

Board of Directors Administrative By-law

Category	Operational and Corporate Internal Policies that Have Significant Implications or are of Interest to Special Groups	
Approved by	Authority	
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Table of Contents

Table of Contents	1
Background.....	4
A. Definitions	5
B. Governance.....	7
1. <i>Board Members</i>	7
2. <i>Officers</i>	8
3. <i>Absence of Chair and Vice-Chair</i>	9
4. <i>Representatives to Conservation Ontario Council</i>	10
5. <i>Election of Chair and Vice-Chair</i>	10
6. <i>Financial Statements and Report of the Auditor</i>	10
7. <i>Borrowing Resolution</i>	10
8. <i>Levy Notice</i>	10
9. <i>Signing Officers</i>	10
10. <i>Executive Committee</i>	10
11. <i>Advisory Boards and Other Committees</i>	11
12. <i>Remuneration of Board Members</i>	11

13. Records Retention.....	12
14. Records Available to Public.....	12
15. By-law Review	12
16. Enforcement of By-law and Policies	13
17. Indemnification of <i>Board Members, Officers</i> and Employees.....	14
C. Meeting Procedures	15
1. Rules of Procedure.....	15
2. Notice of Meeting.....	15
3. Meetings Open to Public	15
4. Meetings with Closed “In Camera” Sessions.....	16
5. Agenda for <i>Board of Directors</i> Meetings	18
6. Quorum.....	18
7. Order of Business.....	18
8. Notice of Motion.....	19
9. Debate	19
10. Matters of Precedence	20
11. <i>Board Members’</i> Attendance	21
12. Electronic Participation	21
13. Delegations.....	21
14. Annual Meeting.....	22
15. Voting	22
16. Motion to Reconsider.....	23
17. Duties of the Meeting <i>Chair</i>	23
18. Conduct of <i>Board Members</i>	24
19. Minutes of Meetings	24
D. Approval of <i>Board of Directors</i> Administrative By-law and Revocation of the Administration Regulation and Rules of Conduct	26
1. Accountability	26
E. Appendices to the Board of Directors Administrative By-law	27
Appendix 1 - Code of Conduct for Members	27
Appendix 2 - Conflict of Interest for Board Members.....	39
Appendix 3 - Procedures for Election of Officers.....	41
Appendix 4 – Board of Directors Terms of Reference	44

Appendix 5 – Executive Committee Terms of Reference	49
Appendix 6 – Partners in Project Green Executive Management Committee, Performance Committees, and Service Centres 2016-2018 Terms of Reference	60
Appendix 7 – Regional Watershed Alliance Terms of Reference	72
Appendix 8 – Toronto and Region Outdoor Education Task Force Terms of Reference	81
Appendix 8 – Related Documents	84
Appendix 9 – Sections of the <i>Conservation Authorities Act</i>	85
Appendix 10 – CPA Canada 20 Questions Directors of Not-For-Profit Organizations Should Ask About Fiduciary Duty	90

Background

Toronto and Region Conservation Authority (TRCA), also known as the Authority, is a non-share corporation, established as a body corporate under Section 3(4) of the *Conservation Authorities Act*, with the objects to provide, in the area over which it has jurisdiction, programs and services designed to further the conservation, restoration, development and management of natural resources other than gas, coal and minerals. In addition to 23 further provincial laws that reference a 'conservation authority' in a manner applicable to TRCA, the organization is governed by supplemented legislation, including the Ontario *Corporations Act* and the imminent *Not-for-Profit Corporations Act*.

Under the *Act*, municipalities within a common watershed are enabled to petition the Province of Ontario to establish a conservation authority. The purpose of the *Act* is to provide for the organization and delivery of programs and services that further the conservation, restoration, development and management of natural resources in watersheds in Ontario. Board of Directors is comprised of Board Members appointed as representatives by the participating municipalities, which include:

- Township of Adjala-Tosorontio/Town of Mono
- Regional Municipality of Durham
- Regional Municipality of Peel
- City of Toronto
- Regional Municipality of York

The Board of Directors must always act within the scope of its powers outlined in the *Act*. The powers of a conservation authority to accomplish its objects are set out in the *Conservation Authorities Act*, including those identified under subsection 21(1) as outlined in Appendix 8.

TRCA believes in diversity and values the benefits that diversity can bring to its Board of Directors. Diversity promotes the inclusion of different perspectives and ideas, mitigates against groupthink and ensures that TRCA has the opportunity to benefit from all available talent. The promotion of a diverse Board of Directors makes prudent business sense and makes for better corporate governance.

TRCA aspires to have a Board of Directors comprised of talented and dedicated Board Members with a diverse mix of expertise, experience, skills and backgrounds. The skills and backgrounds collectively represented on the Board of Directors should reflect the diverse nature of the business environment in which TRCA operates. For purposes of Board of Directors composition, diversity includes, but is not limited to, environmental and business experience, geography, age, gender, and ethnicity and aboriginal status.

TRCA ideally seeks a merit based system for Board of Directors composition within a diverse and inclusive culture which solicits multiple perspectives and views and is free of conscious or unconscious bias and discrimination. When assessing Board of Directors composition or identifying suitable candidates for appointment to the Board of Directors, TRCA requests its participating municipalities consider candidates on merit against objective criteria having due regard to the benefits of diversity and the importance of the Board Member's role for TRCA.

A. Definitions

“**Act**” means the *Conservation Authorities Act*, R.S.O. 1990, chapter C.27.

“**Appendix**” (plural being “**Appendices**”) means accompanying material to the Board of Directors Administrative By-law that may be approved by the Board of Directors or designate without change to the Board of Directors Administrative By-law itself.

“**Board Members**” shall mean the individuals appointed to the Authority’s Board of Directors by the participating municipalities in TRCA’s area of jurisdiction. Board Members have the responsibilities of Directors of the corporation that is TRCA.

“**Board of Directors**” means the general membership, and as such is all of the Board Members collectively appointed by participating municipalities as per the requirements of the *Conservation Authorities Act*.

“**Chair**” means the Chairperson as referenced in the *Act* as elected by the Board of Directors.

“**Chief Executive Officer**” means the top ranking employee of Toronto and Region Conservation Authority, and which, by resolution of the Board of Directors, include the responsibilities of the Secretary-Treasurer.

“**Clerk**” means the recording secretary for a meeting, who shall be the TRCA Clerk or designate.

“**Fiscal Year**” means the period from January 1 through December 31.

“**Levy**” means the amount of costs apportioned to participating municipalities in accordance with the *Act* and Regulations under the *Act*.

“**Majority**” means on any matter, assuming quorum is present, one half of the votes of those Board Members present and voting on the matter, plus one.

“**Non-matching Levy**” means that portion of TRCA’s levy that meets the definition of non-matching levy as found in Ontario Regulation 139/96.

“**Officer**” means the officers of TRCA empowered to sign contracts, agreements and other documents on behalf of TRCA in accordance with Section 19.1 of the *Act*, which shall include, but not be limited to, the Chair, Vice-Chair, Chief Executive Officer and/or Secretary-Treasurer.

“**Participating Municipality**” means a municipality that is designated by or under the *Act* as a participating municipality, such that it shall appoint Board Members to each conservation authority, and may be a regional or local municipality;

“**Pecuniary Interest**” includes the direct or indirect financial interests of a Board Member and that of a member of the Board Member’s immediate family, as outlined in the Municipal Conflict of Interest Act.

“**Staff**” means employees of TRCA as provided for under Section 18(1) of the *Act*.

“Toronto and Region Conservation Authority” (also referred to as “TRCA” or the “Authority” herein) means the corporation of this conservation authority established under Section 5 of the Act.

“Vice-Chair” means the Vice-Chairperson as elected by the Board of Directors. If a first and second Vice-Chair is elected, they shall be called First Vice-Chair and Second Vice-Chair.

“Weighted Majority” means the votes of 51 per cent of those represented after the votes are weighted by the percentage that applies under Ontario Regulation 139/96 for Municipal Levies.

B. Governance

1. Board Members

a) Appointments

Subject to any agreement under section 14(2.1) of the *Conservation Authorities Act*, *participating municipalities* within the jurisdiction of *Toronto and Region Conservation Authority* may appoint *Board Members* in accordance with Section 14 of the *Conservation Authorities Act*.

Appointed *Board Members* must reside in a *participating municipality* within *TRCA's* area of jurisdiction and may include citizens as well as elected members of municipal councils.

Collectively, the appointed *Board Members* comprise the *Board of Directors*.

b) Term of Member Appointments

In accordance with Section 14 of the *Act*, a *Board Member* shall be appointed for a term of up to four years at the discretion of the appointing municipal council; such term beginning at the first meeting of the *Board of Directors* following their appointment and ending immediately before the first meeting of the *Board of Directors* following the appointment of their replacement. The Secretary-Treasurer or designate shall notify the appropriate municipality in advance of the expiration date of any *Board Member's* term, unless notified by the municipality of the *Board Member's* reappointment or the appointment of their replacement. A *Board Member* is eligible for reappointment as per the appointment terms of the *participating municipality*. A *participating municipality* may replace its representative *Board Member* at its discretion at any time prior to the end of their term.

c) Powers of the Board of Directors

Subject to the *Act* and other applicable legislation, the *Board of Directors* is empowered without restriction to exercise all of the powers of *TRCA* set forth in the *Act*. In addition to the powers of a conservation authority under s.21 of the *Act* for the purposes of accomplishing its objects, the powers of the *Board of Directors*, include but are not limited to, the powers outlined in *Appendix 4 –Board of Directors Terms of Reference*.

The *Board of Directors* may appoint an Executive Committee and delegate to the Committee any or all of its powers except the following, as per Section 19.1 (1)(d) of the *Act*:

- i. The termination of the services of the *Chief Executive Officer*,
- ii. The power to raise money, and
- iii. The power to enter into contracts or agreements other than those contracts or agreements as are necessarily incidental to the works approved by the *Board of Directors*.

d) Board Member Accountability

Participating municipalities appoint *Board Members* to the *Board of Directors* as their representatives. *Board Members* have the responsibilities of Directors of the corporation that is *TRCA*. While *staff* is responsible for the day-to-day operations, the *Board of Directors* is responsible for *TRCA's* strategic direction, matters of governance, ensuring compliance with applicable legislation, ensuring appropriate policies are in place, for the financial soundness of *TRCA*, and for the proper exercise of the powers of *TRCA*.

Board Members owe a fiduciary duty to *TRCA* and not their Member Municipalities, when acting as a *Board Member* of the organization (*Appendix 10*).

All *Board Members* have the responsibility to be guided by and adhere to the Code of Conduct for *Board Members* (Appendix 1) and Conflict of Interest for *Board Members* (Appendix 2), as adopted by the *Board of Directors*.

Board Members are responsible for:

- i. Attending all meetings of the *Board of Directors*;
- ii. Understanding the purpose, function and responsibilities of *TRCA*;
- iii. Being familiar with *TRCA*'s statutory and other legal obligations, including but not limited to the roles of conservation authorities in the areas of municipal planning, plan review, and *Conservation Authorities Act* Section 28 permitting related to development activity and natural hazard prevention and management and the protection of environmental interests, in accordance with the: Policies and Procedures for Conservation Authority Plan Review And Permitting Activities (MNR, 2010);
- iv. All matters outline in the accompanying Terms of Reference (Appendix 4).

e) Applicable Legislation

In addition to the *Act*, the *Board Members* are subject to other legislation, including but not limited to, the following:

- *Municipal Conflict of Interest Act*
- *Municipal Freedom of Information and Protection of Privacy Act*

If any part of the *Board of Directors* Administrative By-law conflicts with any provision of the *Municipal Conflict of Interest Act* or the *Municipal Freedom of Information and Protection of Privacy Act* or a provision of a Regulation made under one of those Acts, the provision of that Act or Regulation prevails.

f) Relationship Between Board Members and Staff

The *Board of Directors* relies on the *Chief Executive Officer* and/or Secretary-Treasurer to manage the operations of the organization, including all *staff* of *TRCA*. The *Chief Executive Officer* and/or *Secretary Treasurer* is accountable to the *Board of Directors*, working cooperatively to achieve the goals established by the *Board of Directors*.

The *Board of Directors* will ensure that a process exists for regular performance evaluations of the *Chief Executive Officer* and/or Secretary-Treasurer.

