experienced increased productivity and performance enhancements. (Foreman, Glenn, Meade & Worth, 2017). The implementation of a workplace pet program has also been shown to enhance employee retention and has been seen as a useful strategy in the recruitment of skilled staff (Kramer, 2018).

**ALTERNATIVES FOR CONSIDERATION - Not Applicable****ALIGNMENT TO THE 2016 – 2025 STRATEGIC PLAN****Our People and Performance**

*Hamiltonians have a high level of trust and confidence in their City government.*

**APPENDICES AND SCHEDULES ATTACHED**

Appendix A to Report HUR19023: Workplace Pet Policy

Appendix B to Report HUR19023: Workplace Pet Procedure

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<b>Corporate Human Resources Policy</b>		Content Updated: 2019-09-04
<<Category Name Insert Here>>		Supersedes Policy: <<if applicable>>
Policy No: <<Insert Here>>		
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<b>Workplace Pet Policy</b>	
<b>POLICY STATEMENT</b>	<p>The City of Hamilton recognizes the many health and wellness benefits that arise from having employee pets in the workplace, including enhancements to employee well-being, reduced stress levels, increased productivity and creativity, and enhanced socialization among coworkers.</p> <p>The City supports the inclusion of pets in the workplace wherever it is possible and appropriate to do so, but also recognizes the importance of regulating the City’s approach to ensure that the inclusion of pets in City workplaces is acceptable to all employees, appropriate for the work location, and monitored closely to ensure that disruption, damage or other potential negative impacts are not felt in City workplaces as a result of the inclusion of pets.</p>
<b>PURPOSE</b>	<p>The purpose of this policy is to clarify the City’s position on pets in the workplace and to outline the conditions under which an employee’s pet may be brought into the workplace.</p>
<b>SCOPE</b>	<p>This policy applies to all City of Hamilton employees and members of Council.</p> <p>Pets in this policy include dogs and cats that are owned by City of Hamilton employees and members of Council.</p> <p>This policy does not include service animals or therapeutic animal programs. For the City’s policy on service animals please see Service Animals Policy.</p>
<b>DEFINITIONS</b>	<p>The following terms referenced in this Policy are defined as:</p>
<b>Pet Owner</b>	<p>A City of Hamilton employee or member of Council who has been approved to bring their pet to one of the City’s workplaces.</p>
<b>Pet</b>	

<b>Corporate Human Resources Policy</b>		Content Updated: 2019-09-04
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<p><b>Pet-Friendly Workplace</b></p>	<p>A domestic animal that is owned by, resides with, and is cared for by an employee or member of Council. For the purposes of this policy, this includes dogs and cats. All other pets are excluded from this policy.</p> <p>Any location where City employees perform work that meets the criteria for inclusion in the program. This can include city owned facilities and leased facilities where lease agreements allow for pets on the premises.</p>
<p><b>PRINCIPLES</b></p>	<p>The following principles apply to this Policy:</p> <ol style="list-style-type: none"> <li>1. The City is committed to meeting legislated requirements and will ensure that pets will not be brought into areas where their presence would violate legislation.</li> <li>2. Pets in the workplace will only be considered for work groups in City owned or leased properties that meet criteria for inclusion in the program.</li> <li>3. Departments have the authority to determine the appropriateness of implementing this program in their locations.</li> <li>4. The health, wellbeing and safety of all employees in a workplace must be considered before approving any workplace pet arrangement.</li> <li>5. Agreement from all employees in a workplace must be achieved before implementing this policy in a workplace.</li> <li>6. Approval will not reasonably be denied to workgroups requesting that the policy be implemented, provided the criteria is met.</li> <li>7. The City reserves the right to exclude specific dog breeds or individual animals from inclusion in this program at any time.</li> </ol>

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	<p>8. The presence of pets in the workplace must not impede productivity or the provision of City services.</p> <p>9. The presence of pets in the workplace must be communicated and visitors made aware of their presence.</p> <p>10. Any concerns identified by external persons, including staff, citizens or contractors, are required to be in the workplace where there is a pet onsite must be addressed and alternative arrangements made as required.</p>
<p><b>RESPONSIBILITIES (if applicable)</b></p> <p><b>Pet Owner</b></p>	<p>The following positions and/or departments are responsible for fulfilling the responsibilities detailed in this Policy as follows:</p> <ul style="list-style-type: none"> <li>• Only bring pets into the workplace where approved under this policy</li> <li>• Maintain responsibility for their pet's behavior, well-being, hygiene and happiness the entire time that the pet is in the workplace.</li> <li>• Manage their workspace to ensure it is "pet-proofed" and safe for their visiting pet.</li> <li>• Keep their pet with them and controlled throughout the day. If the employee needs to step away, they should make arrangements with a colleague to monitor the pet in their absence.</li> <li>• Ensure that their pet's behavior does not interfere with other employees' comfort or ability to do their work.</li> <li>• Provide their own pet items to ensure pet safety, such as leashes, crates or gates to keep the pet securely in the employee's work area.</li> <li>• Provide their own pet wellness items, such as waste bags, toys, food and water bowls.</li> <li>• Provide adequate bathroom breaks, access to water and food, and exercise for the pet throughout the day.</li> <li>• Clean up after their pet immediately if any accidents occur.</li> </ul>

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<b>Leader</b>	<ul style="list-style-type: none"> <li>• Maintain insurance that covers animal incidents such as dog bites</li> <li>• Be legally and financially responsible for any damage caused by their pet</li> <li>• Provide proof of vaccination and health for their visiting pets</li> <li>• Keep pets out of areas that are restricted as off limits for pets</li> <li>• Take their pet home at any time if the pet’s behavior or health makes it a distraction, nuisance or danger to anyone else, or if asked to so by their leader.</li> </ul>
<b>Non-Pet Owning Employees</b>	<ul style="list-style-type: none"> <li>• Ensure that Pet Owners are aware of their responsibility over their pets</li> <li>• Ensure that the Pet Owner completes and signs off on the participation waiver</li> <li>• Verify that the employee has adequate insurance to cover an incident that may occur while the pet is on City property</li> <li>• Monitor the implementation of the program, ensuring that the policy is being adhered to and that the pets are not disrupting the work environment</li> <li>• Follow up with all employees in the work team to confirm continued support for the program and to address any concerns that emerge</li> </ul>
<b>Health, Safety and Wellness Team Department Leadership Team</b>	<ul style="list-style-type: none"> <li>• Raise any concerns about the program with the leader at any point throughout the implementation</li> <li>• Contact Health, Safety and Wellness in Human Resources to discuss any concerns or complaints as appropriate</li> </ul> <ul style="list-style-type: none"> <li>• Assist work groups with questions regarding the policy and program</li> <li>• Assist work groups with determining the appropriateness of the work location for the program, as requested</li> <li>• Consult with employees who make a complaint or raise a concern about the</li> </ul>

