



# Governance and Safety

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# | Fiduciary Duty

- Board Members have a duty to act honestly and in good faith with a view to the best interests of the corporation.
- Exercise the care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances.



# | Fiduciary Duty

- **TTC is charged with the responsibility of establishing, operating and maintaining a transportation system to serve all of the inhabitants of the City of Toronto (*City of Toronto Act*)**
- **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 the interests of their constituents, the TTC Board does not operate as a form of representative government. The Commissioners are appointed, not elected by constituents.
  2. Board Members (Directors) should not act by simply taking instruction or direction from their nominator.

# | Business Judgment Rule

- **Courts generally are deferential to decisions of a board**
  - Recognition that decisions often are made under pressure and where circumstances may not always allow for perfect decisions.
  - Courts will focus on whether or not there was reasonable process, procedure and due diligence around a decision, as opposed to the outcome of the decision in hindsight.



# | Member - Functions (General Responsibilities)

## **Directors typically involved with:**

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





# Code of Conduct

- City of Toronto Council has adopted Codes of Conduct for Members of Council and Members of a Local Board (TTC).
  - Code of Conduct for Members of Council
  - Code of Conduct for Members of Local Boards <https://www.toronto.ca/city-government/accountability-operations-customer-service/accountability-officers/integrity-commissioner/code-of-conduct-for-members-of-local-boards/>
  - Members of Council are bound by the Code of Conduct for Members of Council. However, when a Member of Council is acting in their capacity as a Member of a Local Board (TTC), the Member of Council is also bound by the provisions of the Code of Conduct for Members of Local Boards that are specific to the requirements of a local board. (Section 2.1)



# Code of Conduct

- Any questions relating to Code of Conduct should be addressed through the City of Toronto Integrity Commission, Jonathan Batty.
- Integrity Commissioner mandate:
  - responsible for providing advice, complaint resolution and education to members of City Council and local boards (restricted definition, which includes the TTC) on the application of the City's codes of conduct, the Municipal Conflict of Interest Act (MCIA) and other bylaws, policies and legislation governing ethical behaviour
- Telephone: 416-392-3826  
Email: [integrity@toronto.ca](mailto:integrity@toronto.ca)  
Email: [Jonathan.Batty@toronto.ca](mailto:Jonathan.Batty@toronto.ca)



# Confidential Information

- Definition of “Confidential Information” is set out in the Codes of Conduct for Members of a Local Board. (Rule 5)
  - “confidential information” means information in the possession of, or received in confidence by a local board that the local board is: prohibited from disclosing or using for a purpose other than the purpose for which it was received; required to refuse to disclose under the *Municipal Freedom of Information and Protection of Privacy Act*; restricted from using or disclosing under the *Criminal Code*; restricted from using or disclosing under the *Securities Act*; restricted from using or disclosing due to contractual obligations or policies of the local board or City Council.
  - Local Board = TTC





# Confidential Information

- A Member must not:
  - a) disclose or release to any unauthorized person, including a 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 by the TTC or Council to do so;
  - b) use confidential information for personal or private gain, or for the gain of relatives or any person or corporation;



# | Confidential Information

Continued...

- c) disclose the content of any matter that has been discussed at a closed meeting under the Council Procedures By-law, or TTC's procedure by-law and subject to applicable legislation governing the procedures of the local board, because it constitutes confidential information. No member shall disclose the content of any such matter or the substance of deliberations of the closed meeting until the TTC, or if applicable, Council or one of its committees discusses the information at a meeting that is open to the public or releases the information to the public; or,
- d) access or attempt to gain access to confidential information in the custody of the City unless it is necessary for the performance of their duties and not prohibited by the TTC or Council policy.



# | *Occupational Health & Safety Act (OHSA)*

## **Director Liability**

### **Purpose of the Act:**

Protect workers from health and safety hazards while performing their job duties and responsibilities.

### **TTC (as Owner)**

- Ensure that workplace facilities are constructed, altered, reconstructed, provided and maintained in accordance with OHSA and its regulations.

# **Occupational Health & Safety Act (OHSA)**

## **Director Liability**

- 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 general duty provisions under OHSA include: “An employer shall take every precaution reasonable in the circumstances for the protection of a worker”.