2. Officers

The *Officers* of *TRCA*, and their respective responsibilities, shall be:

a) Chair

- Is a *Board Member* of *TRCA*;
- Presides at all meetings of the *Board of Directors* (and Executive Committee, and if applicable in terms of reference, presides over advisory boards and other committees);
- Calls special meetings if necessary;
- Acts as a public spokesperson on behalf of the *Board of Directors*;
- Serves as signing officer for *TRCA*;
- Ensures relevant information and policies are brought to the *Board of Directors* attention;
- Keeps *Board Members* apprised of significant issues in a timely fashion;
- Performs other duties when directed to do so by resolution of the *Board of Directors*.

b) Vice-Chair

- Is a *Board Member* of TRCA;
- Attends at all meetings of the *Board of Directors* and Executive Committee, and performs the duties of the *Vice-Chair* at such meetings;
- Carries out assignments as requested by the *Chair*;
- Understands the responsibilities of the *Chair* and acts as *Chair* immediately upon the death, incapacity to act, absence or resignation of the *Chair* until such time as a new *Chair* is appointed or until the *Chair* resumes his/her duties;
- Serves as a signing officer for TRCA.

c) Chief Executive Officer/Secretary-Treasurer (CEO)

The duties of the *Chief Executive Officer* and Secretary-Treasurer are combined and assigned to a single position. Responsibilities of the *CEO* as assigned by the *Board of Directors* include, but are not limited to the following:

- Is an employee of TRCA;
- Fulfills the requirements of the Secretary-Treasurer as defined in the *Act*;
- Attends all meetings of the *Board of Directors* (and Executive Committee, advisory boards and other committees if applicable) or may designate an acting *CEO* if not available;
- Give or cause to be given all notices required by this By-law;
- Ensure the *Clerk* keeps accurate records of meetings and accounts of the *Board of Directors* (and Executive Committee advisory boards and other committees if applicable);
- Works in close collaboration with the *Chair* and *Vice-Chair* and keeps them apprised of relevant information and significant issues in a timely fashion;
- Develops a strategic plan for approval by the *Board of Directors* and implements short and long-range goals and objectives;
- Is responsible for the management of the operations of TRCA, including all *staff* and programs of TRCA;
- Ensures resolutions of the *Board of Directors* are implemented in a timely fashion;
- Develops and maintains effective relationships and ensures good communications with stakeholders, including *participating municipalities*, federal and provincial government ministries/agencies, indigenous communities, other conservation authorities, Conservation Ontario, and community groups and associations;
- Carry out or cause to be carried out required financial transactions on behalf of the *Board of Directors*;
- Is the custodian of the Corporate Seal;
- Serves as a signing officer for TRCA.

d) Staff

- Other TRCA staff delegated signing authority as per TRCA's policy on Signing Officers.

3. Absence of Chair and Vice-Chair

In the event of the absence of the *Chair* and *Vice-Chair* from any meeting, the *Board Members* shall appoint an Acting *Chair* who, for the purposes of that meeting has all the powers and shall perform all the duties of the *Chair*.

4. Representatives to Conservation Ontario Council

The *Board of Directors* may appoint up to three representatives to the Conservation Ontario Council (“Council”), designated as Voting Delegate and Alternate(s). The Conservation Ontario Council will consist of the Voting Delegates appointed by each member conservation authority. TRCA shall appoint the following annually, without Resolution of the *Board of Directors*:

- b) Voting Delegate – *Chair*
- c) First Alternate – *Vice-Chair*
- d) Second Alternate – *Chief Executive Officer*

The Voting Delegate and Alternates shall be registered by the *Clerk* with Conservation Ontario annually.

5. Election of *Chair* and *Vice-Chair*

The election of the *Chair* and *Vice-Chair* shall be held at the Annual Meeting of the *Board of Directors* in each year. Should a vacancy of either position arise between Annual meetings, election for such positions will be held at the next regular meeting of the *Board of Directors*. All elections shall be in accordance with the *Board of Directors* Procedures for Election of Officials (*Appendix 3*)

6. Financial Statements and Report of the Auditor

The *Board of Directors* shall receive and approve the Audited Financial Statements and Report of the Auditor annually for the previous year.

The *Board of Directors* shall forward copies of the Audited Financial Statements and Report of the Auditor to participating municipalities and the Minister of the Environment, Conservation and Parks, and will make the Audited Financial Statements available to the public by posting on the *TRCA* website in the *Board of Directors* agenda or minutes.

7. Borrowing Resolution

If required, the *Board of Directors* shall establish a borrowing resolution and such resolution shall be in force until it is superseded by another borrowing resolution.

8. Levy Notice

The *levy* due to *TRCA* from *participating municipalities* shall be communicated to those municipalities in accordance with the *Act* and any applicable Regulations.

9. Signing Officers

All deeds, transfers, assignments, contracts and obligations entered into by *TRCA* shall be signed by the signing officers of *TRCA*, or designate, as outlined in the [TRCA policy on Signing Officers](#).

10. Executive Committee

The *Board of Directors* may elect or appoint an Executive Committee every two years at the Annual Meeting of the *Board of Directors*, in accordance with Section 19 of the *Act* and this By-law. The membership of the Executive Committee is outlined in *Appendix 5 – Executive Committee Terms of Reference*.

Should a vacancy on the Executive Committee arise between Annual meetings, election for such positions will be held at the next regular meeting of the *Board of Directors*. All elections shall be in accordance with the *Board of Directors* Procedures for Election of Officials (*Appendix 3*).

The Executive Committee shall have the powers outlined in the Executive Committee Terms of Reference (*Appendix 5*), and any other powers so delegated to it by the *Board of Directors*, in keeping with this By-law.

Rules and procedures governing *Board of Directors* shall be observed by all committee Members.

11. Advisory Boards and Other Committees

In accordance with Section 18(2) of the *Act*, the *Board of Directors* shall establish such advisory boards as required by Regulation and may establish such other advisory boards or committees as it considers appropriate to study and report on specific matters.

The *Board of Directors* shall approve the terms of reference for all such advisory boards and committees, which shall include the role, the frequency of meetings and the number of Members required.

Rules and procedures governing *Board of Directors* shall be observed by all advisory board Members.

Elections or appointment to advisory boards may happen at any regular meeting of the *Board of Directors*. Appointment shall be by way of resolution of the *Board of Directors*, whereas all elections shall be in accordance with the *Board of Directors* Procedures for Election of Officials (*Appendix 3*), and may happen at an advisory board meeting.

Each advisory board or committee shall report to the *Board of Directors*, presenting any recommendations made by the advisory board or committee.

The dates of all advisory board and committee meetings shall be made available to all *Board Members* of the *Board of Directors* by means of *TRCA's* website.

The Terms of Reference for advisory boards and committees are outlined in the *appendices* to this By-law.

The *Board of Directors* may from time to time establish by resolution special advisory boards and committees to deal with particular matters specified by the *Board of Directors*. The members of the special body shall be appointed by resolution of the *Board of Directors*, and shall include at least one *Board Member* of the *Board of Directors* and may in addition appoint other persons to the special body. Such body shall follow the rules and procedures outlined in this By-law.

12. Remuneration of Board Members

Subject to compliance with applicable governing Acts, rules and regulations, remuneration may be afforded to Board Members. Should payment by *TRCA* of remuneration be deemed to be allowable under such law at any period in time, the *Board of Directors* shall establish by Resolution a per diem rate to be paid to *Board Members* for attendance at *Board of Directors* and Executive Committee meetings, and at such other business functions as may be from time to time requested by the *Chair*, through the Secretary-Treasurer, and as approved by the Ontario Public Guardian and Trustee (PGT). In addition, an honorarium that is authorized by the PGT may be approved by the *Board of Directors* for the *Chair* and/or *Vice-Chair* as compensation for their additional responsibilities. A single per diem will be

paid for attendance at more than one meeting if they occur consecutively on the same day. Should payment by TRCA of remuneration be deemed not to be allowable under such law at any period in time, the *Clerk* shall report to the *Board of Directors* in this regard.

The *Board of Directors* shall reimburse *Board Members'* reasonable travel expenses incurred for the purpose of attending meetings and/or functions on behalf of the *Board of Directors*. Advisory board members shall be reimbursed reasonable travel expenses incurred for the purpose of attending meetings and/or functions on behalf of the advisory board, including a per-kilometre rate for use of a personal vehicle, public transportation costs, 407 ETR toll fees (with the exception of video toll charges/camera charges). The per-kilometre rate to be paid shall be the same rate as approved for *staff* of TRCA.

Incidental childcare expenses as a result of attending *Board of Directors* or advisory board meetings or authorized business may be reimbursed where the *Chair* of the appropriate board deems financial hardship would otherwise result, and such expenses shall be pre-approved by the *Chair*.

Requests for such reimbursements shall be submitted within a timely fashion and shall be consistent with TRCA guidelines.

13. Records Retention

TRCA shall keep, retain and protect full and accurate records in accordance with TRCA's Records Management policy and the *Municipal Freedom of Information and Protection of Privacy Act*.

Such records shall be retained and protected in accordance with all applicable laws and the Records Management policy of TRCA, as approved by the *Chief Executive Officer* from time-to-time.

14. Records Available to Public

Subject to requirements of the *Municipal Freedom of Information and Protection of Personal Privacy Act (MFIPPA)*, TRCA shall adhere to TRCA's Open Information and Data policy in determining which TRCA information and data are made available to the public.

The *Board of Directors* shall designate the *Chair* to act as head of TRCA, and by resolution a *staff* member to act as TRCA's information and privacy officer for the purposes of MFIPPA.

In accordance with the *Act*, the *Board of Directors* shall make the *Board of Directors* Administrative By-law available to the public on TRCA's open webpage, including written and alternative formats in accordance with the *Accessibility for Ontarians with Disabilities Act (AODA)* if requested by a member of the public.

15. By-law Review

The *Board of Directors* Administrative By-law shall be reviewed by *staff* at the earlier of every five years or when circumstances arise requiring modifications. Changes will be brought as required to the *Board of Directors* for approval.

16. Enforcement of By-law and Policies

The *Board Members* shall respect and adhere to all applicable by-laws and policies (for example, the Code of Conduct for *Board Members* and Conflict of Interest for *Board Members* – Appendices 1 and 2, respectively). TRCA may take reasonable measures to enforce its by-laws and policies, including the enforcement mechanisms under the *Municipal Conflict of Interest Act*. The procedure for enforcement shall be as follows:

- 16.1 Complainants (which includes any *Board Member*, TRCA *staff* member, or any other member of the general public) may use two different complaint procedures to indicate concerns regarding perceived breaches of the by-laws, policies and Code of Conduct (collectively in this section the “Policies”):
 - a) Informal Complaint Procedure
 - b) Formal Complaint Procedure
- 16.2 The Informal Complaint Procedure will provide an opportunity to immediately identify and address behaviours and activities which are considered to be in contravention of the Policies.
 - a) The Complainant shall:
 - i. Advise the *Board Member* that his/her behaviour or activity contravenes the Policies. This may or may not be in writing;
 - ii. Request that the *Board Member* immediately discontinue the prohibited behaviour or activity;
 - iii. Keep a written record of the incident including date, time, location, other persons present and any other relevant information;
 - iv. If applicable, advise the *Board Member* of his/her satisfaction or dissatisfaction with the response;
 - v. In the event of a dissatisfactory or no response, consider the need to pursue the matter in accordance with the formal complaint procedure.
- 16.3 *Board Members* are encouraged to initially pursue the informal complaint procedure as a means of stopping and remedying a behaviour or activity contrary to the Policies. However, it is not a precondition or a prerequisite that the informal complaint procedure be initiated or completed prior to pursuing the formal complaint procedure as described in the Formal Complaint Procedure option.
- 16.4 The Formal Complaint Procedure shall be as follows:
 - a) A dated signed written complaint detailing the relevant particulars shall be submitted to the *Chief Executive Officer*.
 - b) Upon receipt of the complaint, the *Chief Executive Officer* or designate shall prepare an information package that shall include the following:
 - i. The Complaint;
 - ii. A copy of the Policies that are relevant;
 - iii. Such other information or documentation that the *Chief Executive Officer* deems relevant.
 - c) A Special Committee made up of two Members of the *Board of Directors* not directly involved in the complaint shall be formed by the *Chair* to address the complaint. In the case where the *Chair* is involved in the complaint, the *Vice-Chair* will form the Special Committee.

