

In a written submission accompanying his 2023 June 14 presentation to Council, C2023-0531; Attachment 4a, the General Chair of the Assessment Review Board (“ARB”) outlined three main concerns related to operations, recruitment and independence:

Operational Challenges

In the written submission, the General Chair submitted that:

The ARB has concerns regarding member retention and a potential loss of experienced members due to the inconvenience of cancelled hearings. The lower volume of hearings also provides fewer opportunities for newer members which can delay development of important member skills. (C2023-0531, Attachment 4a, page 9)

The General Chair further raised the following operational challenges in the presentation to Council (C2023-0531; Attachment 4b, slide 17):

Increasing Volume of Complaints Resolved Prior to Hearing

- 85.5% of 2022 [Composite Assessment Review Board (“CARB”)] complaints were settled prior to their hearing date
- 32.8% of CARB complaints that were resolved prior to hearing were withdrawn within 30 days of the hearing date
- Scheduled hearings that are cancelled within 30 days of the hearing date provide challenges for rescheduling members, and for maintaining member engagement and commitment

Administration’s Response

Administration reviewed complaint volume data presented by the General Chair, as set out in the presentation to Council (C2023-0531; Attachment 4b), as well as the total number of complaints heard by the ARB and the size of the ARB membership for the last five years:

	2019	2020	2021	2022	2023 Year to date ¹
CARB (mostly Non-Residential)	2,155	3,087	1,899	1,627	1,454
LARB (mostly Residential)	1,058	869	548	404	619
Total Complaints Filed	3,213	3,004	2,447	2,031	2,073
Total Complaints Heard by the ARB	1029	1012	471	436	369
Total Number of ARB Members	42	42	42	41	34

The General Chair indicated that in response to the decreased CARB (mostly non-residential properties) hearing volume, membership decreased in 2023. In reviewing the above data, in addition to the

¹ As of 2023 September 11

decreased CARB hearing volume, the LARB (mostly residential properties) hearing volume has also declined, on average, over the same five-year period. In addition to the decrease in the overall complaint volume filed by the public, data further shows that the overall number of complaints heard by the ARB has decreased from 1,029 (2019) to 436 (2022), with only 369 to date in 2023. The ARB membership has remained consistent at 41-42 members, except for 2023, while the number of complaints heard has decreased significantly.

Administration reached out to the Edmonton ARB to learn more about their membership and volume of complaints. The Edmonton ARB has 22 appointed members and hears, on average, approximately 1,000 complaints annually. It is worth noting that, in comparison to the Edmonton ARB, the Calgary ARB has a relatively high ratio of members to complaint hearings. Considering the Edmonton ARB context, the Calgary ARB has also retained a relatively high number of members for its hearing caseload.

To address some of the operational challenges presented by the General Chair, Council may wish to consider appointing fewer ARB members for future years in light of the decreased complaint and hearing caseloads. A smaller ARB membership will offer remaining ARB members more opportunities to preside over hearings and more opportunities to develop important adjudication knowledge and skills.

Recruitment Challenges

In the written submission, the General Chair submitted that:

The timing of the current recruitment process conducted by the City's Boards, Commissions and Committees ("BCCs") is also a challenge in attracting new ARB members...The screening, interviewing and selection of candidates also occurs during September, which is a very busy month at the ARB for hearings and decision writing. ARB Leadership proposes a later start to the recruitment process in late September or mid-October, as was practiced in previous years. (C2023-0531, Attachment 4a)

Further, the General Chair described the following recruitment challenges in the presentation to Council (C2023-0531; Attachment 4b, slide 18):

- Leadership finds that commencing recruitment for ARB members in August is too early as:
 - Prospective members and returning members find it difficult to assess their availability for April to October of the following year
 - ARB Leadership finds it difficult to accurately assess its membership needs 8 months in advance of the next hearing season
 - August and September are busy months for members to conduct hearings and write decisions and for Leadership to oversee hearings and finalize decisions on non-residential complaints

Administration's Response

With respect to the General Chair's request to shift the recruitment period, Administration will not take further action. In 2018, Council directed the City Clerk's Office to include all three tribunals [including the ARB, the Subdivision and Development Appeal Board ("SDAB"), and Licence and Community