<b>Corporate Human Resources Policy</b>	 Hamilton	Content Updated: 2019-09-04
<<Category Name Insert Here>>		Supersedes Policy: <<if applicable>>
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	<p>program in their work location, and investigate as appropriate</p> <ul style="list-style-type: none"> <li>• Oversee the implementation of the policy in their departments</li> <li>• Review and improve requests to implement the Workplace Pet Policy within their divisions</li> <li>• Identify and approve locations where Workplace Pet Policy could be feasibly implemented</li> </ul>
<b>COMPLIANCE</b>	<p>All Pet Owners must comply with this policy. Failure to do so will result in the employee being directed to remove the pet from the premises and future visits will be denied.</p>
<b>RELATED DOCUMENTS</b>	<p>The following related documents are referenced in this Policy:</p> <ol style="list-style-type: none"> <li>1. <i>City of Hamilton Service Animal Policy</i></li> <li>2. <i>Workplace Pet Procedure</i></li> <li>3. <i>Pre-Approved Workplace Pet Policy Locations (Appendix A to Workplace Pet Procedure)</i></li> </ol>
<b>HISTORY</b>	<p>The following stakeholders were consulted in the creation or revisions made to this Policy:</p> <p>Corporate Policy Review Group                  Senior Leadership Team</p> <p>This policy was approved by Council on:</p>



<i>Human Resources</i>	
<b>Workplace Pet Procedure</b>	
<b>PURPOSE</b>	The purpose of this procedure is to outline the requirements and steps that must be implemented to participate in the Workplace Pet Policy.
<b>DEFINITIONS</b>	
<b>Pet Owner</b>	A City of Hamilton employee or member of Council who has been approved to bring their pet to one of the City's workplaces.
<b>Pet</b>	A domestic animal that is owned by, resides with, and is cared for by an employee or member of Council. For the purposes of this policy, this includes dogs and cats. All other pets are excluded from this policy.
<b>Pet-Friendly Workplace</b>	Any location where City employees perform work that meets the criteria for inclusion in the program. This can include city owned facilities and leased facilities where lease agreements allow for pets on the premises.
<b>Workgroup</b>	A group of employees who share the same work location.
<b>STEPS</b>	
<b>Criteria for Pet-Friendly Workplace</b>	<p>To be considered as a Pet-Friendly Workplace, the work location must meet the following criteria:</p> <ul style="list-style-type: none"> <li>• The location must be primarily an office-type environment</li> <li>• The location must be indoors</li> <li>• The location must have secured doors</li> <li>• The primary location must not be accessible to the public</li> <li>• The location must have access to outdoor facilities suitable for pets</li> <li>• Otherwise suitable for animals</li> </ul> <p>If the location is leased by the City, the lease must explicitly allow for pets.</p>

<p><b>Work Area not Identified as a Pet-Friendly Location</b></p> <p><b>Restricted Work Areas</b></p>	<p>Workgroups seeking to implement the program must</p> <ul style="list-style-type: none"><li>• Ensure that their location is on the list of approved City workplaces (Appendix A)</li><li>• Consult with and get support from their direct Supervisor</li><li>• Seek written approval from their Director</li></ul> <p>Where the work location is leased by the City, the workgroup must also:</p> <ul style="list-style-type: none"><li>• Speak with Facility Services about the request to implement the program in the leased location</li><li>• Consult with the Human Resources Health and Safety Team to ensure the property meets the criteria for inclusion in the program</li><li>• Ensure that the property landlord is aware of the workgroup's intent to implement the program</li></ul> <p>Where employees want to implement the pet policy in a work location that is not on the list of preapproved work locations, Human Resources Health, Safety and Wellness Specialist must be consulted to determine suitability of the location.</p> <p>The following work areas are restricted from participation in the Workplace Pet Policy:</p> <ul style="list-style-type: none"><li>• Areas that are open to the public and commonly used, such as reception areas, bathrooms, meeting and conference rooms, unless it is clearly communicated that a pet may be present upon entry to the space and the pet is removed from the space if requested. Pets can also be in these spaces as necessary to travel on route to and from permitted locations.</li><li>• Dining and food preparation areas; kitchenettes; breakrooms</li><li>• Health and medical facilities</li><li>• Elevators, unless stairs are not accessible or there is a documented medical reason that the animal cannot use stairs</li><li>• Rooms that are frequently visited by employees outside of the participating</li></ul>
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<p><b>Eligible Pets</b></p>	<p>area such as meeting rooms and some offices</p> <ul style="list-style-type: none"><li>• Any area or work situation in which another person has raised a legitimate concern for health or other reasons about the presence of a pet, except for designated service animal</li><li>• Areas where the presence of a pet is prohibited</li></ul> <p>To participate in the program, pets must:</p> <ul style="list-style-type: none"><li>○ Have a valid municipal license (where required)</li><li>○ Be at least four months old</li><li>○ Be current on all required vaccinations (proof required)</li><li>○ Be parasite-free</li><li>○ Be housebroken</li><li>○ Be of good health</li><li>○ Be of good hygiene (e.g. no foul, unpleasant or strong odours)</li><li>○ Be leashed or tethered at all times</li></ul> <p>Pet owners will be required to provide proof of vaccination to their supervisor prior to the pet being in the workplace.</p> <p>Pet owners must provide updated medical information for their pet as required or where the pet's status changes.</p>
<p><b>Restricted Pets</b></p>	<p>Pets with the following conditions are restricted from the workplace until the issue is resolved:</p> <ul style="list-style-type: none"><li>○ A sick pet</li><li>○ A pet with fleas or any disease that is communicable to other pets or to humans</li><li>○ A pet that has not been properly vaccinated, or that has internal or external parasites</li><li>○ A pet that continuously barks, behaves aggressively, or is otherwise disruptive</li><li>○ A pet that is not properly house broken</li><li>○ A pet that has not been spayed or neutered</li><li>○ Any pet that has been previously banned</li></ul>

<p><b>Liability</b></p>	<ul style="list-style-type: none"><li>○ Any breed that is banned as a result of a bylaw or legislation</li></ul> <p>Pet owners are responsible for not bringing a pet into the workplace who has one of the above conditions.</p> <p>Where a pet is found to have a condition as outlined above, the pet owner will be asked to remove the pet from the workplace.</p> <p>Pet owners are responsible for their pet's behaviour, well-being and hygiene while in the workplace.</p> <p>Pet owners are liable for any damage or harm caused by their pet while in the workplace.</p>
<p><b>Frequency</b></p>	<p>Each work location must determine and agree to the frequency of having pets in their workplaces.</p> <p>Multiple pets cannot be in the same workplace on the same day.</p>
<p><b>Internal Communication</b></p>	<p>Workgroups are responsible for creating and maintaining a schedule to advise of the dates that specific pets that will be in the work location.</p> <p>A schedule of pets in the workplace must be communicated with all employees in the workplace and posted in a visible location.</p> <p>Before bringing a pet to the workplace, the pet owner will speak to their supervisor, and will check in with colleagues in the workgroup to understand any concerns or requests they may have (allergies, fear, concern of distraction) about implementing this program.</p> <p>Where there are any concerns identified by employees in the workgroup, the program will not be approved within that work area.</p> <p>Throughout the time that the program is being implemented in a work location, regular communication must occur between employees, their leader, and the pet owner to ensure that the</p>

**Communication with Persons Outside of the Work Group**

team remains supportive of the arrangement, or to identify any adjustments required

Workgroups are responsible for creating and maintaining an up-to-date schedule to indicate when pets will be at the workplace.

Participating work areas must ensure that signage identifying the presence of the pet is visible to persons outside of the work location where appropriate.

Participating work areas must communicate about the presence of pets in the workplace with any persons, including but not limited to employees external to their workgroup, contractors, consultants and members of the public, who are expected to be onsite at the work location during the time that a pet is present in the workplace.

Communication with persons external to the workgroup must occur in advance of the person coming into the workplace. The communication must advise of the Workplace Pet program and to identify any concerns and to make adjustments that the person might require in advance.