- d) The information package referred to above shall be provided to the *Board Member* alleged to be in contravention forthwith and to the Special Committee on appointment.
- e) The *Chief Executive Officer* shall submit a brief report to the Board of Directors in open session at a regularly scheduled Board meeting advising that a complaint was received, providing the following information:
 - i. Name of Alleged Offender;
 - ii. Name of Complainant;
 - iii. The provision of the Policies allegedly contravened;
 - iv. A summary of the facts constituting the alleged contravention;
 - v. The date of request.
- f) The Special Committee shall complete an investigation of the complaint (which shall include an opportunity to the affected *Board Member* to respond to the allegation) within 30 days of receipt of the information package or such longer period as it may require not to exceed 60 days, and provide a report to the *Chair* (or *Vice-Chair* as the case may be) on the matter as to the validity of the complaint and its written recommendations as to the appropriate measures to be taken by the *Board of Directors*. The report shall be tabled in closed session at the next regularly scheduled *Board of Directors* meeting.
- g) The *Board of Directors* shall receive the report and recommendations from the Special Committee and may determine the appropriate action(s) to be taken, if any. Following such determination by the *Board of Directors* the appointing municipality shall be notified of such determination.

17. Indemnification of *Board Members, Officers and Employees*

TRCA shall maintain an Indemnification policy with respect to *Board Members, Officers* and *Employees* which shall be reviewed by *staff* at minimum every five years. Such policy shall be publicly available on TRCA's open webpage.

C. Meeting Procedures

The Meeting Procedures below governing the procedures of the *Board of Directors* shall also be observed in Executive Committee and advisory board meetings, as far as they are applicable, and the words Executive Committee or advisory board shall be substituted for the words *Board of Directors* as applicable

1. Rules of Procedure

In all matters of procedure not specifically dealt with under the *Act* and this By-law, the current edition of Robert's Rules of Order or other generally accepted rules of procedure shall be binding.

The *Board of Directors* may choose to conduct its business as a committee of the whole.

2. Notice of Meeting

The *Board of Directors* shall approve a schedule for regular meetings in advance, following the requirements of Frequency of Meetings outlined in the *Appendices*. The Secretary-Treasurer shall send Notice of regular meetings to all *Board Members* at least five days in advance of a meeting. Notice of all regular or special meetings of the *Board of Directors* or its committees shall be made available to the public as soon as possible after its delivery to *Board of Directors*.

Notice of any meeting shall indicate the time and place of that meeting and the agenda for the meeting. Posting of the agenda on *TRCA's* website is deemed to meet the notice requirement.

All material and correspondence to be dealt with by the *Board of Directors* at a meeting will be submitted to the Secretary-Treasurer nine days in advance of the meeting to be included in the regular agenda, three days in advance of the meeting to be included with the added agenda, and one day in advance of the meeting if it is to be introduced at the meeting.

The *Chair* may, at his/her pleasure or at the request of a *Board Member* with a majority support of the other *Board Members*, call a special meeting of the *Board of Directors* on seven days' notice, in writing, or as is necessary. The *Chair* shall not refuse the calling of a special meeting with majority support. The notice shall state the business of the special meeting and only that business shall be considered at that special meeting. The agenda for special meetings of the *Board of Directors* shall be prepared as the *Chair* may direct.

The *Chair* or the Secretary-Treasurer may, by notice in writing, deliver to the *Board Members* so as to be received by them at least 12 hours before the hour appointed for the meeting, postpone or cancel any meeting of an advisory board or other committee until the next scheduled date for the specific advisory board or committee affected.

The *Chair* or the Secretary-Treasurer may, if it appears that a weather event or like occurrence will prevent the *Board Members* from attending a meeting, postpone that meeting by advising as many *Board Members* as can be reached. Postponement shall not be for any longer than the next regularly scheduled meeting date.

3. Meetings Open to Public

All meetings of the *Board of Directors* and Executive Committee shall be open to the public.

A meeting or part of a meeting may be closed to the public if the subject matter meets the criteria for a closed meeting as defined in Section C.4 of this By-law.

All meetings of the *Board of Directors* and Executive Committee will be webcast and be made publicly available for both live streaming and later viewing, or be made similarly available using the best available technological systems.

4. Meetings with Closed “In Camera” Sessions

Every meeting shall be open to the public as per Section 15(3) of the *Act*, subject to the exceptions set out below.

Meetings may be closed to the public if the subject matter being considered relates to:

- a) The security of the property of TRCA;
- b) Personal matters about an identifiable individual, including staff of TRCA;
- c) A proposed or pending acquisition or disposition of land by TRCA;
- d) Labour relations or employee negotiations;
- e) Litigation or potential litigation, including matters before administrative tribunals (e.g. Local Planning Appeal Tribunal), affecting TRCA;
- f) Consideration of the issuance or refusal to issue permissions pursuant to section 28 (or 28.1) of the *Act*;
- g) Advice that is subject to solicitor-client privilege;
- h) A matter in respect of which the Board of Directors, Executive Committee, advisory board or other body may hold a closed meeting under another *Act*;
- i) Information explicitly supplied in confidence to TRCA by the Government of Canada, a province or territory or a Crown agency of any of them;
- j) a trade secret or scientific, technical, commercial, financial or labour relations information, supplied in confidence to TRCA, which, if disclosed, could reasonably be expected to prejudice significantly the competitive position or interfere significantly with the contractual or other negotiations of a person, group of persons, or organization;
- k) a trade secret or scientific, technical, commercial or financial information that belongs to TRCA and has monetary value or potential monetary value; or
- l) 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 TRCA.

The Board of Directors shall close a meeting if the subject matter relates to the consideration of a request under MFIPPA.

A meeting of the *Board of Directors* may also be closed to the public if:

- a) the meeting is held for the purpose of educating or training the *Board Members*, and
- b) at the meeting, no *Board Member* discusses or otherwise deals with any matter in a way that materially advances the business or decision-making of the *Board of Directors*.

If the requirement for a closed meeting or part of a meeting is known when the agenda or added agenda is produced, the subject matter being considered and the criteria for closed session shall be identified on the agenda.

Before holding a meeting or part of a meeting that is to be closed to the public, the *Board Members* shall state by resolution during the open session of the meeting that there will be a meeting closed to the public and the general nature of the matter to be considered at the closed meeting. Once matters have been dealt with in a closed meeting, the *Board of Directors* shall reconvene in an open session.

The *Board of Directors* shall not vote during a meeting that is closed to the public, unless:

- a) the meeting meets the criteria outlined in this By-law to be closed to the public;
- b) the vote is for a procedural matter or for giving directions or instructions to *Officers, staff* or agents of *TRCA*;
- c) a vote is called in connection with a decision to allow (with or without conditions) or refuse, permission following a hearing pursuant to section 28 (or 28.1) of the *Act*.

The clerk's office shall implement the following procedures for handling of confidential matters:

- a) A public report with as much details as is publicly available shall be circulated to *Board Members* where possible, and the confidential material be verbally reported in closed session. Should there be an extensive amount of confidential material for consideration, that circulation shall be by hard copy couriered or a password protected file by email to the *Board Members*.
- b) Each confidential report shall contain a watermark with the name of the individual receiving it as a unique identifier, and hard copies printed on coloured paper.
- c) Any materials presented to the *Board of Directors* during a closed meeting shall be returned to the *Clerk* prior to departing from the meeting and shall be treated in accordance with the *Board of Directors* procedures for handling confidential material.
- d) Confidential minutes will be produced for all discussions which are held in closed session where a resolution is approved. Confidential minutes will only be available to *Board Members*, eligible *staff* or legal counsel upon request or when required to be dealt with as part of a *Board of Directors* agenda, and when circulated shall be watermarked with a unique identifier.
- e) The clerk's office shall maintain a log of who confidential items are circulated to, at any time it is circulated, and who returns confidential items to the clerk's office.
- f) Notes will be taken of discussions of all closed session discussions, in keeping with *MFIPPA* requirements, and such notes shall only be provided to the Information and Privacy Commissioner or designate, if requested, as evidence of the confidential nature of the closed session.

Confidential minutes and discussion notes will be produced by the *Clerk* for all in camera meetings and maintained as a corporate record. If the *Clerk* is not present in a closed session, a designate shall take notes of any direction provided and the nature of the discussion.

Public minutes will state the reason for confidentiality as per this section of the By-law. At such time as the items considered in camera can be made public, the relevant resolution(s) will be included as part of a regular *Board of Directors* agenda for information.

5. Agenda for Board of Directors Meetings

The clerk's office, under the supervision of the Secretary-Treasurer, shall prepare an agenda for all regular meetings of the *Board of Directors* that shall include, but not necessarily be limited to, the following headings: Aboriginal Territorial Acknowledgement; Minutes; Business Arising from the Minutes; Disclosure of *Pecuniary interest* and General Nature Thereof; Elections of *Officers*; Delegations; Presentations; Correspondence; Items for Action or Information; Material from Executive Committee or advisory boards; Ontario Regulation 166/06, as amended; Notice of Motion; New Business.

The agenda for special meetings of the *Board of Directors* shall be prepared as directed by the *Chair*.

Agendas for meetings shall be forwarded to all *Board Members* at least seven calendar days in advance of the meeting. Such agendas shall be made available to the public on TRCA's website at the same time, unless the meeting is closed to the public in accordance with this By-law. Such agendas shall also be available in alternative formats, in accordance with AODA, if requested by interested parties.

6. Quorum

At any meeting of the *Board of Directors*, a quorum consists of one-half of the *Members* appointed by the *participating municipalities*, except where there are fewer than six such *Board Members*, in which case three such *Board Members* constitute a quorum. At any Executive Committee or advisory board meeting, a quorum consists of one-half of the *Members*.

If there is no quorum within one half hour after the time appointed for the meeting, the *Chair* for the meeting shall declare the meeting adjourned due to a lack of a quorum, or shall recess until quorum arrives, and the *Clerk* shall record the names of the *Board Members* present and absent.

If during a *Board of Directors* meeting a quorum is lost, then the *Chair* shall declare that the meeting shall stand recessed or adjourned, until the date of the next regular meeting or other meeting called in accordance with the provisions of this By-law. Agenda items including delegations and presentations may be covered and presented and issues discussed, but no formal decisions may be taken by the remaining *Board Members* which do not constitute a quorum.

Where the number of *Board Members* who are unable to participate in a meeting due to the declaration of a conflict of interest as per *Appendix 2* is such that at that meeting the remaining *Board Members* are not of sufficient number to constitute a quorum, the remaining number of *Board Members* shall be deemed to constitute a quorum, provided such number is not less than two.

7. Order of Business

When quorum is first present after the time fixed for the meeting, the *Chair* shall take the chair and call the meeting to order. The first order of business shall be the Acknowledgement of Indigenous Territory, which shall be read by the *Chair* at the start of each meeting and shall read as follows:

“We respectfully acknowledge that we are situated on Traditional Territories and Treaty Lands, in particular those of the Mississaugas of the Credit First Nation, as well as the Anishinaabeg of the Williams Treaty First Nations, the Huron-Wendat, the Haudenosaunee, and the Métis Nation. As stewards of land and water resources within the greater Toronto region, Toronto and Region Conservation Authority appreciates and respects the history and diversity of the land and is grateful to have the opportunity to work and meet in this territory.”

Note: The pronunciation code is as follows: Anishinaabeg (ah-nish-nah-beg); Haudenosaunee (ho-den-oh-show-nee); Wendat (wen-dat)

The business of the *Board of Directors* shall be taken up in the order in which it stands on the agenda, with the exception that delegations and/or presentations shall be handled after the *Chair* runs through the agenda and deals with by resolution other matters on the agenda as the *Board of Directors* chooses, unless otherwise decided by the *Chair*. Delegations shall follow the rules outlined in Section C.13., whereas presentations are allowed at the request of the Secretary-Treasurer, and shall be allotted a maximum of 10 minutes to address the *Board of Directors*, except by leave of the *Chair*.

No *Board Member* shall present any matter to the *Board of Directors* for its consideration unless the matter appears on the agenda for the meeting of the *Board of Directors* or leave is granted by the *Chair* to present the matter under New Business.