# ***Occupational Health & Safety Act (OHSA)***

- OHSA also addresses the responsibilities of workplace parties with respect to workplace harassment, violence and workplace sexual harassment.
  - Responsibilities include prevention, mitigation and investigations.



## Directors – Macro/Micro

- 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 do their jobs and that appropriate levels will be informed about major problems if and when they arise.





# | OHSA Penalties

Corporations »»	\$1.5M / charge (+25% surcharge)
Directors and Officers »»	\$1.5 M (as of July 1, 2022*) (+25% surcharge) and/or 1 year in jail / charge
Individuals »»	\$.5M (as of July 1, 2022*) (+25% surcharge) and/or 1 year in jail / charge

\* Prior to July 1, 2022 maximum fine for a director/officer and individual was \$100,000 (15x increase for Directors and Officers and 5x increase for all other individuals)



# | Criminal Code – Director 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.



# | Criminal Negligence

Directors / Officers:

- Doing or omitting to do anything that is their legal duty to do and who shows wanton or reckless disregard for lives or safety of others.

What is “wanton and reckless disregard” for their lives or safety?

- The test is whether the conduct was a “marked and substantial departure from what a reasonable person would do in the same circumstances.”
- 217.1 Every one who undertakes, or has the authority, to direct how another person does work or performs a task is under a legal duty to take reasonable steps to prevent bodily harm to that person, or any other person, arising from that work or task.



# ***Criminal Code Penalties***

## Individuals – Jail Time

- Officers, directors and employees also face risk of imprisonment, with maximum sentence varying based on the offence.

## Individuals and Corporations – Fines & Probation

- up to \$100,000 on summary conviction
- unlimited for indictable offence
- probation



# Environmental Liabilities

- Directors may be charged for failing to take reasonable care to ensure that their organization does not contravene the *Environmental Protection Act (EPA)* and Regulations.
- Directors and officer have express duties under the EPA, including to exercise reasonable care to prevent the corporation from causing or permitting the discharge of contaminants into the natural environment and to report any discharge thereof.



# Reasonable Care for Directors – SH&E Management

- The TTC manages and mitigates Safety, Health and Environment (SH&E) risks in a systematic and consistent manner through its SH&E Management System.
- The SH&E Management System:
  - Conforms to current global standards for identifying, assessing and controlling SH&E risks;
  - Meets the requirements of the Occupational Health and Safety Act and its Regulations; and
  - Provides Directors with assurance of their prescribed duties to take all reasonable care to ensure compliance with safety and environmental legislation and all regulatory orders.