Communication about the program must be made regardless of whether a pet will be in that work location on the day that the external party will be present in the work place.

Any concerns identified by the person external to the workgroup must be addressed and a reasonable solution reached.

Examples of addressing concerns may include but is not limited to; ensuring that pet dander and fur is cleaned from meeting rooms; changing the location of a meeting to a location where there are no pets; ensuring that a pet is not in the office on the day that the external person will be on site.

<p><b>Pet Behaviour</b></p>	<p>If a pet exhibits aggressive behaviour they will be removed from the workplace immediately.</p> <p>In the event that the pet bites someone, the pet will be permanently banned from the workplace.</p> <p>In order to avoid disrupting co-workers and/or inhibiting work productivity, the following behaviours are prohibited:</p> <ul style="list-style-type: none"><li>○ Loud play</li><li>○ Excessive barking at any time</li><li>○ Scent distraction (keep food and garbage away)</li></ul> <p>Should the pet be disruptive to the office for any reason, the Pet Owner will be asked to remove the pet from the office.</p>
<p><b>Complaints and Concerns</b></p>	<p>A pet may be removed from the office if it:</p> <ul style="list-style-type: none"><li>○ Causes any person to experience allergic reactions, fear, or any other physical or psychological discomfort</li><li>○ Distracts any employee from their work</li><li>○ Reduces any employee's productivity or quality of work</li></ul> <p>Employees who have any concerns or complaints about the Workplace Pet program are advised to first discuss their complaint with their direct supervisor.</p> <p>Concerns or complaints may be made confidentially to Health, Safety and Wellness in Human Resources for review and action. Complaints may also be made to Diversity Team in Human Resources.</p> <p>Upon receipt of a complaint, the Health, Safety and Wellness Specialist will investigate the situation to determine if it violates the Workplace Pet Policy and Procedure.</p> <p>Where a person has raised a concern about the presence of a pet in the workplace that is found to be legitimate or otherwise in violation of the</p>

	Workplace Pet Policy, the pet will be restricted from the workplace.
<b>COMPLIANCE</b>	All employees must comply with this procedure. Failure to do so will result in the employee being directed to remove the pet from the premises and future visits will be denied.
<b>RELATED DOCUMENTS</b>	The following related documents are referenced in this Procedure: <ol style="list-style-type: none"> <li>1. <i>Workplace Pet Policy</i></li> <li>2. <i>Appendix A: Pre-Approved Workplace Pet Policy Locations</i></li> </ol>
<b>CONTENT UPDATED</b>	2019-09-23
<b>HISTORY</b>	The following stakeholders were consulted in the creation or revisions made to this Procedure: Corporate Policy Review Group, August 2019
<b>APPROVAL</b>	<<YEAR-MM-DD>>

## Appendix A: Pre-Approved Workplace Pet Policy Locations

The following is a list of locations that meet the criteria for the inclusion of pets in the workplace. Approval to participate in the program must be achieved as outlined in the Workplace Pet Policy. Workgroups wanting to participate in the Workplace Pet Policy who do not see their work location on the list below must contact Health, Safety and Wellness in Human Resources so that the work location can be assessed against the policy criteria.

### Pet Friendly Workplace Criteria

- The location must be primarily an office-type environment
- The location must be indoors
- The location must have secured doors
- The primary area where pets will be housed must not be accessible to the public
- The location must otherwise be suitable for pets

<b>Site Name</b>	<b>Site Location</b>
Standard Life Building	120 King Street West, 9th Fl*
1550 Upper James Street	1550 Upper James Street*
181 Main Street West	181 Main Street West*
2255 Barton Street East	2255 Barton Street East*
250 Main Street East	250 Main Street East*
Wentworth St. Operations	330 Wentworth Street North
55 Hess Street South	55 Hess Street South
Ancaster Town Hall	300 Wilson Street East
Animal Control	247 Dartnal Road
City Centre - Suites 320/325	77 James Street North, 320/325*
Dundas Town Hall	60 Main Street
Glanbrook Town Hall	4280 Binbrook Road
Go Transit Terminal	36 Hunter Street East*
Hamilton City Hall	71 Main Street West
City Centre - Suite 250	77 James St N, Suite 250*
City Centre - Suite 400	77 James St N, Suite 400*
350 King Street East	350 King Street East, 110
Lrt	21 King Street West, 14th Fl*
Lister Block	28 James Street North
Mountain Transit Centre	2200 Upper James Street
Parking Operations	80 Main Street West
Robert Thomson Building	110 King Street West, Fl 2/3/4*
Stoney Creek City Hall	777 Highway # 8
Waterdown Library & Msc	163 Dundas Street East
ADGS	21 Hunter St. East*
Adolescent Services	100 Main St East*
David Braley	100 Main St West*

\*Leased Properties



## INFORMATION REPORT

<b>TO:</b>	Chair and Members Audit Finance and Administration Committee
<b>COMMITTEE DATE:</b>	November 21, 2019
<b>SUBJECT/REPORT NO:</b>	Orientation for Hearing of Complaints Made Pursuant to Subsection 20(1) of the <i>Development Charges Act, 1997</i> (LS19043) (City Wide)
<b>WARD(S) AFFECTED:</b>	City Wide
<b>PREPARED BY:</b>	Michael G. Kovacevic (905) 546-2424 Ext. 4641
<b>SUBMITTED BY:</b>	Nicole Auty City Solicitor Legal and Risk Management Services
<b>SIGNATURE:</b>	

### COUNCIL DIRECTION

**Not Applicable**

### INFORMATION

On October 11, 2019 a complaint pursuant to subsection 20(1) of the *Development Charges Act, 1997* (“DC Act”) submitted by Sullivan, Mahony LLP on behalf of Harvey Armstrong Ltd. was received by the City Clerk’s Office.

Subsection 20(1) of the DC Act allows a complaint to be filed where the amount of the Development Charges (“DC”) was incorrectly determined, where a credit was incorrectly determined or where there has been an error in application of the DC By-law.

Subsection 20(4) of the DC Act, requires Council to hold a hearing into the complaint (“Complaint Hearing”). Upon conclusion of the Complaint Hearing Council may dismiss the complaint or rectify any incorrect determination or error that was the subject of the complaint, the key being that there was an actual incorrect determination or error in the application of the DC By-law.

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OUR Vision: To be the best place to raise a child and age successfully.

OUR Mission: To provide high quality cost conscious public services that contribute to a healthy, safe and prosperous community, in a sustainable manner.

OUR Culture: Collective Ownership, Steadfast Integrity, Courageous Change, Sensational Service, Engaged Empowered Employees.

**SUBJECT: Orientation For Hearing of Complaints Made Pursuant to Subsection 20(1) of the Development Charges Act, 1997 (LSxxxxx) (City Wide) - Page 2 of 2**

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On October 23, 2019 Council delegated its authority to hold Complaint Hearings pursuant to subsection 20(4) of the DC Act to the Audit, Finance and Administration Committee (“AF&A”). How AF&A conducts the Complaint Hearing is governed by the procedures set out in the Council Procedure By-law and the *Statutory Powers Procedure Act* (“SPPA”).

AF&A has had the authority to conduct a Complaint Hearing delegated in the past. However, for this session of Council and at least the previous two sessions, neither Council nor AF&A has conducted a Complaint Hearing because any complaints had either been settled or withdrawn or not dealt with by Council or AF&A. Accordingly, Legal staff have provided AF&A with an Orientation Package informing Committee how a Complaint Hearing should be conducted.