8. Notice of Motion

Written notice of motion to be made at a *Board of Directors* meeting may be given to the Secretary-Treasurer or *Clerk* by any *Member* of the *Board of Directors* not less than nine days prior to the date and time of the meeting and shall be forthwith placed on the agenda of the next meeting. Such notice of motion shall be included in full in the agenda for the meeting concerned.

Recommendations included in reports of advisory boards that have been included in an agenda for a meeting of the *Board of Directors*, shall constitute notice of motion for that meeting.

Recommendations included in *staff* reports that have been included in an agenda for a meeting of the *Board of Directors*, shall constitute notice of motion for that meeting.

Notwithstanding the foregoing, any motion or other business may be introduced for consideration of the *Board of Directors* provided that it is made clear that to delay such motion or other business for the consideration of an appropriate advisory board would not be in the best interest of the *Board of Directors* and that the introduction of the motion shall be upon an affirmative vote of the *majority* of the *Board Members* of the *Board of Directors* present.

9. Debate

The *Board of Directors* shall observe the following procedures for discussion/debate on any matter coming before it:

- a) A *Board Member* shall be recognized by the *Chair* prior to speaking;
- b) Where two or more *Board Members* address the *Chair* to speak, the *Chair* shall designate the *Member* who has the floor, who shall be the *Board Member* who in the opinion of the *Chair* was first recognized;

- c) Before speaking every *Board Member* shall address the *Chair*, and all questions and points of discussion shall be directed through the *Chair*;
- d) Where a motion is presented, either orally or in writing, it shall be moved and seconded before debate;
- e) No *Board Member* shall speak more than once to the same question without leave from the *Chair*, except in explanation of a material part of the speech and if no new matter is introduced;
- f) No *Board Member* shall speak at any time for more than three minutes without leave of the *Chair*;
- g) Any *Board Member* may ask a question of the previous speaker through the *Chair*;
- h) The *Board Member* who has presented a motion, other than a motion to amend or dispose of a motion, may speak again to the motion immediately before the *Chair* puts the motion to a vote;
- i) When a motion is under debate, no motion shall be received other than a motion to amend, to defer action, to refer the question, to call the question, to adjourn, or to extend the hour of closing the proceedings;
- j) When a motion is under consideration, only one amendment is permitted at a time.

10. Matters of Precedence

The following matters shall have precedence over the usual order of business:

- a) a point of order;
- b) matter of privilege;
- c) a matter of clarification;
- d) a motion to suspend a rule of procedure or to request compliance with the rules of procedure;
- e) a motion that the question be put to a vote, which shall adhere to the following rules:
 - i. This motion requires a seconder.
 - ii. This motion cannot be discussed or debated. As soon as the *Chair* hears a seconder, the vote is immediately taken.
 - iii. It takes two-thirds of the voting *Board Members* in favor to cut off debate.
 - iv. If two-thirds of the group want to stop debate and vote, then the *Chair* immediately takes the vote on the pending motion – the motion that the group is considering at this time. No further discussion is allowed.
- f) a motion to adjourn.

On a point of order, the *Board Member* shall ask leave of the *Chair* to raise it and after leave is granted the *Board Member* shall state the point of order to the *Chair*, and remain silent and seated until the *Chair* rules. No *Board Member* shall address the *Chair* on the point of order except for the purpose of appealing the *Chair's* ruling.

A motion to adjourn or call the question (put a question to the vote) shall be put to a vote immediately without debate, except that such vote shall not be taken:

- i. while a *Board Member* is in possession of the floor or has previously indicated to the *Chair* the desire to speak on the matter; or
- ii. after it has been decided to put a motion to the vote and that vote is not carried or completed.

A motion to call the question requires a two-thirds majority of those present and voting to carry.

The ruling of the *Chair* shall be final except where there is an appeal the meeting shall decide without debate and such decision is final.

11. Board Members' Attendance

The *Clerk* shall provide a listing of *Board Members'* attendance at scheduled meetings of the *Board of Directors* to the *participating municipalities* at least annually, such that the municipal treasurers may comply with the *Municipal Act*.

Upon a *Board Member's* vacancy due to death, incapacity or resignation occurring in any office of the *Board of Directors*, the *Board of Directors* shall request the *participating municipality* that was represented by that *Board Member* to appoint a replacement. In cases of incapacity or under a requirement of the *participating municipality*, a *Board Member* may take a temporary leave of absence and advise the *Secretary-Treasurer* and *participating municipality* of the leave. The *Clerk* shall record this leave of absence in attendance of meetings until the leave is either ended or the *Board Member* is replaced by the *participating municipality*.

If a *Board Member* is unable to attend any meeting and wishes to bring any additional information or opinion pertaining to an agenda item to the *Board of Directors*, the *Board Member* shall address in writing to the *Chair* or *Secretary-Treasurer* such correspondence a minimum of two hours prior to the start of the meeting. The correspondence shall be circulated by the clerk's office to *Board Members* in attendance.

12. Electronic Participation

Board Members may participate in an Executive Committee or advisory board meeting that is open to the public via telephone or other electronic means that permits all participants to communicate adequately with each other during the meeting. A *Board Member* participating in a meeting electronically shall be counted in determining quorum.

A *Board Member* shall not participate electronically in: a *Board of Directors* meeting; any Executive Committee or advisory board meeting that includes presentations, delegations or hearings; or any meeting, or portion of a meeting that is closed to the public.

Staff is never permitted to participate in a meeting electronically. Should the public wish to address the *Board of Directors* they may not participate by electronic means, except by special permission of the *Chair* to meet AODA requirements.

All meetings of the *Board of Directors* and Executive Committee, and other meetings as directed by the *Chair*, will be webcast and be made publicly available for both live streaming and later viewing, or be made similarly available using the best available technological systems.

13. Delegations

Any person or organization who wishes to address the *Board of Directors* may make a request in writing by such means as designated by the clerk's office. The request should include a brief statement of the issue or matter involved, the position to be taken, and indicate the name, title (if applicable) and contact information of the proposed speaker(s). If such request is received nine days in advance of a scheduled meeting, the delegation shall be listed on the regular agenda and three days in advance shall be listed on the added agenda.

Any person or organization requesting an opportunity to address the *Board of Directors* but not having made a written request to do so in the timelines specified above, may appear before a meeting of the *Board of Directors* but will be heard only if such motion is made by a *Board Member* at the meeting and the motion passes by the *majority* in attendance. If such motion passes, the *Chair* may immediately rule that the hearing of the delegation would be unfair or prejudicial to *Board Members* or other persons not present because of lack of advance notice and that the hearing of the delegation be deferred to the next meeting and listed on that agenda. The *Chair's* ruling may be immediately appealed by proper motion and the ruling of the meeting shall then govern.

Delegations are limited to one meeting of either the *Board of Directors*, Executive Committee or advisory board, except by approval of the *Chair* to be heard at an additional meeting(s). This may not be applied if there is a material change in the direction of recommendations related to the item.

Delegations shall confine their remarks to the matters before the *Board of Directors* and to the aspects of the issues within the purview of the mandate of the *Board of Directors*. Should the request for a delegation be in regard to a matter not currently before the *Board of Directors*, the Secretary-Treasurer may defer hearing the matter until such time as it is before the *Board of Directors*.

Except by leave of the *Chair*, each delegation shall be limited to not more than two speakers, with a total time allotment limited to five minutes, for each delegation.

When a number of people are to appear representing one interest group, it is expected that the group be represented by a maximum of two spokespersons as indicated above and be allotted a total time of a maximum of five minutes, and/or submit written submissions.

When the Chair believes that a large number of delegations will request an opportunity to address the *Board of Directors* with respect to a particular matter or matters, the Chair may summon a special meeting of the *Board of Directors* to deal with the particular matter or matters.

If the number of delegations present wishing to address a particular matter or matters is such that the meeting will not be able to deal with its agenda properly, then, on proper motion, the particular matter or matters may be adjourned to a special meeting and, if the time, date and place of the special meeting is included in the motion, no further notice of such meeting will be required.

Delegations may submit written submissions for consideration at a meeting up to the start of any meeting on which they have been approved to speak.

14. Annual Meeting

One meeting of the *Board of Directors* each year shall be designated as the Annual Board of Directors Meeting and shall include the Election of *Officers* on the agenda, in addition to the normal course of business.

15. Voting

In accordance with Section 16 of the *Act*:

- a) each *Board Member*, including the *Chair*, is entitled to one vote; and

- b) a *majority* vote of the *Board Members* present at any meeting is required upon all matters coming before the meeting.

If any *Board Member* abstains from voting, they shall be deemed to have voted neither in favour nor opposed to the question.

If a vote results in a tie, the motion fails.

Interrelated motions shall be voted on in the order specified in Robert's Rules of Order, or other generally accepted rules of procedure.

Unless a *Board Member* requests a recorded vote, a vote shall be by a show of hands or such other means as the *Chair* may call. No question shall be voted upon more than once at any meeting, unless a recorded vote is requested, or a *Board Member* states immediately following the *Chair's* declaration of the results their disagreement with the *Chair's* declaration. For reconsideration of an item voted on, see Section 16 of this By-law.

If a *Board Member* present at a meeting at the time of the vote requests immediately before or after the taking of the vote that the vote be recorded, each *Board Member* present, as called by the *Clerk* in alphabetical order by surname, with the *Chair* voting last, except a *Board Member* who is disqualified from voting by any *Act*, shall announce their vote openly answering "yes" or "no" to the question, and the *Clerk* shall record each vote.

At the meeting of the *Board of Directors* at which the *Non-Matching Levy* is to be approved, the *Clerk* shall conduct the vote to approve the *Non-Matching Levy* by a *Weighted Majority* of the *Members* present and eligible to vote, in accordance with applicable Regulation.

Where a question under consideration contains more than one item, upon the request of any *Board Member*, a vote upon each item shall be taken separately.

No vote shall be taken by ballot or by any other method of secret voting, and every vote so taken is of no effect.

While the *Chair* is putting a question to the vote, all *Board Members* shall remain seated and not make any noise or disturbance until the result is declared.

16. Motion to Reconsider

After a question has been decided it shall not be reconsidered except that any *Board Member* who voted thereon with the *majority* may move for a reconsideration of the question at any regular meeting of the *Board of Directors* and requires a two-thirds *majority* of those present and voting to carry.

No further discussion of a decided question shall be allowed until a motion for reconsideration is carried and no question shall be reconsidered more than once at any meeting.

17. Duties of the Meeting Chair

It shall be the duty of the *Chair*, with respect to any meetings over which he/she presides, to:

- a) Preserve order and decide all questions of order, subject to appeal, and without argument or comment, state the rule applicable to any point of order if called upon to do so;

- b) Ensure that the public in attendance does not in any way interfere or disrupt the proceedings of the *Board Members*;
- c) Receive and submit to a vote all motions presented by the *Board Members*, which do not contravene the rules of order or Regulations of the *Board of Directors*;
- d) Announce the results of the vote on any motions so presented;
- e) Adjourn the meeting when business is concluded.

18. Conduct of Board Members

Board Members shall maintain a high standard of conduct and at all times comply with applicable laws and the Code of Conduct for *Board Members* (Appendix 1).

No *Board Member* at any meeting of the *Board of Directors* shall:

- a) Speak in a manner that is discriminatory in nature based on an individual's race, religious beliefs, colour, gender, physical or mental disabilities, age, ancestry, place of origin, citizenship, creed, marital status, source of income, family status or sexual orientation;
- b) Leave their seat or make any noise or disturbance while a vote is being taken or until the result is declared;
- c) Interrupt a speaker, except to raise a point of order or a question of privilege;
- d) Speak disrespectfully or use offensive words against *TRCA*, *Board Members*, *staff*, or any individual;
- e) Speak beyond the question(s) under debate, such that discussion shall be limited to the matters under the jurisdiction, rules and Regulations of *TRCA*;
- f) Resist the rules of order or disobey the decision of the *Chair* on the questions or order or practices or upon the interpretation of the By-laws.

The *Chair* shall preserve order and decide all questions of order.

The *Chair* shall have the power to eject an offending *Board Member* from a meeting and the *Board Member* shall not return to the meeting unless the remaining *Board Members* permit such return by resolution.

When a *Board Member* is speaking no other *Board Member* shall pass between the speaker and the *Chair* or interrupt the speaker except on a point of order.

Any *Board Member* may require a question or motion under debate to be read at any time except while another *Board Member* is speaking. Any *Board Member* may require a question or motion under debate to be displayed on screen at any time.

