



TTC GOVERNANCE

Presentation - December 9, 2014



FIDUCIARY DUTY



- Commissioners have a duty to act honestly and in good faith with a view to the best interests of the TTC
- Commissioners should seek to achieve the objectives established in the *City of Toronto Act, 2006* (the “Act”) for the TTC
- The *Act* provides that no person other than the TTC shall establish, operate or maintain a local passenger transportation system within the City of Toronto, until TTC is dissolved or the controlling management over the local transportation system is removed from the TTC (subject to some exceptions)





- **A Commissioner is charged with the responsibility of establishing, operating and maintaining a transportation system to serve all of the inhabitants of the City of Toronto**
- **Two important distinctions to bear in mind:**
 - (1) while Toronto City Council operates as a form of representative government and members of Toronto City Council are expected to represent interest of their constituents, the TTC Board does not operate as a form of representative government. The Commissioners are appointed, not elected by constituents
 - (2) Commissioners (Directors) should not act by simply taking instruction or direction from their nominator



CARE DILIGENCE AND SKILL



- A Commissioner is required to exercise skill and diligence that could reasonably be expected having regard to his or her knowledge and experience
- This duty includes obligations with respect to integrity, conflict of interest and confidentiality





Standard of Review with respect to Director Decisions:

- **Court deferential to decisions of board**
 - Recognition that decisions often made under pressure and where circumstances may not always allow for perfect decisions
 - Courts focus on process and procedure around a decision
 - Condition to protection of the business judgment rule – reasonable process, procedure and due diligence





➤ **BE = BS + BM + BP**

Board effectiveness (BE) depends upon board structure (BS) plus board membership (BM) plus board process (BP)

➤ **DE = DI + DC + DB**

Director effectiveness (DE) depends upon director independence (DI) plus director competencies (DC) plus director behaviour (DB)



BOARD PROCESS



- Not debate, not polite discussion
- Dialogue – creative exploration of complex and subtle issues
- Requires suspension of personal views and involves listening deeply
- Importance of being skeptical, not cynical
- Asking questions





Dialogue requires:

- Members to act as colleagues
- Suspension of assumptions
- Spirit of inquiry and reflection
- Assuming role of facilitators
 - Creates an informed and proper dialogue
 - Leads to best resolution in the circumstances





Directors typically involved with:

- Strategic planning; risk management; oversight / supervision of management; organization's values, standards and policies; ensuring obligations to stakeholders are understood and met; major corporate decisions.





City of Toronto Act, 2006:

Local Board

142. (3) A city board is a local board of the City for all purposes.

Code of Conduct

157. (1) The City shall establish codes of conduct for members of city council and members of local boards (restricted definition).



CODE OF CONDUCT



- Code of Conduct was adopted by City Council and applies to any member appointed to a local board (restricted definition), which includes the TTC.

Code of Conduct Principles:

- Members shall serve and be seen to serve the City and community in a conscientious and diligent manner;
- Members should be committed to performing their functions with integrity and to avoiding the improper use of the influence of their office, and conflicts of interest, both apparent and real;
- Members are expected to perform their duties in office and arrange their private affairs in a manner that promotes public confidence and will bear close public scrutiny; and
- Members shall seek to serve the City's and the public's interest by upholding both the letter and spirit of applicable laws of the Federal Parliament and Ontario Legislature, and the laws and policies of Council and of the local board of which they are a member.





A. CONFIDENTIAL INFORMATION:

- Confidential information includes information in the possession of, or received in confidence by a local board that the local board is either prohibited from disclosing, or is required to refuse to disclose, under the *MFIPPA*, or other legislation.
 - Includes information received in confidence from third parties;
 - Information that is personal; and
 - Information that is subject to solicitor-client privilege.
- *City of Toronto Act* and TTC Procedural By-law allows information that concerns personnel, labour relations, litigation, property acquisitions and security of property and solicitor and client privilege to remain confidential.





CONFIDENTIAL INFORMATION:

Requirement

- No member shall disclose or release by any means to any member of the public, any confidential information acquired by virtue of their office, in either oral or written form, except when required by law, or authorized to do so by the local board or, if applicable, by Council.
- No member shall disclose the content of any such matter as discussed in the in-camera (closed) portion of a meeting until the information is no longer confidential.
- Members should not access or attempt to gain access to confidential information in the custody of the TTC unless it is necessary for the performance of their duties and not otherwise prohibited.





B. Gifts and Benefits

- No member shall accept a fee, advance, gift or personal benefit that is connected directly or indirectly with the performance of his or her duties of office, unless otherwise exempted (includes spouse, child, parent or a member's staff provided the member has knowledge).





- a) Compensation authorized by law
- b) Gifts or benefits that normally accompany the responsibility of office and are received as an incident of protocol or social obligation;
- c) A political contribution otherwise reported by law;
- d) Services provided by persons volunteering their time (unpaid);
- e) A suitable memento of a function honouring the member;
- f) Food, lodging, transportation and entertainment provided by a provincial, regional and local government or political subdivision of them, by the Federal government or by a foreign government within a foreign country, or by a conference, seminar or event organizer where the member is either speaking or attending in an official capacity;
- g) Food, beverages consumed at banquets, receptions or similar events (with some qualifications); and
- h) Communications to the office of a member (e.g. subscription to newspapers)



- Except for category (c), the permitted gifts and benefits do not apply to where such gifts or benefits are provided by lobbyists or their clients or employees
- For (b), (e), (f), (g) and (h), if the value of the gift or benefit exceeds \$300, or if the total value received from any one source during the course of a calendar year exceeds \$300, a disclosure statement must be filed with the City's Integrity Commissioner.
- Except in the case of categories (a), (c) and (f), a member may not accept a gift or benefit worth in excess of \$500 or gifts and benefits from one source during a calendar year worth in excess of \$500





C. USE OF BOARD AND CITY PROPERTY, SERVICES AND OTHER RESOURCES:

Requirement

- No member shall use, or permit the use of TTC or City land, facilities, equipment, supplies, services, staff or other resources for activities other than the business of the local board or the City.
- No member should obtain any personal financial gain from the use or sale of TTC or City developed intellectual property etc.