Attached hereto as Appendix “A” is an Orientation Package outlining the Complaint Hearing process to be followed by AF&A.

#### **APPENDICES AND SCHEDULES ATTACHED**

Appendix “A” - Orientation Package



**Members of the Audit Finance and Administration Committee 2018-2022:**

Chair: Councillor Chad Collins  
Councillor Maria Pearson  
Councillor Brad Clark  
Councillor Chad Collins  
Councillor Brenda Johnson  
Councillor Judi Partridge  
Councillor Arlene VanderBeek  
Councillor Maureen Wilson  
Councillor Lloyd Ferguson

**IN THIS DOCUMENT:**

**Procedures**

**Before the Complaint Hearing**

1. Parties
2. Notice
3. Allegations of Bad Character, Impropriety of Conduct and Incompetence
4. First Meeting

**The Complaint Hearing**

1. Disclosure
2. Conflict of Interest
3. Maintenance of Order at Hearings
4. Adjournments
5. Open and Closed Proceedings / Deliberations
6. Agreed Upon Statements of Fact and Joint Submissions
7. Witnesses
8. Evidence
9. Note-taking
10. Decisions

**Appendix A – Common Objections to Testimony**

**Appendix B – Statutory Powers Procedure Act**

## **DEVELOPMENT CHARGE COMPLAINT HEARING ORIENTATION**

### **INTRODUCTION**

The *Development Charges Act, 1997* ("DC Act") requires Council to hold a hearing in respect of a complaint filed by a person pursuant to section 20 of the DC Act. Council has delegated the responsibility of the holding of the hearing to the Audit Finance and Administration Committee ("AF&A")

Section 20 of the DC Act states:

**20** (1) A person required to pay a development charge, or the person's agent, may complain to the council of the municipality imposing the development charge that,

- (a) the amount of the development charge was incorrectly determined;
- (b) whether a credit is available to be used against the development charge, or the amount of the credit or the service with respect to which the credit was given, was incorrectly determined; or
- (c) there was an error in the application of the development charge by-law.

The complaint must be made within 90 days of the development charge ("DC") or any part if it is payable and the complaint must be in writing. Notice of the hearing must be provided by the Clerk of the City at least 14 days prior to the hearing.

### **PROCEDURES**

In conducting a hearing pursuant to subsection 20(4) of the DC Act, AF&A follows the procedures set out in the Council Procedure By-law and the *Statutory Powers Procedure Act* ("SPPA"). The Council Procedure By-law applies to Council and, with necessary modifications, to all Committees/Tribunals of Council. The SPPA applies to the exercise of a statutory power of decision such as a hearing of a complaint pursuant to subsection 20(4) of the DC Act.

### **BEFORE THE HEARING**

#### **1. Parties**

There are two parties to the hearing of a DC Complaint, the City and the Complainant. The City's Finance Division is responsible for administering the DC By-law and a solicitor from the Legal Division will represent the City at the hearing. The complainant may choose to be represented by a lawyer or an agent (who, in accordance with the *Law Society Act* and its regulations may provide representation). (Section 10, SPPA)

AF&A must be satisfied that the Complainant, their representative, if any, and their witnesses, if any, understand the proceedings. If they are not satisfied, they should act to remedy this, for example by adjourning the proceedings and directing the Secretary to arrange for an interpreter when the proceedings resume.

## **2. Notice**

Subsection 20(5) of the DC Act requires that the Clerk of the City mail the complainant notice of the hearing at least 14 days prior to the hearing date.

Subsections 6(2) and (3) of the SPPA require that the notice include a reference to the statutory authority under which the hearing will be held and state the time, place and purpose of the hearing. The notice must also state that if a party does not appear, AF&A may proceed in their absence. If notice fails to meet any of the requirements contained in the DC Act and SPPA and the complainant does not appear, AF&A should order that a new notice be delivered. If the complainant does appear, AF&A should consider whether or not the failure to meet any requirement has prejudiced the complainant and, if it has, how to remedy the prejudice, for example, by acceding to a reasonable request for adjournment.

## **3. Allegations of Bad Character, Impropriety of Conduct and Incompetence, Grounds for Complaint**

In the hearing of a DC Complaint, AF&A may have to deal with allegations of bad character, impropriety of conduct and incompetence. Section 8 of the SPPA requires that a party be furnished with reasonable information of any such allegations prior to the hearing. The grounds listed on the notice of the hearing are intended to fulfil this requirement. If AF&A is convinced at a hearing that reasonable information has not been furnished, then it may adjourn the hearing to a future date and direct Finance staff to provide additional information to the complainant.

AF&A, in conducting the hearing of a DC Complaint, is required to only consider the grounds permitted under subsection 20(1) of the DC Act namely:

- a) whether the amount of the DC was incorrectly determined;
- (b) whether a credit is available to be used against the DC, or the amount of the credit or the service with respect to which the credit was given, was incorrectly determined; or
- (c) there was an error in the application of the DC by-law.

Examples of matters not relevant to the determination of a DC Complaint include but are not limited to: financial or personal hardship as a result of the DC; using a complaint as a way to provide assistance (bonusing) to a commercial enterprise contrary to section 106 of the *Municipal Act, 2001*; , lack of knowledge of the applicability of the DC, failure of municipal officials to inform applicants of deadline in relation to a change in DC quantum<sup>1</sup>, and the appropriateness of a DC By-law. As stated by the LPAT the grounds set out in the DC Act are very specific and quite focused. They do not include a request to be exempt from a DC otherwise applicable pursuant to a DC By-law nor do they include a request to create a new category of development not found in a DC By-law.<sup>2</sup> A DC Complaint cannot be used to amend the DC By-law to alter the DC rate otherwise validly applicable or to add a credit or exemption not already within the DC By-law.<sup>3</sup>

## **THE HEARING**

### **1. Disclosure**

AF&A may make an order regarding disclosure in response to a motion made by a party.

### **2. Conflict of Interest and Bias**

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<sup>1</sup> A. Pigeau Construction, Re, 1993 CarswellOnt 4878, 30 O.M.B.R. 210

<sup>2</sup> Stone v. Hamilton (City), 2019 CanLII 16512 (ON LPAT)

<sup>3</sup> Szilveszter. V. Barrie (City) 2004 CarswellOnt 5919, 48 O.M.B.R. 63

As members of Council, the members of AF&A, in their capacity in hearing a DC Complaint, are subject to municipal conflict of interest requirements under the *Municipal Conflict of Interest Act*. The members also must be mindful of any actual or perceived conflict of interest or bias as members of AF&A.

Many administrative tribunals adopt Codes of Professional Conduct that state, amongst other things, that their members must strive at all times to make their decisions independently, fairly, objectively, impartially and without bias. A Code of Professional Conduct has not been adopted by AF&A for the purpose of a DC Complaint hearing but Council has its own Code of Conduct which continues to apply. However, an AF&A member's duty goes beyond ensuring that there is no actual bias. They must conduct themselves in a manner that will not give rise to an appearance of unfairness, partiality or bias. Each member presiding over a matter must decide whether they have a conflict of interest or whether their past or present activities, associations, or interests may rise an apprehension of bias.

The test applied by the courts has been "what would an informed person, viewing the matter realistically and practically – and having thought the matter through conclude that it is more likely or not that the decision-maker, whether consciously or unconsciously, would not decide fairly."