19. Minutes of Meetings

The Secretary-Treasurer shall undertake to have a *Clerk* in attendance at meetings of the *Board of Directors* to act as the recording secretary. The *Clerk* shall make a record in the form of minutes of the meeting proceedings and in particular shall record all motions considered at the meeting.

Minutes of all meetings shall include the time and place of the meeting and a list of those *Board Members* present and shall state all motions presented together with the mover and seconder and voting results.

Procedures for minutes of meetings closed to the public are outlined in Section C.4. of this By-law.

The minutes of the previous meeting shall be posted on the TRCA website as soon as they are approved by the Secretary-Treasurer and within 30 days of the meeting, which shall constitute meeting the requirement of Section 15(2) of the *Act* to provide minutes of meetings to *Board Members* within 30 days after any meeting of the *Board of Directors*. The minutes are then ratified at the next regular meeting of the *Board of Directors*.

After the minutes have been approved by resolution, original copies may be signed by the Secretary-Treasurer and *Chair*. All non-confidential minutes shall be available on *TRCA's* website in perpetuity. Such minutes shall also be available for review by any member of the public at *TRCA's* Head Office, or provided in alternative formats in accordance with the *AODA*, if requested by interested parties.

D. Approval of *Board of Directors* Administrative By-law and Revocation of the Administration Regulation and Rules of Conduct

Administrative Regulation dated February 2, 1992 is hereby repealed;

Rules of Conduct dated June 24, 2016 is hereby repealed;

Board of Directors Administrative By-law number #1 shall come into force on the [REDACTED] day of [REDACTED], 2018.

1. Accountability

The *Chair*, Secretary-Treasurer and *Clerk* are responsible for monitoring and maintaining compliance to the By-law and dealing with any non-compliance issues.

E. Appendices to the Board of Directors Administrative By-law

Appendix 1 - Code of Conduct for Members

The Code of Conduct for Members rules below governing the conduct of the Board of Directors shall also be observed in Executive Committee and advisory board meetings, as far as they are applicable, and the words Executive Committee or advisory board shall be substituted for the word Board of Directors as applicable.

1. Background

Toronto and Region Conservation Authority (TRCA) demands a high level of integrity and ethical conduct from its Board Members. TRCA's reputation relies upon the good judgement of individual Board Members. A written code of conduct helps to ensure that all Board Members share a common basis for acceptable conduct. Formalized standards help to provide a reference guide and a supplement to legislative parameters within which Board Members must operate. Further, they enhance public confidence that Board Members operate from a base of integrity, justice and courtesy.

The Code of Conduct for Board Members is a general standard. It augments the laws which govern the behaviour of Board Members, and it is not intended to replace personal ethics.

This Code of Conduct for Board Members will also assist Board Members in dealing with confronting situations not adequately addressed or that may be ambiguous in Board of Directors resolutions, regulations, or TRCA policies and procedures.

2. General

All Board Members, whether municipal councillors or citizen representatives of a municipality, are expected to conduct themselves in a manner that reflects positively on TRCA.

All Members shall serve in a conscientious and diligent manner. No Board Member shall use the influence of office for any purpose other than for the exercise of his/her official duties.

It is expected that Board Members adhere to a code of conduct that:

- i. upholds the purpose of the *Act*, mandate, vision, mission, rules and regulations of TRCA;
- ii. considers TRCA's jurisdiction in its entirety, including their appointing municipality;
- iii. respects confidentiality;
- iv. approaches all TRCA issues with an open mind, with consideration for the organization as a whole;
- v. exercises the powers of a Board Member when acting in a Board of Directors meeting;
- vi. only represents the position of the Board of Directors at any time outside of Board of Directors meetings, and shall not present their individual opinion as a position of TRCA;
- vii. respects the democratic process and respects decisions of the Board of Directors;
- viii. declares any direct or indirect pecuniary interest or conflict of interest when one exists or may exist, as defined in the *Municipal Conflict of Interest Act*; and
- ix. conducts oneself in a manner which reflects respect and professional courtesy and does not use offensive language in or against TRCA, Board Members, staff or any individual.

3. Gifts and Benefits

Board Members shall not accept fees, gifts, hospitality or personal benefits that are connected directly or indirectly with the performance of duties, except compensation authorized by law.

4. Confidentiality

The Board Members shall be governed at all times by the provisions of the *Municipal Freedom and Information and Protection of Privacy Act (MFIPPA)*.

All information, documentation or deliberations received, reviewed or taken in a closed meeting are confidential.

Board Members shall not disclose or release by any means to any member of the public, in verbal, written or other form, any confidential information acquired by virtue of their office, except when required by law to do so.

Board Members shall not permit any persons, other than those who are entitled thereto, to have access to information which is confidential.

In the instance where a Board Member vacates their position on the Board of Directors , they will continue to be bound by *MFIPPA* requirements.

Particular care should be exercised in protecting information, including but not limited to, the following:

- i. Human resources matters;
- ii. Matters relating to the legal affairs of TRCA;
- iii. Sources of complaints where the identity of the complainant is given in confidence;
- iv. Items under negotiation;
- v. Information about suppliers provided for evaluation that might be useful to other suppliers;
- vi. Schedules of prices in tenders or requests for proposals;
- vii. Appraised or estimated values with respect to TRCA's proposed property acquisitions or dispositions;
- viii. Information deemed to be "personal information" under *MFIPPA*.

5. Use of TRCA Property

No Board Member shall use for personal purposes any TRCA property, equipment, supplies or services of consequence other than for purposes connected with the discharge of TRCA duties or associated community activities of which TRCA has been advised, or as allowable by TRCA policies, guidelines and fee schedules.

6. Work of a Political Nature

All Board Members must be familiar with and act in accordance to the Use of Resources During an Election policy and procedures (Attachment 1 to Code of Conduct for Members) as approved from time-to-time. No Board Member shall use TRCA resources or act in any manner contrary to said policy and procedures.

7. Conduct at Board of Directors Meetings

During meetings of the Board of Directors, Board Members shall conduct themselves with decorum. Respect for delegations, presenters, staff and for fellow Board Members requires that all Board Members show courtesy and not distract from the business of the Board of Directors at any time during meetings. Board Members should be familiar with Section C.18. – Conduct of Members, of the Board of Directors Administrative By-law.

8. Influence on Staff

Board Members shall be respectful of the fact that staff work for TRCA as a whole and are charged with making recommendations that reflect their professional expertise and corporate perspective, without undue influence.

9. Apprehension of Bias

As decisions makers, no Board Member shall enter into discussions with any party outside of TRCA that may result in either a real or perceived bias of their position on matters that may come before the Board of Directors.

Executive Committee Members may act as a decision-making tribunal in the form of Hearing Board on matters related to Regulations issued under the *Conservation Authorities Act*, and in particular Section 28 (1) (or section 28.1 when in force). Executive Committee Members shall not enter into discussions outside the Hearing on such matters that may result in either a real or perceived bias of their position on the matters under the Hearing, with the exception of the TRCA solicitor. The Chair of the Executive Committee may receive a briefing from TRCA staff on procedural matters prior to the Hearing Board convening.

Executive Committee and Board of Directors Members shall not enter into discussions on the merits of a *Planning Act* application and/or an appeal to the Local Planning Appeal Tribunal (formerly Ontario Municipal Board) that may be associated with a current or likely permit application under the Act, that may result in either a real or perceived bias of their position on the permit application.

10. Business Relations

No Board Member shall borrow money from any person who regularly does business with TRCA unless such person is an institution or company whose shares are publicly traded and who is regularly in the business of lending money.

No Member shall act as a paid agent before the Board of Directors, except in compliance with the terms of the *Municipal Conflict of Interest Act*.

11. Encouragement of Respect for TRCA and its Regulations

Board Members shall represent TRCA in a respectful way and encourage public respect for TRCA.

12. Harassment

It is the policy of TRCA that all persons be treated fairly in the workplace in an environment free of workplace harassment, sexual harassment and discrimination. Harassment of another Board Member, staff or any member of the public is misconduct and shall not be tolerated. Board Members shall follow TRCA's Workplace Harassment policy as approved from time-to-time. The policy applies to any activities on or off of TRCA premises which could reasonably be associated with TRCA.

Examples of harassment that will not be tolerated include: verbal or physical abuse, threats, derogatory remarks, jokes, innuendo or taunts related to an individual's race, religious beliefs, colour, gender, physical or mental disabilities, age, ancestry, place of origin, citizenship, creed, marital status, source of income, family status or sexual orientation. TRCA will also not tolerate the display of pornographic, racist or offensive signs or images; practical jokes that result in awkwardness or embarrassment; unwelcome invitations or requests, whether indirect or explicit and any other prohibited grounds under the provisions of the *Ontario Human Rights Code*.

13. Breach of Code of Conduct

Any breach, or alleged breach, of the Code of Conduct for Board Members shall be investigated in accordance with Section B.16. - Enforcement of By-laws and Policies outlined in the *Board of Directors* Administrative By-law.

Attachment 1 to Code of Conduct of Board Members

Use of Resources During an Election Policy

1. PURPOSE

Toronto and Region Conservation Authority (TRCA, also known as the Authority) policy on "Use of Resources During an Election" provides a consistent approach and direction to TRCA employees on how TRCA resources can and cannot be used during municipal, school board, provincial and federal election campaigns or campaigns on a question on a ballot.

This policy and accompanying procedures establishes guidelines on the appropriate use of resources during an election period, in order to:

- protect the interests of Board Members, candidates, staff and TRCA, and
- ensure accountable and transparent election practices.

2. BACKGROUND

TRCA employees may be approached by candidates to use TRCA resources for the purposes of campaigning. A clear policy is required to guide the action of TRCA employees and help determine which requests can be accommodated and which should be denied.

The *Municipal Elections Act, 1996* specifies that a municipality or local board cannot make a contribution to a municipal election candidate (Section 70(4)). A "contribution" includes money, goods and services given to and accepted by or on behalf of a person for their election campaign (Section 66 (1)).

Since a "contribution" may take the form of money, goods or services, any use of TRCA's resources for an election campaign by any candidate, may be considered a contribution by TRCA. Where a candidate pays the regular rate for goods and services as any other individual, it is not considered a contribution. If a discounted rate or free goods and services were procured, that would be considered a contribution.

3. SCOPE

This policy and accompanying procedures applies to all Board Members, candidates in a municipal, school board, provincial and federal election, and TRCA staff during an election period.

4. ROLES AND RESPONSIBILITIES

Chief Executive Officer (CEO): Procedures and guidelines pursuant to the "Use of Resources During an Election" policy shall be developed to ensure audit implementation compliance. All issues with respect to this policy and associated procedures should be directed toward the CEO.

Senior Leadership Team: Staff members responsible for the application of this policy to TRCA resources, facilities and employees managed by their Divisions.

TRCA Employees: TRCA employees are responsible for understanding and applying this policy and for seeking clarification and advice if required.

5. POLICY

TRCA strives to recognize the need to balance freedom of expression and assembly of candidates with responsibilities while ensuring there is no unfair advantage, promotion or contributions to any one candidate, party, registrant or supporter of a ballot question.

TRCA cannot make a contribution (including money, goods and/or services) to any candidate, political party, registrant or a supporter of a question on a ballot during an election.

TRCA resources cannot be used to promote one candidate, political party, registrant or a supporter of a question on a ballot during an election over another candidate, political party, registrant or a supporter of a question on a ballot during an election.

This policy is intended to enable continued public and media access to candidates or registrants for information and interviews. The policy distinguishes between unplanned media scrums or chance public encounters by candidates and the media, whether in-person or online, and actual planned media events or rallies.

The policy recognizes that Board Members are holders of their position until their successor is appointed, and supports Board Members in continuing to fulfill their responsibilities as Board Members. In addition, it recognizes that Board Members have political interests outside of their duties on the Board of Directors. In this regard, the policy does not apply to Board Members' using their personal resources for their own political interests, subject to this use in no way referencing TRCA or their capacity as a Board Member. Use of personal resources in this manner shall not be endorsed by TRCA.

The policy recognizes that Members of Council are holders of their office until the end of their term and supports Board Members in continuing to fulfill their responsibilities as Members of Council.

The TRCA Clerk's Office shall ensure the policy contained herein and associated procedures are reviewed on a regular basis (not to exceed three years) and remain relevant to the needs of TRCA, in accordance with legislative requirements and good business practices.