Standards Appeal Board (“LCSAB”); collectively referred to as “Tribunals”)], in the annual BCC advertisement and recruitment campaign commencing in 2019. At that time, Council was advised of the following:

The City Clerk’s Office through its Legislative Services and QJB divisions conducts three separate advertisement and recruitment campaigns throughout the year for public members with separate appointment processes and timelines. Each campaign requires advertising with a separate budget and results in applications presented to Council at different times using different formats. All of the QJBs currently use a manual application intake process, whereas the BCCs utilize an online intake process with eligibility criteria that applicants can self-select. (PFC2018-0444)

The consolidation of recruitment continued the practice of targeted advertisement for the specialized expertise of members to serve on the three Tribunals, and achieved the anticipated efficiencies for Council and Administration, while at the same time offering a more streamlined process for applicants, Members of Council and Administration.

It is not clear whether the challenges arising from the timing of recruitment described by the General Chair have had a material impact on recruitment and retention of ARB members. Since the consolidation of recruitment practices, ARB membership has remained consistent at 41-42 members, with a recent decrease in membership to 34. In a letter dated 2023 May 2, the General Chair wrote that “[t]he ARB has followed this timeline for recruitment in 2019, 2020, 2021 and 2022 and has been successful in recruiting qualified new and returning members.”

The General Chair further indicates that September is a very busy month at the ARB for hearings and decision writing, which presents challenges for ARB leadership related to recruitment. Administration offers the following options for mitigating this concern:

1. *Increase ARB Member Appointment Term Lengths:* the current term length of each ARB member is one year. To reduce the workload associated with the annual recruitment (screening, interviewing and selecting candidates), extending and staggering the term length of ARB members could reduce the annual recruitment related workload for the ARB’s Leadership. Extending and staggering ARB member term length will reduce the number of annual vacancies on the ARB and will allow for the assessment and performance development of current members by the General Chair. Longer terms of appointment for Tribunal members, including staggered terms, are a common best practice, and are already in place for the Subdivision and Development Appeal Board (“SDAB”).
2. *Appoint a 2nd Vice Chair to assist with screening, interviewing and selection of candidates:* Council’s current ARB Bylaw 15M2018 provides that the General Chair may appoint a second Vice-Chair from among the members of the ARB [sec. 5(1)] and that the General Chair may delegate to the Vice-Chairs any of the powers, duties or functions of the General Chair of the ARB [sec. 5(2)]. A second Vice-Chair, if appointed, could provide support to the Chair and Vice-Chair.

3. *Appoint a smaller ARB Membership:* With the decreasing volume of complaints filed by the public, as well as the decreasing number of hearings to be carried out by the ARB, Council may wish to appoint a smaller ARB membership to reduce the recruitment workload for ARB's Leadership.

Independence Challenges

In the written submission, the General Chair submits that:

A decrease in personal interaction and a reliance on ARB administrative staff for technical support for electronic hearings during the pandemic, increased withdrawals resulting in fewer hearings, recent ARB administrative staff changes, administrative position realignments, and redesignating of ARB public space to City administrative space have all contributed in part to a perceived diminished commitment to the three hallmarks of independence. (C2023-0531, Attachment 4a, page 9)

Administration's Response

With respect to the General Chair's concerns about independence, Administration will not take further action.

The *Municipal Government Act* ("MGA") provides that "a person appointed as a clerk of a subdivision and development appeal board may also hold an appointment under section 456 as a clerk of an assessment review board" [MGA sec. 627.1(2)]. Accordingly, the administrative position realignment to improve the Clerk's administrative support to The City's Tribunals, along with the creation of a shared workspace for members of the Clerk's staff that support The City's three largest Tribunals, does not contravene the legislative framework set out in the MGA.

Finally, the Alberta Court of Queen's Bench considered the institutional independence of the Calgary ARB in the case of *Altus Group Ltd. v. Calgary (City)*, 2013 ABQB 617, and its decision was later upheld by the Alberta Court of Appeal in the case of 2015 ABCA 86. The Courts ultimately found that the Calgary ARB possessed the necessary degree of institutional independence.