If an AF&A member feels that they should not be hearing a particular matter, the member may inform AF&A that they will not participate, giving a general or specific reason why not, e.g. one of the witnesses is a relation.

An alternative, particularly when the conflict of interest is less obvious, is for the AF&A member to explain their concern to the parties, hear what the comments are and then make their decision. For example, and in the context of a licensing tribunal hearing, a councillor who was approached at a public event by a licensee the weekend before that licensee's licensing tribunal hearing explained he could not speak to the licensee about the hearing. The councillor then disclosed the conversation at the outset of the hearing. The hearing went forward with the councillor continuing to sit. The matter went to judicial review, but there was never any question raised about the councillor having a conflict of interest.

The courts have applied a different test for disqualifying bias for councillors sitting as members of an administrative tribunal who have previously commented, in their role as councillors, on a matter before them. The test is whether or not the councillor has an open mind such that they are capable of giving a fair hearing and a fairly decided decision. It is the duty of a councillor to disqualify themselves if they are

not open to being able to be persuaded in favour of either party. Members of AF&A should refrain from commenting on a matter while it is before them as this makes any allegation of bias much more credible.

### **3. Maintenance of Order at Hearings**

Subsection 9(2) of the SPPA gives AF&A the authority to maintain order at a hearing. If any person disobeys or fails to comply with an order made by AF&A, the Chair or another member may call upon a peace officer to enforce this order.

### **4. Adjournments**

Adjournments may be requested by either party at the start of or during a hearing. AF&A may grant or refuse an adjournment request in light of a number of considerations including: the legitimate inability of the complainant or a witness to attend or, within reason, the counsel of their choice; or, the necessity for time to prepare before a hearing or to respond to new and unexpected issues or allegations arising in the course of a hearing. The courts are reluctant to interfere with an administrative tribunal's exercise of discretion to refuse an adjournment but will do so if they find that the refusal was unreasonable.

If both parties are in agreement that the hearing be adjourned, then AF&A should normally exercise its discretion to do so.

In considering a request for an adjournment, AF&A members should be cognizant of the right of the complainant, pursuant to subsection 22(2) of the DC Act, to appeal its complaint to the Local Planning Appeal Tribunal ("LPAT") if the AF&A does not deal with the complaint within 60 days after the complaint was made.

### **5. Open and Closed Proceedings / Deliberations**

All proceedings are to be open to the public and the parties unless one of the exceptions under the SPPA or the *Municipal Act, 2001* applies.

Section 9(1) of the SPPA provides that a hearing may be closed to the public if: (a) a matter 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 interest of any person affected or in the public interest outweighs the desirability of adhering to the principle that hearings be open to the public.

If AF&A believes that such matters could be disclosed, it should ask each of the parties if this is the case. If one or both answer “yes”, AF&A should further ask the party or parties answering “yes” to explain, without providing details, what harm would result from disclosure. If AF&A is convinced that the harm outweighs the desirability of the hearing being open to the public, the hearing may be closed to the public. When a hearing is closed to the public under the SPPA, only the parties and their representatives remain in attendance.

AF&A may also rely on the authority under section 239 of the *Municipal Act, 2001* in closing proceedings to the public or the public and the parties - for example, if it wishes to receive advice subject to solicitor-client privilege.<sup>4</sup>

In addition, records containing personal information, such as medical reports before AF&A may be protected from disclosure under the *Municipal Freedom of Information and Protection of Privacy Act*.

AF&A may, but is not required to, retire to deliberate in the absence of the public and the parties.<sup>5</sup> Deliberations occur when AF&A considers the evidence and submissions in arriving at a decision. The decision itself is announced in the presence of the public and the parties. The authority for retiring to deliberate is found at common law and is referred to as the “confidentiality principle” or the “rule on deliberative secrecy”. As explained in one court decision: “The purpose of the rule on deliberative secrecy is to preserve adjudicative independence so that adjudication occurs with circumspection, reflection and in freedom.” On occasion, deliberations may be subject to judicial review, however, “secrecy remains the rule” and is lifted only “when the litigant can present valid reasons for believing that the process followed did not comply with the rules of natural justice.”

## **6. Agreed Upon Statements of Fact and Joint Submissions**

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<sup>4</sup> Section 9(1) of the SPPA and s. 239(2)(b) of the *Municipal Act, 2001* (A meeting or part of a meeting may be closed to the public if the subject matter being considered is, . . . personal matters about an identifiable individual . . .) overlap. There is no process prescribed for closing a hearing under the authority of Section 9(1) of the SPPA, while there is a detailed process, set out in the Council Procedure By-law, prescribed for closing a meeting under the authority of Section 239 of the MA, 2001. It is advisable, in case of a challenge, for the AF&A to always follow the process set out in the Council Procedure By-law when closing a proceeding.

<sup>5</sup> *Ontario Ombudsman v. Hamilton (City)*, 2018 ONCA 502.

From time to time the parties may submit an agreed upon statement of facts which means that they will inform AF&A that some or all of the facts relevant to the hearing are not in dispute. Agreed upon facts need not be proven and should be accepted by AF&A.

The parties may go beyond an agreed upon statement of facts to make a joint submission, asking for a final decision that is acceptable to both. AF&A must give serious consideration to a joint submission and must not reject it without good cause. While AF&A may reject all or part of a joint submission, if this is being considered, both parties must be given the opportunity to make representations before the final decision is made.

## **7. Witnesses**

The parties may call witnesses. (Section 10.1, SPPA) At the request of a party or on its own initiative, AF&A may require the attendance of a witness to give evidence by issuing a summons. The summons is signed by the Chair, or, if they are unavailable, another member of AF&A, who should be satisfied that the summoned evidence is relevant to the subject matter of the proceeding and admissible at the hearing. The summons must be served personally. The witness is entitled to a fee, to be paid by the party who requested the summons be issued, or by the City if AF&A summoned the witness. (Section 12, SPPA)

A witness who is summoned to testify before AF&A cannot refuse to answer a proper and relevant question. Section 13 of the *Canadian Charter of Rights and Freedoms* and Section 14 of the SPPA both protect witnesses from the consequences of being compelled to evidence against themselves, providing that any such evidence may not be used against the witness in any other proceeding, except in a prosecution for perjury.

It is open to AF&A to call its own witnesses. AF&A needs to be satisfied as to the relevance of the witness' testimony (and would have to consider the submissions of the parties in this regard) and that sufficient disclosure would be provided. However, under most circumstances, AF&A should be hearing only the relevant evidence of the parties' witnesses.

Witnesses should be sworn or affirmed by the Chair of AF&A prior to commencing their testimony.

Lawyers or representatives acting as an advocate for a complainant cannot be a witness.



A summary of common objections to the testimony of witnesses is attached as Appendix B. As indicated in the summary, generally objections are made by one of the parties about the manner in which the other party is presenting their case. Only in rare instances, for example if AF&A felt the fairness of the hearing were in jeopardy, should AF&A make an objection.

## **8. Evidence**

Administrative tribunals are given much more latitude than courts with respect to the evidence which they may receive and consider in arriving at a decision. Accordingly, AF&A may receive hearsay evidence and unsworn evidence. (Section 15, SPPA) The fundamental test with respect to the admissibility of evidence is that it must be relevant to the issues which are involved in the hearing. Relevance for a DC hearing is determined by reference to the permitted grounds set out in subsection 20(1) of the DC Act and by the grounds set out in the complaint, but only if those grounds are permitted grounds. When AF&A is confronted with an objection to the admissibility of a relevant piece of evidence, the evidence should generally be admitted unless it is clearly irrelevant. AF&A should consider the objection with respect to the weight it gives to that particular evidence when arriving at its decision. The general principle is that indirect evidence (hearsay) should be given less weight than direct evidence such as a witness' own observations, unless there is a valid reason to conclude that the direct evidence is not credible.