6. DEFINITIONS

"Board Member" – means any individual appointed to the Board of Directors of Toronto and Region Conservation Authority by a participating member municipality.

"Campaigning" – means any activity by or on behalf of a candidate, political party or question on a ballot meant to elicit support during the election period. Campaigning does not include the appearance of elected officials, other candidates or their supporters, or registrants at an event in their personal capacity without the display of any signage or graphic which identifies the individual as a candidate or registrant and without the solicitation of votes.

"Campaign Materials" – means any materials used to solicit votes for a candidate(s) or question in an election including but not limited to literature, banners, posters, pictures, buttons, clothing or other paraphernalia. Campaign materials include materials in all media, for example, print, displays, electronic radio or television, online including websites or social media.

"Candidate" – means any person who has filed and not withdrawn a nomination for an elected office at the municipal, school board, provincial or federal level in an election or by-election.

"TRCA Resources" – includes but is not limited to TRCA employees, TRCA events, TRCA facilities, TRCA funds, TRCA information and TRCA infrastructure. These are further defined as follows:

"TRCA employees" – for the purpose of this policy, TRCA employees, full time, part time and contract employees, as well as paid or unpaid interns and volunteers.

"TRCA events" – means events funded or organized by TRCA or any Board Member, including events that may be jointly organized with community organizations and/or with external sponsors. TRCA events include, but are not limited to: community meetings and consultations, parks, recreation or cultural facility openings or celebrations and other special events.

"TRCA facilities" – means any facility or property which is owned or leased by TRCA and which is directly managed and operated by TRCA divisions or programs. TRCA facilities do not include public right-of-ways such as sidewalks, roads and boulevards and laneways.

"TRCA funds or monies" – means funding support through TRCA's annual operating or capital budgets, including but not limited to funds provided directly to TRCA programs and services, Board Members expenses and staffing budgets.

"TRCA information" – means any information in the custody and control of TRCA, including databases that may be the repository of names, contact information, business records, financial information or other identifiers compiled and used by TRCA employees to conduct TRCA business. Examples of TRCA databases include but are not limited to: Contact Manager records, lists of event attendees, partners and TRCA tenants. Constituent information collected by TRCA Board Members are not under custody or control of TRCA and are not considered TRCA information for the purpose of this policy.

"TRCA infrastructure" – means any physical or technology systems that support the operation of TRCA programs and services, including but not limited to TRCA's fleet and marine vehicles, computer network, telecommunications and email system, wireless equipment, computer hardware, software and peripherals, internet and intranet. Excludes public right-of-way including sidewalks, roads, laneways and boulevards.

"Contribution" – as defined in the *Municipal Elections Act, 1996*, as amended means "money, in-kind support, goods and services given to and accepted by or on behalf of a person for their election campaign".

"Election" – means an election or by-election at the municipal, school board, provincial and federal level of government, or the submission of a question or by-law to the electors.

"Election Period" – for the purposes of TRCA, the election period is:

- For a municipal or school board election, the election period commences on June 30th and ends on voting day.
- For a provincial or federal election, the election period commences the day the writ for the election is issued and ends on voting day.
- For a by-election, the period commences when the by-election is called and ends on voting day.

"Elected Official" – means an individual elected to the House of Commons, the Legislative Assembly of Ontario, a municipal council or a school board.

"Glad-handing" – means attending a TRCA event as a private individual and interacting with other event attendees without displaying signage or disseminating material which identifies the individual as a candidate and without encouraging votes for a candidate, a political party or a position on a question on a ballot.

"Media Event" – means an event such as a press conference or photo opportunity to which the media is invited and the purpose of which is to promote a candidate, a political party or a position on a question on a ballot. Features of a media event can include but are not limited to, the issuing of a media advisory stating date, time and location of briefing/press conference, use of backdrops, podiums or public address systems, the distribution of media releases and/or media kits and/or the display of signage and/or other materials to promote a candidate or a position on a question on a ballot.

"Media Scrum" – means an unplanned encounter between a candidate, a registrant, their staff and/or a member or members of the media.

"News/Social Media" – means online technologies and practices used to share opinions, insights, experiences and perspectives through words, pictures, music, videos and audio. Social media can take many different forms, including but not limited to internet forums, web logs (blogs), social blogs, messaging, wikis, podcasts, pictures, video, music sharing, rating and bookmarking.

"Political Party" – Political parties for provincial and federal elections are those registered with the Ontario *Election Finances Act* in the registry of parties referred to in section 374 of the *Canada Elections Act*. Political party for municipal, school board or question on a ballot means an organization whose fundamental purposes is to participate in public affairs by endorsing one or more of its members as candidates and supporting their election, or to promote the acceptance of a certain position on a question on a ballot.

"Question on a Ballot" – means any question or by-law submitted to the electors by Council, a school board, an elected local board, or the Minister of Municipal Affairs and Housing under the *Municipal Elections Act, 1996*.

"Registrant" – means an individual, corporation or trade union described in paragraphs 1 to 3 of subsection 70(3) who has registered with the clerk regarding a question on a ballot under the *Municipal Elections Act, 1996*.

"Supporter" – means a supporter of a yes or no response to a question on a ballot but not incurring expenses like a registrant.

"Voting Day" – means the day on which the final vote is to be taken in an election.

Use of Resources During an Election Procedures

1. Activities Allowable during an Election Period

- 1.1 Board Members may directly book normally permitted space in a Toronto and Region Conservation Authority (TRCA) facility at the approved rate identified in the fee schedule for public facilities and programming, and any other conditions normally imposed under such permit, shall apply.
- 1.2 All-candidate meetings can be held at TRCA facilities provided that all candidates for an office or all registrants are invited to attend such meetings. This clause is subject to all applicable TRCA policies and procedures.
- 1.3 Candidate, political party, registrant or a supporter of a question on a ballot during an election are permitted to distribute campaign materials only in areas permitted as per Section 1.1 above, subject to the existing permitting policies and procedures for these facilities.
- 1.4 Informal media scrums are permitted in public or common areas at TRCA facilities provided that no apparatus, mechanism or device for the amplification of the human voice or any sounds is used and that the activity is not disruptive to regular TRCA business in the vicinity. If the media scrum is disruptive, employees may ask the participants to find an alternative location. This clause is subject to all applicable TRCA policies and procedures.
- 1.5 A candidate, political party, registrant or a supporter of a question on a ballot during an election is permitted to attend TRCA events, or events held at TRCA facilities, in either their capacity as an appointee to TRCA, an elected representative or as a private citizen to glad-hand with attendees and visitors, but may not solicit votes for themselves, a political party, registrant or a supporter of a question on a ballot. No election signs may be posted and no campaign materials may be disseminated at TRCA events. This clause is subject to all applicable TRCA policies and procedures.
- 1.6 Permits for generic election-related purposes, such as teaching members of the public how to become a candidate or the knowledge to organize an election campaign, can be issued for TRCA facilities as long as no one particular candidate, political party, registrant or a supporter of a question on a ballot during an election is promoted or endorsed at the event.
- 1.7 Elected officials are permitted to attend TRCA-organized events or events held on TRCA property and act as ceremonial participants in their capacity as elected officials, including speaking at the event and partaking in ceremonial activities. Once the writ is issued for provincial or federal elections, MPPs and MPs are no longer elected officials and therefore should not be invited to attend TRCA events.
- 1.8 TRCA online information related to Board Members will continue to be accessible by the public.
- 1.9 TRCA databases already made available for public use may be used by candidate, political party, registrant or a supporter of a question on a ballot during an election.

- 1.10 TRCA employees may work on a campaign or support a candidate outside of their work hours, as long as they abide by the Human Resources policy titled “Conflict of Interest - Employee Participation in Municipal, Provincial or Federal Elections” which defines permitted campaign activity. The policy also prohibits certain employees from participating in any campaign activity.
- 1.11 Information that is requested and/or provided by TRCA employees to one candidate, political party, registrant or a supporter of a question on a ballot during an election shall be made available to all other candidate, political party, registrant or a supporter of a question on a ballot, at their request, either through posting of the information on the internet or through other mechanisms. The provision of information to a candidate, political party, registrant or a supporter of a question on a ballot during an election will be coordinated through the Clerk’s Office.
- 1.12 Requests by a candidate, political party, registrant or a supporter of a question on a ballot for personal meetings with TRCA employees, and requests for tours of TRCA facilities may not always be accommodated due to resource and time constraints. If a meeting or a tour is organized for one candidate, political party, registrant or a supporter of a question on a ballot during an election, TRCA staff would need to commit to organizing a similar meeting or tour for all other candidates, political parties, registrants or supporters of a question on a ballot, at their request.
- 1.13 A file photo of a candidate with a logo in the background may be used in campaign material.

2. Activities Not Allowable during an Election Period

- 2.1 TRCA resources, including but not necessarily limited to monies, facilities, equipment, supplies, services or other TRCA resources, may not be used at anytime to support, endorse or otherwise provide an unfair advantage to any candidate, political party, registrant or a supporter of a question on a ballot at any time, whether during an election period or not, except as described in sections 1.1 - 1.3.
- 2.2 TRCA monies may not be used to acquire any resources for any campaign or election related activities.
- 2.3 TRCA employees may not campaign or actively work in support of a municipal, school board, provincial or federal candidate, political party, registrant or a supporter of a question on a ballot during an election during working hours, but may during non-working hours as described in the Human Resources policy titled “Conflict of Interest - Employee Participation in Municipal, Provincial or Federal Elections”.
- 2.4 TRCA facilities and TRCA infrastructure cannot be used for any election-related purposes by candidate, political party, registrant or a supporter of a question on a ballot, including for the display of any campaign-related signs in windows or on the facilities, as well as for any other form of campaigning on the facilities, including distribution of election-related material, except as described in sections 1.1 - 1.3.
- 2.5 For permits, licenses, leases, or any other agreement for the use of TRCA facilities for the promotion of a particular candidate, political party, registrant or a supporter of a question on a ballot during an election, discounted rates shall not be provided.

- 2.6 Any candidate, political party, registrant or a supporter of a question on a ballot during an election shall not distribute any campaign materials in TRCA facilities or at TRCA events, except as described in section 1.3 or during all-candidates meetings.
- 2.7 TRCA communications materials, whether for internal or for public distribution, must not be used to:
- a. Profile (name or photograph), make reference to and/or identify any individual as a candidate in any election or a registrant in a question on a ballot.
 - b. Advocate for or against a particular candidate, political party, registrant or a supporter of a question on a ballot during an election.

Communications materials include but are not limited to: media releases, media advisories, invitation's for special events, flyers, posters, banners, brochures and newsletters.

- 2.8 Websites or domain names that are funded by TRCA must not include any campaign materials, make reference to and/or identify any individual as a candidate, political party, registrant or a supporter of a question on a ballot during an election, or profile any slogan or symbol associated with a candidate, political party, registrant or a supporter of a question on a ballot during an election.
- 2.9 News/social media sites, blogs and other new media created and managed by TRCA employees must not make reference to and/or identify any individual as a candidate, political party, registrant or a supporter of a question on a ballot during an election.
- 2.10 Photographic or video materials which have been or may be created by TRCA employees or with TRCA resources must not be used in any campaign materials.
- 2.11 Any TRCA created and owned logo must not be placed specifically in any campaign materials, except as outlined in Section 1.13 above.
- 2.12 TRCA databases must not be used by any candidate, political party, registrant or a supporter of a question on a ballot during an election, unless the database has already been released for public use as per section 1.9.
- 2.13 TRCA infrastructure cannot be used for any election purposes.
- 2.14 TRCA employees will not perform any service, offer any advice or provide any information solely for the use of one Board Member, candidate, political party, registrant or a supporter of a question on a ballot during an election.
- 2.15 All printing, high speed photocopying and distribution of materials, including stationery and business cards, will be discontinued for a Board Member, candidate, political party, registrant or a supporter of a question on a ballot during an election, unless authorized by the Board of Directors, except Agendas and Minutes of Board of Directors, committee and advisory board meetings are exempt from this provision. If a compelling corporate need arises during the election period, a Board Member who is a candidate may use corporate resources to advise or contact TRCA constituents, in keeping with the procedures contained herein, with the consent of the TRCA Chief Executive Officer.