D. ELECTION CAMPAIGN WORK:

Requirement

- No member shall use facilities, equipment, supplies, services or other resources of the TTC or the City (including TTC newsletters and website) for any election campaign or campaign related activities.
- No member shall undertake campaign-related activities on TTC or City property unless permitted by City policy.
- No member shall use the services of persons for election-related purposes during the hours in which those persons receive any compensation from the TTC or the City.





E. IMPROPER USE OF INFLUENCE:

Requirement

- No member shall use the influence of her or his office for any purpose other than for the exercise of her or his official duties as a member of the TTC Board.

F. BUSINESS RELATIONS:

Requirement

- No member shall act as a paid agent before any agency, board or commission of the City, the Council and its committees (except if permitted in accordance with the *Municipal Conflict of Interest Act*).



G. CONDUCT RESPECTING CURRENT AND PROSPECTIVE EMPLOYMENT

Requirement

- No member shall allow the prospect of his or her future employment by a person or entity to detrimentally affect the performance of his or her duties to the TTC and to the City.

H. CONDUCT AT MEETINGS:

Requirement

- Members shall conduct themselves with decorum at TTC Board meetings.





I. CONDUCT RESPECTING STAFF

Requirement

- Members shall be respectful of the role staff of the TTC to provide advice based on political neutrality and objectively, and without undue influence from any individual member or faction of the TTC Board.
- No member shall maliciously or falsely injure the professional or ethical reputation, or the prospects or practice of staff, and all members shall show respect for the professional capacities of staff.
- No member shall use, or attempt to use, their authority or influence for the purpose of intimidating, threatening, coercing, commanding, or influencing any staff member with the intent of interfering with the person's duties, including the duty to disclose improper activity.





Generally Accepted Legal Principles with respect to the conduct of members:

- Members must be independent, impartial and responsible to the public in carrying out their duties.
- The public must have confidence in the integrity of members and their dedication to the City's best interests.
- The role of Council and the role of the TTC Board each involve decision-making at the highest level in their respective bodies.



Occupational Health & Safety (OHSA)

- **Directors & Officers shall take reasonable care to ensure that a corporation complies with**
 - The *Act* and the Regulations;
 - The orders and requirements of inspectors and directors; and
 - Orders of the Minister.





- The employer shall take every precaution reasonable in the circumstances for the protection of a worker
- Annual review of the Health & Safety Policy and the programs to implement that policy





- Directors not responsible for micromanagement (for example: prompt reporting of every minor mishap)
- Directors however must be satisfied that a proper system is in place and functioning as it should, that personnel are adequately and properly trained to their jobs and that appropriate levels will be informed about major problems if and when they arise



PROPER PROCESSES



- Procedures, systems, documentation
- Audits for compliance (with *OHSA*)
- Appropriate delegation and chain of command
- Adequate training (competent person)
- Progressive discipline
- Adequate resources





- Every person who contravenes on conviction is liable to a fine of not more than \$25K or to imprisonment for a term of not more than 12 months or to both
- If corporation is convicted the maximum fine is \$500K





Broadened Personal Liability – Legal Duty of Care

- **Everyone with authority to direct work (from Director, Senior Officer to Foreperson)**
 - Must take reasonable steps to prevent harm to workers and to the public





- Doing or omitting to do anything that it is their legal duty to do; and
- Shows wanton or reckless disregard for lives of safety of others





- **Pattern of breaches of Provincial *OHSA* and/or**
- **Lack of a comprehensive safety system and/or**
- **Deviation from Corporate Policy, standards and rules**
 - ... in the context of a marked departure from the standard of care which would be expected from a Senior Officer





- **Individuals**
 - Up to 10 years on summary conviction
 - Up to life for indictable conviction

- **Individuals and Corporations**
 - Up to \$100,000 on summary conviction
 - Unlimited for indictable offence
 - Probation





- Directors may be charged for failing to take reasonable care to ensure their organization does not contravene the *Environmental Protection Act* and Regulations





Charges:

- If Commissioner charged with an offence under the *Criminal Code* or statute arising out of duties as a Commissioner, the Commissioner shall at first instance be responsible for his or her own defence including retaining legal counsel
- If personal conviction under *Criminal Code* or statute, Commissioner personally pays the fine or penalty, and is responsible for own legal costs
- Where a Commissioner is acquitted (includes a finding of not guilty, a dismissal of the charges, a stay of the charge or the withdrawal of the charges) legal fees are referred to the TTC on advice of General Counsel





- If eligible for reimbursement of legal fees, General Counsel shall provide an assessment of the reasonableness of the lawyers' account, having regard to the factors ordinarily considered by a court including, but not limited, the experience, skill and competence of the lawyer, the complexity of the issues, the importance of the matter, and the time expended by the lawyer.





Civil Actions

- In a civil action, the TTC shall pay damages and costs awarded against a Commissioner if not covered by Commission's insurance policy, provided that the civil action arose out of acts or omissions of Commissioner in his or her capacity as a Commissioner.
- For full details, please refer to the TTC's policy entitled "Indemnification of Commissioners from Action or Judgement".



THANK YOU!



Brian M. Leck