AF&A may make a finding of credibility in considering the testimony of a witness – giving little or no weight to testimony it does not find credible. In doing so, the members should consider the following factors: ability to recall (e.g. poor or good); appearance and demeanour (e.g. responsive or evasive); ability to observe (e.g. focussed or distracted); motivation (e.g. anything to gain or lose); probability (e.g. reasonable or unreasonable); external consistency (e.g. with other testimony, documentary evidence, etc.); internal consistency (e.g. answers during examination in chief vs. answers during cross examination). An administrative tribunal may find it very difficult to indicate in a decision that a witness was not credible. It is advisable for the administrative tribunal to fully and clearly explain itself, for example, by stating X's testimony was not relied upon because they admitted to a direct financial interest in the outcome of the hearing and because their answers were influenced by this.

Although unaffirmed or unsworn evidence is admissible, testimony to AF&A should be given under affirmation or oath. Each witness should be affirmed or sworn immediately before giving their testimony. A witness should be asked whether they prefer to be sworn or affirmed. The unrepresented complainant

is acting in two capacities, both as their own representative and as a witness. When they are acting as a witness – for example, telling AF&A what did or did not happen – they should be under affirmation. The affirmation may be administered by any member of AF&A or delegated to be administered by the Legislative Coordinator in attendance at the hearing.

The parties may examine their own witnesses and cross-examine other witnesses. (Section 10.1, SPPA) AF&A may also question witnesses. Generally, this should be done after the parties have finished questioning the witness. The Chair or Vice Chair presiding should allow each party to ask any further questions of the witness they may have arising from questions posed by a member of AF&A.

The onus is on the complainant to satisfy AF&A that the DC amount was incorrectly determined, that a credit should have been issued against the DC, that a credit was incorrectly applied, or there was an error in the application of the DC by-law.<sup>6</sup>

## 9. Note-taking

Courts and tribunals have recognized that judges and members of administrative tribunals "must have total freedom in terms of recording what [they] find noteworthy during the ongoing hearing". Adjudicative independence requires that adjudicators be able to reach their decisions without interference and this includes making notes which are not subsequently subject to scrutiny. It also includes the ability to retire and reach decisions in the absence of the public and the parties. As a result, courts and tribunals have refused to order the disclosure of notes when asked to do so. An exception may be made if there is "sufficient evidentiary basis for alleging a breach of the rules of natural justice and procedural fairness, such as improper consultations". It is because of this possible exception that notes should be kept for a reasonable period of time, enough time for whatever appeal right there may be to be exercised.

A problem arises when protection of privacy and freedom of information legislation applies. In the case of the *Municipal Freedom of Information and Protection of Privacy Act*, there is no exception made for the notes of members sitting on a municipal tribunal such as AF&A hearing a DC Complaint. As a consequence, if the City, in this case Clerks, has custody or control of the notes, these notes may be subject to disclosure under MFIPPA. In addition, the notes arguably would be subject to the Records Retention By-law and could only be destroyed in accordance with that By-law. Consequently, to ensure

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<sup>6</sup> *Lofaro v. Toronto (City)*, 2018 CanLII 112933 (ON LPAT)

that adjudicative independence can be maintained, it is recommended that if an AF&A member chooses to take notes, they:

- do so for the purposes of helping (i) them to remember and understand what occurred during a hearing; and (ii) to make a decision in respect of a hearing;
- keep their notes confidential, not allowing any other person to see, read or use the notes for any purpose;
- maintain responsibility for the care and safe-keeping of their notes;
- store their notes at their office or home; and
- destroy their notes after some reasonable period of time such as one year.

## 10. Decisions

AF&A, in the context of a DC Complaint hearing, makes two types of decisions: procedural decisions such as adjourning the hearing to another date; and final decisions concerning whether: the amount of the DC was correctly determined, a credit was available, a credit was correctly determined or there was an error in the application of the DC By-law. An alteration of the amount of the DC payable can only be made if the DC By-law has been applied incorrectly.<sup>7</sup> The procedural decision or final decision of the majority of the members of AF&A is the procedural decision or final decision of AF&A, allowing for a vote with dissent. However, it is recommended that AF&A operate on a consensual basis in respect of DC Complaint decisions.

As indicated above, AF&A may retire to deliberate in the absence of the public and the parties. At the conclusion of its deliberations, AF&A gives its procedural decision or final decision on the matter in the presence of the parties and the public. AF&A is not required to give reasons for a procedural decision that is made with the consent of the parties. Otherwise, AF&A must give oral and/or written reasons for a procedural decision. AF&A may make a final decision orally in the presence of the parties and the public, however, AF&A must make its decision in writing to the complainant and/or their legal counsel or agent within a reasonable time subsequent to the completion of the hearing.

Subsection 17(1) of the SPPA requires a written decision to include reasons for the decision only if a party to the complaint requests reasons. If reasons are requested the decision should summarize the facts and

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<sup>7</sup> *Modelaire Enterprises Inc. v. Oshawa (City)* 1997 CarswellOnt 6227, 34 O.M.B.R. 412 (O.M.B.)

arguments presented by the parties, the findings of fact made by AF&A. In addition, the jurisprudence indicates that reasons must be more than "merely a recital of allegations followed by bald conclusions". AF&A's decision must explain the relationship between the evidence and its conclusions, including why evidence was rejected or given little credibility.

AF&A members should refrain from expressing opinions on the merits or strength of a case until after all of the evidence and submissions have been heard and they are giving their decision. They must avoid commenting to the media or to other members of the public about a case, particularly while it is before AF&A. The Federal Court, in considering the conduct of Mr. Justice John Gomery when conducting the inquiry into the federal sponsorship scandal, found that "the media is not an appropriate forum in which a decision-maker is to become engaged while presiding over a commission of inquiry, a trial, or any other type of hearing or proceeding."

AF&A must ensure that at all times it has a quorum. In addition to being present, AF&A members must take care to listen to the presentation of all evidence and submissions during the hearing. They must avoid talking amongst themselves. All cell phones, tablets or other communication devices should be turned off. This applies not only to AF&A members but to all those in attendance at a hearing. A recess should be requested for any matter requiring an AF&A member's immediate attention such as responding to a phone call in respect of a family emergency.

One of the City's Solicitors is available to provide legal advice to AF&A during a hearing and deliberations. This practice is permissible provided that the Solicitor does not take part in making findings of fact or in making the ultimate decision on the matter.

It is important that AF&A provides clear instructions to the Legislative Coordinator for AF&A about the decisions it makes, however, it is acceptable for the Legislative Coordinator to prepare a draft decision for approval by AF&A.

## **Appeal**

The DC Act requires notice of the decision of AF&A to be mailed within 20 days after the day the decision is made. The decision of AF&A is subject to appeal by the complainant to the LPAT. An appeal must be made no later than 40 days after the day the decision is made. The appeal is an appeal *de novo* which means LPAT is not required to consider AF&A's reasons in its decision regarding an appeal.