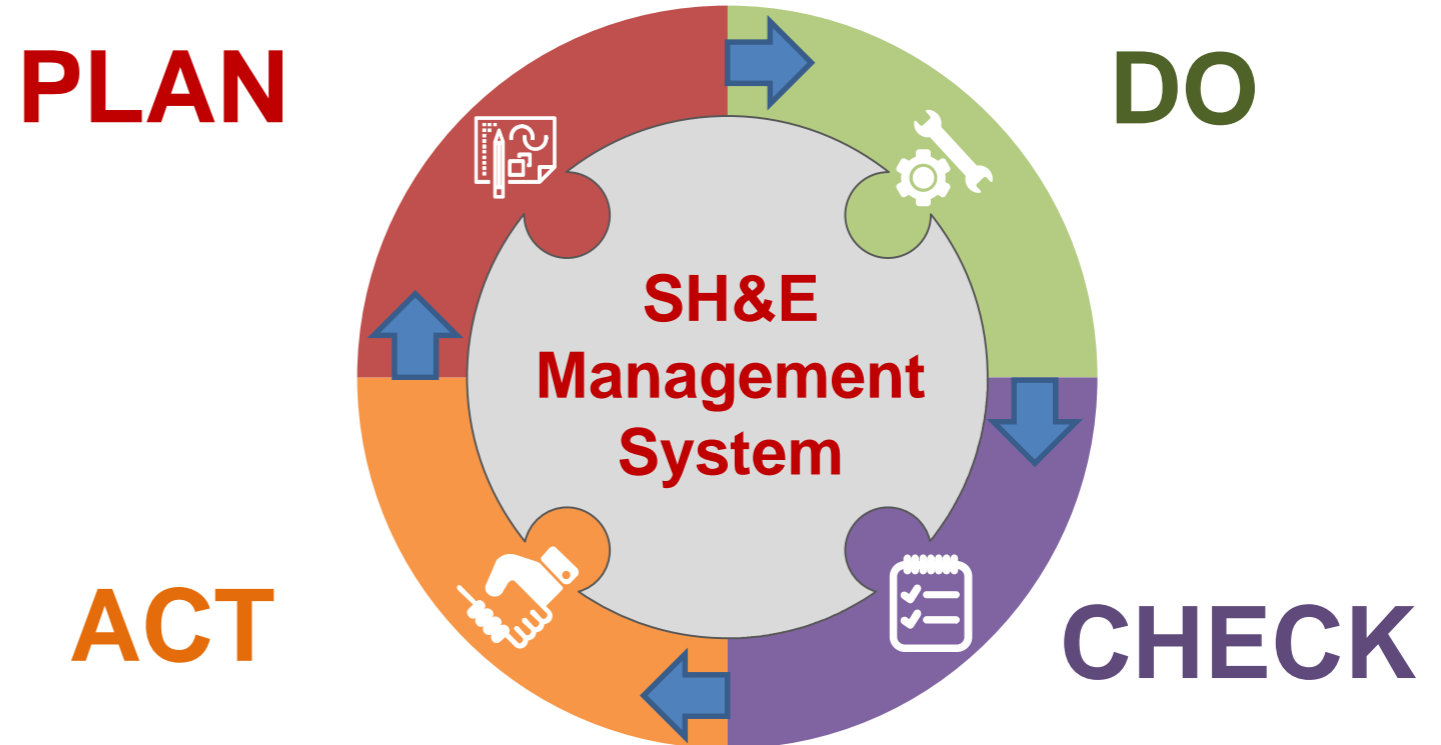


# Reasonable Care for Directors – SH&E Management

- The TTC's internal Safety, Security and Environment Executive (SX) Committee oversees the SH&E Management System by providing executive oversight, direction and resources.
- The SX Committee reviews Key Performance Indicators on a monthly basis and performs a comprehensive SH&E Management System review on an annual basis.
- The purpose of the annual review is to evaluate the suitability, adequacy and effectiveness of the SH&E Management System, ensuring the ongoing management of SH&E risks.

# SH&E Management System – Overview

- A SH&E Management System is a comprehensive and proactive approach to managing SH&E risks.
- It goes beyond a simple sum of individual or isolated programs and activities.
- It is designed to improve performance and reduce risks by integrating all its processes into a continual improvement cycle of Plan, Do, Check and Act.



# SH&E Management System – Plan



## PLAN

- The SH&E Policy is the over-arching document of TTC's SH&E Management System and establishes its commitment to protecting workers, customers, the public and the environment.
- The SH&E Goals & Objectives are established through the annual review process and act as the strategic plan to manage and control SH&E risks.

# SH&E Management System – Do



## DO

- Formal SH&E programs are developed to control SH&E risks, and as needed, to address changes in legislation or for emerging issues.
- Extensive internal stakeholder consultation occurs during SH&E program development.
- SH&E programs are supported in their daily execution and revised or adjusted as needed.

# SH&E Management System – Check



## CHECK

- American Public Transportation Association (APTA) Safety Management System Audits are conducted every three years.
- Safety Assurance Checks and internal SH&E Audits are conducted regularly.
- The CEO's Report, released monthly, includes monitoring of Key Performance Indicators.
- The Board is advised of all incidents that meet the criteria outlined in the Escalation and Notification Protocol.

# SH&E Management System – Act



## ACT

- A comprehensive review of the SH&E Management System is conducted annually.
- The review includes:
  - Key Performance Indicators with trend analysis;
  - Status of SH&E projects and initiatives;
  - Audits and investigation findings;
  - Regulatory oversight; and
  - Updated SH&E Goals & Objectives.
- The report is provided annually to the ARMC and Board.