- 2.16 On any material printed or distributed by TRCA, any Board Member, candidate, political party, registrant or a supporter of a question on a ballot during an election are not permitted to: illustrate that a person is a candidate registered in an election; identify where a person will be running for office; or profile or refer to candidates during an election.
- 2.17 Use of cell phones and PDA's that are funded by TRCA for any election-related campaign purpose is not permitted, unless TRCA is reimbursed.
- 2.18 Use of TRCA's voice mail system to record election related messages, and the computer network and related IT systems (including TRCA's email system) to distribute election related correspondence, is not permitted.

3. Restrictions related to Services Provided to Board Members during an Election Year

As Board Members may also be candidates in an election, after August 1 in the municipal or school board election year, or on the day the writ for election is issued for provincial or federal elections, TRCA employees will discontinue the following activities for Board Members. The same rule applies to all Board of Directors Members, irrespective of whether they are seeking election in the new term or not:

- 3.1 Advertising and other communications materials paid for by TRCA funds and distributed by TRCA will not reference the name of a Board Member.
- 3.2 Event signage, including banners and posters, will not reference the name of a Board Member.
- 3.3 Media releases issued by TRCA employees will not reference the name of a Board Member.

4. Audit Compliance

- 4.1 The Clerk's Office is responsible for communication of this protocol to Board Members.
- 4.2 The CEO, Senior Leadership Team, Senior Managers, Managers and Supervisors are responsible for communication of this protocol to their staff and to investigate reported contraventions to ensure that there is compliance. All reported contraventions are to be reported to the Clerk or designate.
- 4.3 TRCA staff shall consult with the Clerk's Office prior to confirming a booking with a political client, to ensure the event booking is in compliance with the policy on Use of Resources During an Election.
- 4.3 Board Members and TRCA staff are accountable to comply with this protocol.

5. Limitation

- 5.1 Nothing in this policy shall preclude a Board Member from performing their job as a Board Member, nor inhibit them from representing the interests of the governing body who appointed them.

Appendix 2 - Conflict of Interest for Board Members

The Conflict of Interest rules below governing the Board of Directors shall also be observed in Executive Committee and advisory board meetings, as far as they are applicable, and the words Executive Committee or advisory board shall be substituted for the words Board of Directors as applicable.

1. *Municipal Conflict of Interest Act*

Board Members commit themselves and TRCA to ethical, businesslike and lawful conduct when acting as the Board of Directors. TRCA is bound by the *Municipal Conflict of Interest Act*. This By-law is intended to assist Board Members in understanding their obligations. Board Members are required to review the [Municipal Conflict of Interest Act](#) on a regular basis.

2. *Disclosure of Pecuniary Interest*

Where a Board Member, either on their own behalf or while acting for, by, with or through another, has any pecuniary interest, direct or indirect, in any matter and is present at a meeting of the Board of Directors at which the matter is the subject of consideration, the Board Member shall:

- a) prior to any consideration of the matter at the meeting, disclose the pecuniary interest and the general nature thereof to the Board of Directors;
- b) not take part in the discussion of, or vote on any question in respect of the matter; and,
- c) not attempt in any way whether before, during or after the meeting to influence the voting on any such question.

3. *Chair's Conflict of Interest or Pecuniary Interest*

Where the Chair of a meeting discloses a conflict of interest with respect to a matter under consideration at a meeting, the Vice-Chair, or another Board Member in absence of the Vice-Chair, shall be appointed by resolution to chair that portion of the meeting.

4. *Closed Meetings*

Where a meeting is not open to the public, a Board Member who has declared a conflict of interest shall leave the meeting for the part of the meeting during which the matter is under consideration.

5. *Board Member Absent*

Where the interest of a Board Member has not been disclosed by reason of their absence from the particular meeting, the Board Member shall disclose their interest and otherwise comply at the first meeting of the Board of Directors, Executive Committee, advisory board or committee, as the case may be, attended by them after the particular meeting.

6. *Disclosure Recorded in Minutes*

The Clerk shall record in reasonable detail the particulars of any disclosure of conflict of interest or pecuniary interest made by Board Members and whether the Board Member withdrew from the discussion of the matter. Such record shall appear in the minutes of that particular meeting of the Board of Directors. The Clerk shall maintain a registry in which shall be kept:

- (a) a copy of each disclosure filed with the Clerk;
- (b) a copy of each declaration recorded in the open or closed session minutes.

The registry shall be available for public inspection in the manner and during the time that TRCA may determine.

7. *Breach of Conflict of Interest for Board Members*

Should a Board Member breach the Conflict of Interest for Board Members, they shall advise the Chair and Vice-Chair, with a copy to the Secretary-Treasurer, as soon as possible after the breach.

Should a Board Member of the Board of Directors allege that another Board Member has breached the Conflict of Interest for Members, the said breach shall be communicated to the Chair, with a copy to the Secretary-Treasurer, in writing. In the absence of the Chair, or if a Board Member alleges that the Chair has breached the Conflict of Interest for Board Members, the said breach shall be communicated to the Vice-Chair, with a copy to the Secretary-Treasurer, in writing, following completion of the meeting at which the alleged breach occurred. The Chair shall not entertain discussions of an alleged breach during a meeting.

Any breach, or alleged breach, of the Conflict of Interest for Board Members shall be investigated in accordance with the Section B.16. - Enforcement of By-laws and Policies outlined in the Board of Directors Administrative By-law.

Appendix 3 - Procedures for Election of Officers

1. *Voting*

All votes shall be conducted in public session by open vote, and shall be recorded. No Board Member may vote by proxy.

2. *Acting Chair*

The Clerk or designate shall be Acting Chair or Returning Officer, for the purpose of Election of Officers.

3. *Scrutineer(s)*

The appointment of two scrutineers, along with the Acting Chair, is required by motion for the purpose of counting the show of hands, should an election be required. The Acting Chair shall call a motion for the appointment of two persons, who are not Board Members, in addition to themselves, to act as scrutineers. A Board Member, who will not stand for election, may be appointed as an additional scrutineer if requested. Due to the open voting, a TRCA staff member may be appointed as scrutineer(s).

4. *Election Procedures*

The Acting Clerk shall advise the Board Members that the election will be conducted in accordance with the *Conservation Authorities Act* and the Board of Directors Administrative By-law as follows:

- a) The elections shall be conducted in the following order:
 - i. Election of the Chair, who shall be a Board Member;
 - ii. Election of the Vice-Chair, who shall be a Board Member;
 - iii. Election of the remaining Members of the Executive Committee, if required.
- b) The Acting Chair shall ask for nominations to each position;
- c) Only current Board Members who are present may vote;
- d) Nominations shall be called three times and will only require a mover;
- e) The closing of nominations shall require both a mover and a seconder;
- f) Each Board Member nominated shall be asked to accept the nomination. The Board Member must be present to accept the nomination unless the Board Member has advised the Secretary-Treasurer in writing in advance of the election of their willingness to accept the nomination.
- g) Once voting commences, the only motion permitted will be a motion to recess.

If one Nominee:

- h) If only one Nominee the individual shall be declared into the position by acclamation.

Two Nominees only:

- i) In the event of an election, each Nominee shall be permitted not more than three minutes to speak for the office, in the order of the alphabetical listing by surnames.
- j) Upon the acceptance by Nominees to stand for election to the position of office, the Acting Chair will list the names of all Nominees in alphabetical order of surnames and will conduct voting in that order. The Acting Chair will call for a vote on the first name and Board Members will stand if they wish to vote for the Nominee. The Acting Chair will state the names of those standing and the scrutineers will record the results.
- k) There shall be one Nominee vote per Board Member per round of voting. A Board Member's first vote is deemed to be the Board Member's vote. If a Board Member votes a second time in the same round of voting, the Acting Chair shall advise the Board Member and the Board Member's vote shall not count. The exception is voting where multiple Nominees are to be elected for positions, as noted in Procedures (o) – (s) below.
- l) The Nominee who receives a majority of votes is appointed by resolution to the position.
- m) If there is a tie vote, the Acting Chair shall declare a 10-minute recess to allow the Board of Directors time to consider the matter, after which the vote shall be retaken. If the vote is again tied, the Acting Chair shall decide by lot the successful Nominee. The person whose name is drawn is appointed by resolution to the position.

Three or more Nominees:

- n) First and successive votes:
 - i. The Nominee who receives a majority of votes is appointed by resolution to the position.
 - ii. If no Nominee receives a majority of votes, the Nominee with the least number of votes shall be excluded from subsequent voting and the Board of Directors shall proceed with the next round of voting.
 - iii. If there is a tie vote with respect to the Nominees receiving the least number of votes, the Acting Chair shall recess the meeting for a period of 10 minutes, after which the Acting Chair shall conduct another vote, and if there is still an equality of votes, then a lot shall be conducted until there is one name not drawn, and the name (or names) drawn shall go forward to the next round of voting, and the name not drawn shall be excluded from subsequent rounds of voting.
 - iv. When there are only two Nominees remaining, the procedure for Two Nominees only [procedures (i) – (m)] shall apply.

Multiple Nominees to be elected

- o) If there are more Nominees than the number of available positions, the Acting Chair will list the names of all Nominees in alphabetical order of surnames and will conduct voting in that order. The Acting Chair will call for a vote on the first name and Board Members will stand if they wish to vote for the Nominee. The Acting Chair will state the names of those standing and the scrutineers will record the results.
- p) Each Board Member may vote for a total number of nominees as positions available. A Board Member's first vote(s) for the available positions is deemed to be the Board Member's vote(s). If a Board Member votes more times than the number of positions available in the same round of voting, the Acting Chair shall advise the Board Member and these vote(s) shall not count.
- q) The Nominee(s) who receive a majority of votes for the number of available positions are appointed by resolution to the positions.
- r) If no Nominee receives a majority of votes for any of the positions remaining after those who have been elected as per clause (q) above, the Nominee with the least number of votes shall be excluded from subsequent voting and the Board of Directors shall proceed with the next round of voting if necessary.
- s) If there is a tie vote with respect to the Nominees receiving the least number of votes, the Acting Chair shall recess the meeting for a period of 10 minutes, after which the Acting Chair shall conduct another vote, and if there is still an equality of votes, then a lot shall be conducted until there is one name not drawn, and the name (or names) drawn shall go forward to the next round of voting, and the name not drawn shall be excluded from subsequent rounds of voting.

The Acting Chair shall announce the results of the voting, naming the candidates and the number of votes cast for each candidate.

Appendix 4 – Board of Directors Terms of Reference

Subject to the *Conservation Authorities Act* and other applicable legislation, the Board of Directors is a governance body empowered without restriction to exercise all of the powers of TRCA under the *Act*. In addition to the powers of a conservation authority under s.21 of the *Act* for the purposes of accomplishing its objects, as referenced in Section 1 of the By-law, the powers of the Board of Directors, include but are not limited to, the following. The administrative/operational powers of TRCA, including but not limited to the approval of policies and procedures, are delegated to the Chief Executive Officer or designate.

1. Oversight of TRCA

- 1.1. Setting the goals, strategies and vision of the organization.
- 1.2. Electing officers, advising them and auditing their performance.
- 1.3. Safeguarding and approving changes in assets.
- 1.4. Approval of significant financial transactions as defined by TRCA policies and required reporting.
- 1.5. Delegating powers as permitted (i.e. signing, purchasing, investing, etc.).
- 1.6. Maintaining and adhering to the Board of Directors Administrative By-law.
- 1.7. Fulfilling fiduciary duties to the corporation, including ensuring adherence to all applicable legislation.
- 1.8. Direct staff to accomplish a Board directive or report back as required.
- 1.9. Approve all governance related policies impacting any of the Board of Director responsibilities, including, but not limited to, those listed in this terms of reference.

2. Staff and Legal

- 2.1. Appoint a Chief Executive Officer (CEO) and/or Secretary-Treasurer, if the position is deemed to be required by the Board of Directors. Otherwise the CEO shall perform these duties. All hiring/termination must adhere to TRCA policies.
- 2.2. Terminate the services of the Chief Executive Officer and/or Secretary-Treasurer.
- 2.3. Hearing of representations from staff or the Chief Executive Officer on any reported conflict of interest on the part of the Chief Executive Officer, as per the requirements of TRCA's Code of Conduct for staff.
- 2.4. Approve of the salary and wage schedules.
- 2.5. Approving policies which provide staff with benefits in excess of those provided by the *Employment Standards Act*
- 2.6. Instruct legal counsel on governance matters.