## **APPENDIX A**

### **Common Objections to Testimony<sup>8</sup>**

Generally, objections are made by one of the parties about the manner in which the other party is presenting their case. In most instances, an objection will be made when a party is questioning a witness, although it may also occur during submissions, for example, if a party misstates evidence while summing up. When an objection is made, the tribunal is called upon to do one of three things:

- (a) Allow the party to continue (“overruling” the objection). For example, deciding, contrary to an objection, that a question is relevant and may be asked;
- (b) Allow the party to continue but instructing them to adjust. For example, instructing a questioner to rephrase a leading question; or
- (c) Require the party to stop (agreeing with the objection). For example, agreeing with an objection that a question has been asked and answered and instructing the questioner to move on.

AF&A may, if it is of the opinion that something objectionable is happening, act as set out in (b) and (c) above on its own initiative. Care should be taken not to pre-empt either of the parties and to ensure that members of AF&A are in agreement.

#### **1. Irrelevant Question**

- A tribunal may admit evidence of dubious relevance.
- A tribunal may ask for an explanation of the relevance of a question and, if the explanation is plausible, should allow the question. If the explanation is not plausible, the tribunal may ask the questioner to move on.

#### **2. Privilege**

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<sup>8</sup> Adapted from a paper entitled “Evidence in Administrative Proceedings: A Practical Primer” by Andrew K. Lokan given at the Canadian Institute’s “Fundamentals of Administrative Law & Practice”, April 28 & 29, 2008.

- Under s. 15(2) of the *Statutory Powers Procedure Act* a tribunal cannot hear privileged evidence: for example, evidence subject to solicitor/client, litigation, husband/wife, priest/penitent or settlement discussion privilege.

### **3. Hearsay**

- Hearsay is evidence of an unsworn, out-of-court statement offered as proof of the truth of its contents.
- A tribunal usually admits hearsay evidence, deciding what weight to give it once it has been admitted. However, hearsay evidence of no value should not be admitted.
- In respect of both the admission and weighing of hearsay evidence, a tribunal considers reliability, reasonableness, unfairness and prejudice.

### **4. Leading the Witness in Chief**

- A leading question is any question whose contents suggest the answer. It is only an issue in respect of contentious matter: for example, suggesting in a question to a municipal law enforcement officer that they are employed by the City of Hamilton is not an issue.
- A tribunal should try to ensure that the evidence is contained in the witness's answers, not in the questions being asked.
- Leading can normally be cured by a tribunal asking the questioner to rephrase the question so that the answer is not contained in the question.
- Leading is permissible in cross-examination.

### **5. Calls for Opinion from an Unqualified Witness**

- Expert opinions may only be given by expert witnesses. All witnesses may give opinions on matters of general knowledge: for example, any witness may estimate height or distance.
- In making its ruling, a tribunal needs to consider whether or not the opinion being asked for is an expert opinion.

### **6. Calls for Legal Argument**

- While testimony, particularly testimony from an enforcement officer, may explain how a law was applied, it should not include legal argument. Submissions, however, may and often do contain legal argument, for example an explanation of how a law is to be interpreted.
- A tribunal may ask for parties to address a legal argument in their submissions rather than during the testimony of witnesses.

## **7. Question Misstating Previous Evidence**

- Questioners should accurately recount previous evidence when asking subsequent questions.
- A tribunal should ensure that previous evidence is accurately recounted, either in questions or in submissions.

## **8. Repetitious Questions**

- This may occur either in chief, to bolster the case by having the witness repeat the "right" answer, or in cross, to badger the witness.
- A tribunal may require that a questioner asking repetitious questions move on.

## **9. Interrupting the Witness**

- While a tribunal should not allow a questioner to interrupt a witness's answer, the questioner is entitled to have their question answered.

APPENDIX B

Français

**Statutory Powers Procedure Act**

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

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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).

### Section Amendments with date in force (d/m/y)

1994, c. 27, s. 56 (1-3) - 1/04/1995

2002, c. 17, Sched. F, Table - 1/01/2003

2006, c. 21, Sched. C, s. 134 (1, 2) - 1/05/2007

### 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).

**Section Amendments with date in force (d/m/y)**

1999, c. 12, Sched. B, s. 16 (1) - 14/02/2000

2006, c. 19, Sched. B, s. 21 (1) - 22/06/2006

**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.

**Section Amendments with date in force (d/m/y)**

1994, c. 27, s. 56 (5, 6) - 1/04/1995

2006, c. 19, Sched. C, s. 1 (1, 2, 4) - 22/06/2006

2009, c. 33, Sched. 6, s. 87 - 1/06/2011

**Waiver**

**Waiver of procedural requirement**

4. (1) Any 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**

(2) Any 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).

**Section Amendments with date in force (d/m/y)**

1994, c. 27, s. 56 (7) - 1/04/1995; 1997, c. 23, s. 13 (1) - 28/11/1997

**Disposition without hearing**

4.1 If 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).

**Section Amendments with date in force (d/m/y)**

1997, c. 23, s. 13 (2) - 28/11/1997

**Panels, certain matters**

4.2 (1) A 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**

(2) In 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**

(3) The 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).

**Section Amendments with date in force (d/m/y)**

1994, c. 27, s. 56 (8) - 1/04/1995; 1997, c. 23, s. 13 (3) - 28/11/1997

**Panel of one, reduced panel**

**Panel of one**

4.2.1 (1) The 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**

(2) Where 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).

**Section Amendments with date in force (d/m/y)**

1999, c. 12, Sched. B, s. 16 (2) - 14/02/2000

**Expiry of term**

4.3 If 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).

**Section Amendments with date in force (d/m/y)**

1997, c. 23, s. 13 (4) - 28/11/1997

**Incapacity of member**

4.4 (1) If 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**

(2) Subsection (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).

**Section Amendments with date in force (d/m/y)**

1994, c. 27, s. 56 (9) - 1/04/1995; 1997, c. 23, s. 13 (5) - 28/11/1997

**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).

**Section Amendments with date in force (d/m/y)**

1999, c. 12, Sched. B, s. 16 (3) - 14/02/2000

**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).

**Section Amendments with date in force (d/m/y)**

1999, c. 12, Sched. B, s. 16 (3) - 14/02/2000

**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).

**Section Amendments with date in force (d/m/y)**

1999, c. 12, Sched. B, s. 16 (3) - 14/02/2000

**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).

**Section Amendments with date in force (d/m/y)**

1999, c. 12, Sched. B, s. 16 (3) - 14/02/2000

**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).

**Section Amendments with date in force (d/m/y)**

1999, c. 12, Sched. B, s. 16 (3) - 14/02/2000

**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).

**Section Amendments with date in force (d/m/y)**

1994, c. 27, s. 56 (10) - 1/04/1995; 1997, c. 23, s. 13 (6) - 28/11/1997; 1999, c. 12, Sched. B, s. 16 (4) - 14/02/2000

**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).

**Section Amendments with date in force (d/m/y)**

1994, c. 27, s. 56 (10) - 1/04/1995; 1997, c. 23, s. 13 (7) - 28/11/1997

**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).

**Section Amendments with date in force (d/m/y)**

1997, c. 23, s. 13 (8) - 28/11/1997

**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).

**Section Amendments with date in force (d/m/y)**

1994, c. 27, s. 56 (11) - 1/04/1995; 1997, c. 23, s. 13 (9, 10) - 28/11/1997

**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).

**Section Amendments with date in force (d/m/y)**

1994, c. 27, s. 56 (12) - 1/04/1995; 1997, c. 23, s. 13 (11, 12) - 28/11/1997

**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).

**Section Amendments with date in force (d/m/y)**

1994, c. 27, s. 56 (13) - 1/04/1995; 1997, c. 23, s. 13 (13) - 28/11/1997; 1999, c. 12, Sched. B, s. 16 (5) - 14/02/2000

**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).

**Section Amendments with date in force (d/m/y)**

1994, c. 27, s. 56 (14, 15) - 1/04/1995

**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) 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).

**Section Amendments with date in force (d/m/y)**

1994, c. 27, s. 56 (16-18) - 1/04/1995; 1997, c. 23, s. 13 (14) - 28/11/1997

**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).

**Section Amendments with date in force (d/m/y)**

1994, c. 27, s. 56 (19) - 1/04/1995; 1997, c. 23, s. 13 (15, 16) - 28/11/1997

**Right to representation**

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

**Section Amendments with date in force (d/m/y)**

1994, c. 27, s. 56 (20) - 1/04/1995

2006, c. 21, Sched. C, s. 134 (3) - 1/05/2007

**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).

**Section Amendments with date in force (d/m/y)**

1994, c. 27, s. 56 (20) - 1/04/1995

**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).

**Section Amendments with date in force (d/m/y)**

1994, c. 27, s. 56 (21, 22) - 1/04/1995

2006, c. 21, Sched. C, s. 134 (4, 5) - 1/05/2007

**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).

**Section Amendments with date in force (d/m/y)**

1994, c. 27, s. 56 (23-26) - 1/04/1995

2006, c. 19, Sched. C, s. 1 (1) - 22/06/2006

**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).

**Section Amendments with date in force (d/m/y)**

1994, c. 27, s. 56 (27) - 1/04/1995; 1997, c. 23, s. 13 (17) - 28/11/1997

**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).

**Section Amendments with date in force (d/m/y)**

1994, c. 27, s. 56 (28, 29) - 1/04/1995

**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).

**Section Amendments with date in force (d/m/y)**

1994, c. 27, s. 56 (30) - 1/04/1995; 1997, c. 23, s. 13 (18) - 28/11/1997

**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).

**Section Amendments with date in force (d/m/y)**

1994, c. 27, s. 56 (31) - 1/04/1995

**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).

**Section Amendments with date in force (d/m/y)**

1994, c. 27, s. 56 (32) - 1/04/1995

**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).

**Section Amendments with date in force (d/m/y)**

1999, c. 12, Sched. B, s. 16 (6) - 14/02/2000

**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).

**Section Amendments with date in force (d/m/y)**

1993, c. 27, Sched. - 31/12/1991; 1994, c. 27, s. 56 (33) - 1/04/1995

**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).

**Submissions must be in writing**

(7) Despite sections 5.1, 5.2 and 5.2.1, submissions for a costs order, whether under subsection (1) or under an authority referred to in subsection (6), shall be made by way of written or electronic documents, unless a party satisfies the tribunal that to do so is likely to cause the party significant prejudice. 2015, c. 23, s. 5.

(8), (9) REPEALED: 2015, c. 23, s. 5.

**Section Amendments with date in force (d/m/y)**

1999, c. 12, Sched. B, s. 16 (7) - 14/02/2000

2006, c. 19, Sched. B, s. 21 (2) - 22/06/2006

2015, c. 23, s. 5 - 03/11/2015

**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).

**Section Amendments with date in force (d/m/y)**

1994, c. 27, s. 56 (34) - 1/04/1995; 1997, c. 23, s. 13 (19) - 28/11/1997

2006, c. 21, Sched. C, s. 134 (6) - 1/05/2007

**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).

**Section Amendments with date in force (d/m/y)**

1994, c. 27, s. 56 (35) - 1/04/1995

2006, c. 19, Sched. C, s. 1 (1) - 22/06/2006

**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).

#### **Section Amendments with date in force (d/m/y)**

1994, c. 27, s. 56 (36) - 1/04/1995

#### **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).

#### **Section Amendments with date in force (d/m/y)**

1994, c. 27, s. 56 (36) - 1/04/1995; 1997, c. 23, s. 13 (20) - 28/11/1997

#### **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).

#### **Section Amendments with date in force (d/m/y)**

1994, c. 27, s. 56 (37) - 1/04/1995

2006, c. 21, Sched. C, s. 134 (7) - 1/05/2007

#### **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).

**Section Amendments with date in force (d/m/y)**

1997, c. 23, s. 13 (21) - 28/11/1997

**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).

**Section Amendments with date in force (d/m/y)**

1999, c. 12, Sched. B, s. 16 (8) - 14/02/2000

**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).

**Section Amendments with date in force (d/m/y)**

1994, c. 27, s. 56 (38) - 1/04/1995

2006, c. 21, Sched. F, s. 136 (1) - 25/07/2007

**Regulations**

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

**Section Amendments with date in force (d/m/y)**

1994, c. 27, s. 56 (39, 41) - 1/04/1995

**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).

**Section Amendments with date in force (d/m/y)**

1999, c. 12, Sched. B, s. 16 (9) - 14/02/2000

**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).

**Section Amendments with date in force (d/m/y)**

1999, c. 12, Sched. B, s. 16 (9) - 14/02/2000

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

**Section Amendments with date in force (d/m/y)**

1994, c. 27, s. 56 (40) - 1/04/1995

**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).

**Section Amendments with date in force (d/m/y)**

1994, c. 27, s. 56 (42) - 1/04/1995

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

**Section Amendments with date in force (d/m/y)**

1994, c. 27, s. 56 (43) - 1/04/1995

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

**Section Amendments with date in force (d/m/y)**

1994, c. 27, s. 56 (44) - 1/04/1995

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Français

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# CITY OF HAMILTON MOTION

Audit, Finance & Administration Committee: November 21, 2019

MOVED BY COUNCILLOR WILSON.....

SECONDED BY COUNCILLOR.....

### Methodology for Infrastructure Master Plans to Support Future Calculation of Variable Development Charges

WHEREAS at the June 12, 2019 meeting, City Council repealed Development Charges (DC) By-law 14-153 and enacted a new 2019 DC By-law effective June 13, 2019;

WHEREAS the DC By-law is a result of compiling the City’s infrastructure Master Plans;

WHEREAS the *Development Charges Act, 1997* requires a process to be followed which results in a calculated DC;

WHEREAS the adoption of variable DC rates must be predicated on either a defined and defensible methodology calculation or by policy (such as providing a partial exemption to the calculated DC rate);

WHEREAS the City’s 2019 DC By-law reflects the results of such a review for water and wastewater services, and as a result includes a variable approach in calculating the 2019 DC By-law rate for stormwater services;

WHEREAS all other services are calculated on a city-wide basis;

WHEREAS the *More Homes, More Choice Act, 2019* (Bill 108) will remove the discounted (soft) services from the Development Charges Act once proclaimed into force and provides a defined list of services that will remain in the *Development Charges Act, 1997*; and,

WHEREAS the City’s current GRIDS 2 process will ultimately identify growth allocations by traffic zone throughout the city to 2041;

THEREFORE BE IT RESOLVED:

That staff be directed to report back to the Audit, Finance & Administration Committee on methodology options including an assessment of the financial impacts for future updates to the Transportation Master Plan (including transit services); 10-year Fire Service Delivery Plan; and Waste Services Master Plan; that will provide the basis for a variable rate calculation as part of the next Development Charges (DC) By-law update should Council wish to take a variable rate approach.