3. Financial

- 3.1.** Management of financial assets, including but not limited to, the ability to raise funds and approval of the Investment and Reserve policies.
- 3.2.** Approve the method of financing for any new capital projects, if external funding is required.
- 3.3.** Approve details on budget allocations on any new or existing capital projects.
- 3.4.** Approve by weighted vote TRCA's operating and capital budget (which inherently provides approval of the projects/programs to be funded) for the ensuing year, and approve the non-matching levy to be paid by the participating municipalities subject to applicable regulations.
- 3.5.** Receive and approve TRCA's Audited Financial Statements for the preceding year and any program requiring such documentation under provincial direction or through contract compliance.
- 3.6.** Authorize the borrowing of funds on promissory note(s) of TRCA in accordance with subsection 3(5) of the *Act*.
- 3.7.** In accordance with the *Act*, approve policies and regularly review such policies with respect to fees TRCA may charge, which shall include the preparation, maintenance and approval of fee schedules and the manner in which such fees are determined for programs and services for TRCA, together with the circumstances in which a person may request that TRCA reconsider a fee that was charged to the person and the procedures applicable to the reconsideration, as per Section 21.2 of the *Act* and applicable Regulations.
- 3.8.** Approval of remuneration and expense rates for Board Members, as applicable.
- 3.9.** Receipt of procurement summary and senior staff expenses for the preceding year.

4. Contractual and Purchasing/Disposal

- 4.1.** Approve any proposed acquisition, expropriation or disposition of land, and entering into contracts or agreements for the acquisition, expropriation or disposition of land subject to the requirements under the *Act*.
- 4.2.** Enter into management agreements with municipal partners for maintenance and development of TRCA-owned lands, and approval of development requests under such management agreements.
- 4.3.** Enter into contracts or agreements which are either necessarily incidental to a project approved pursuant to the *Act* or necessarily incidental to the works approved by the Board of Directors, in accordance with the specific monetary limits set by the Board of Directors and in accordance with the policies and procedures established by the Board of Directors.

- 4.4. Enter into agreements with municipalities where TRCA is situated in whole or in part within its area of jurisdiction, in respect of programs and services that TRCA will provide on behalf of the municipality, in accordance with the specific monetary limits set by the Board of Directors and in accordance with the policies and procedures established by the Board of Directors. TRCA must make such documents available to the public in such manner and reviewed at such intervals as may be determined in the agreements, as required in Section 21.1 of the *Conservation Authorities Act*.
- 4.5. Enter into agreements with non-governmental organizations in accordance with the specific monetary limits set by the Board of Directors and in accordance with policies and procedures established by the Board of Directors.
- 4.6. Authorize the purchase of goods, equipment or services necessary for carrying on the work of TRCA within the approved TRCA budget in accordance with the specific monetary limits set by the Board of Directors and in accordance with the policies and procedures established by the Board of Directors.
- 4.7. Authorize the disposal of TRCA assets in accordance with the specific monetary limits set by the Board of Directors and in accordance with the policies and procedures established by the Board of Directors.

5. General

- 5.1. Approve the minutes of a previous meeting of the Board of Directors. Receive minutes of advisory boards.
- 5.2. Approve the meeting schedule of the Board of Directors and Executive Committee annually for the upcoming meeting year.
- 5.3. Elect the Chair, Vice-Chair and the Executive Committee, and any other positions outlined in the Board of Directors Administrative By-laws.
- 5.4. Approve Board Member representation on external committees.
- 5.5. Approve the creation of the Executive Committee and/or advisory boards, the members thereof and the terms of reference for the Executive Committee and/or advisory boards, and all matters relating to its governance.
- 5.6. Provide for the calling of the meetings, and the procedures to be followed at meetings, specifying which meetings, if any, may be closed to the public, through approval of the Board of Directors Administrative By-law or such similar document.
- 5.7. Approval of TRCA organizational strategy documents including but not limited to: strategic plan; business plans; master plans; trail plans; asset management plans; asset management strategy and state of good repair reports; watershed or subwatershed plans and associated updates; and watershed report cards for TRCA's jurisdiction.

- 5.8. Approval of proposed staff comments for external purposes on, but not limited to: Acts; Regulations; Environmental Bill of Rights postings; official plans and amendments; special policies areas; municipal master plans; planning and environmental assessment processes; or other projects and programs as so directed by the Secretary-Treasurer.
- 5.9. Approval of branding of the organization and its distinct locations, programs and assets, including potential advertising for external organizations on TRCA locations and assets.
- 5.10. Hearing of representations from benefitting owners with regard to any aspect of the erosion control programs in accordance with procedures adopted by Board of Directors Resolution #18/80. May occur at Executive Committee meetings if required due to timing constraints.
- 5.11. Receipt of summary of freedom of information requests responded to as per the *Municipal Freedom and Protection of Privacy Act*.
- 5.12. Receipt of public complaints received in regard to TRCA and those received through TRCA's whistleblower hotline.
- 5.13. Responsibility for risk management, including, but not limited to, adherence to legislation, accommodation, human rights, accessibility, harassment and indemnification, and receipt of annual reporting on TRCA's risk management program.
- 5.14. The Board of Directors shall constitute itself as a separate entity named the Toronto and Region Source Protection Authority (TRSPA). Under the *Clean Water Act, 2006* and its Regulations, TRCA has been designated as the lead source protection authority for the CTC Source Protection Region (Credit Valley-Toronto and Region-Central Lake Ontario conservation authorities) and therefore has additional powers delegated to the TRSPA.
- 5.15. All other such other matters as may be prescribed by regulation, policy or TRCA's Secretary-Treasurer.

6. Section 28(1) of the Act

- 6.1. Delegate any of the Board of Directors' powers relating to the issuance or cancellation of permits under this *Act* or the regulations, to the Executive Committee or to any other person or body, subject to any limitations or requirements that may be prescribed by regulation.
- 6.2. Delegate positive permit approvals to designated staff subject to any limitations or requirements that may be prescribed by regulation.
- 6.3. Recommend to the Minister of the Environment, Conservation and Parks regulations for TRCA's jurisdiction.
- 6.4. Delegate the Board of Directors' powers or duties relating to holding of hearings in relation to the permits to the Executive Committee, subject to any limitations or requirements that may be prescribed by regulation.

7. Frequency of Meetings

As per Section 15(1) of the *Act*, the Board of Directors shall hold at least one meeting before the 1st day of March and at least one meeting after the 1st day of July and such other meetings as it considers necessary to effectively conduct the affairs of TRCA. The schedule shall be:

- 7.1.** The Annual meeting held following a municipal election shall be in January, while the Annual meetings in the interim years between municipal elections be held in February.
- 7.2.** The Board of Directors shall meet at least six times per year.
- 7.3.** The meetings shall be held at such date, time and place, within a participating municipality, as the Board of Directors shall adopt each year.
- 7.4.** The Chair may call a special meeting of the Board of Directors as is necessary. Any Board Member, with 50% support of the other Board Members, may also request the Chair to call a meeting of the Board of Directors and the Chair shall not refuse. Such special meeting shall be called on seven days' notice, in writing. That notice shall state the business of the special meeting and only that business shall be considered at that special meeting.

8. Membership

Sections 2(2) and 14 set out the membership of the Board of Directors.

Appendix 5 – Executive Committee Terms of Reference

As per Section B.11 of the By-law, the Board of Directors shall approve the terms of reference for advisory boards and committees, which shall include the role, the frequency of meetings and the number of members required.

The Board of Directors may delegate to the Executive Committee any of its powers except the following, as per Section 19.1 (1)(d) of the *Act*:

- i. The termination of the services of the Chief Executive Officer and/or Secretary-Treasurer,
- ii. The power to raise money, and
- iii. The power to enter into contracts or agreements other than those contracts or agreements as are necessarily incidental to the works approved by the Board of Directors.

The Board of Directors delegates the following powers to the Executive Committee, and reserves the right to delegate any other such powers as the Board of Directors determines appropriate, such that it is in keeping with the Board of Directors Administrative By-law and the *Conservation Authorities Act*.

Should the timing be such that staff is unable to report to the Executive Committee on the following matters, staff may report to the Board of Directors instead, with the exception of Section 28 and Hearing Board matters, covered under Section 5 below.

1. Contractual and Purchasing/Disposal

- 1.1. To award and enter into contracts or agreements which are not for the acquisition or disposition of land but which are either necessarily incidental to a project approved pursuant to the *Act* or necessarily incidental to the works approved by the Board of Directors, in accordance with the specific monetary limits set by the Board of Directors and in accordance with the policies and procedures established by the Board of Directors.
- 1.2. Review and make recommendations to the Board of Directors on: any proposed acquisition, expropriation or disposition of land, and entering into contracts or agreements for the acquisition, expropriation or disposition of land subject to the requirements under the *Act*.
- 1.3. Review and make recommendation to the Board of Directors on any requests for disposal of TRCA-owned land.
- 1.4. Authorize the purchase of goods, equipment or services necessary for carrying on the work of TRCA within the approved TRCA budget in accordance with the specific monetary limits set by the Board of Directors and in accordance with the policies and procedures established by the Board of Directors.
- 1.5. Authorize the disposal of TRCA assets in accordance with the specific monetary limits set by the Board of Directors and in accordance with the policies and procedures established by the Board of Directors .
- 1.6. Termination of agricultural leases as designated in the Sustainable Near-urban Agriculture policy.

2. Staff and Legal

- 2.1.** Authorize TRCA participation in Local Planning Appeal Tribunals and other tribunals on planning and development matters, and receipt of updates on activities from such tribunals.
- 2.2.** Direct the staff of TRCA to accomplish an Executive Committee directive or report back as required.

3. Financial

- 3.1.** Review and make recommendations to the Board of Directors on the investment and reserve policies.
- 3.2.** Review and make recommendations to the Board of Directors on all matters relating to preliminary estimates, budget, financial statements and related matters, including but not limited to:
 - 3.2.1.** preliminary estimates;
 - 3.2.2.** budget guidelines;
 - 3.2.3.** annual and multi-year business plans;
 - 3.2.4.** banking;
 - 3.2.5.** audited financial statements from the preceding year;
 - 3.2.6.** financial progress and expenditure reports;
 - 3.2.7.** financial procedures; and
 - 3.2.8.** financial policy documents relating to, but not limited to, the above.
- 3.3.** Perform the functions of an audit committee;
- 3.4.** Approval for disposition of surplus project funds when a project is completed and TRCA is unable to make contact with the donor/grantor for approval to redistribute.
- 3.5.** Approval to write-off receivables and other approval requirements of the Accounts Receivable policy, in accordance with specific dollar limits set by the Board of Directors.
- 3.6.** Approval of annual report regarding Senior Leadership Team travel expenses in accordance with the specific monetary limits and travel expenses policy(s) and procedures set by the Chief Executive Officer.

4. General

- 4.1.** Approve the minutes of a previous meeting of the Executive Committee.
- 4.2.** Exercise such additional powers, excluding those powers set out in Section B.1.c) of the By-law and noted above in the Terms of Reference, as may be assigned to it by the Board of Directors during the month of August, provided that a report be given to the Board of Directors for receipt at the first meeting of the Board of Directors thereafter.
- 4.3.** The Executive Committee may appoint sub-committees from among the Board Members to study, consider and report back to the Executive Committee on any subject over which the Executive Committee has jurisdiction.

- 4.4. Hearing of representations from benefitting owners with regard to any aspect of the erosion control programs in accordance with procedures adopted by Authority Resolution #18/80. May occur at Board of Directors meetings if required due to timing constraints.
- 4.5. Recommend and report to the Board of Directors on all matters not within the jurisdiction of an advisory board or which may be assigned to it by the Board of Directors.
- 4.6. All other such other matters as may be prescribed by regulation, policy or TRCA's Secretary-Treasurer.

5. Section 28(1)

- 5.1. Positive permit approvals subject to any limitations or requirements that may be prescribed by regulation.
- 5.2. Appointment of Enforcement Officers for the purposes of ensuring compliance with the Act and the regulations.
- 5.3. Review and recommend to the Board of Directors regulations for the TRCA jurisdiction.
- 5.4. Act as a Hearing Board, subject to any limitations or requirements that may be prescribed by regulation or other law. TRCA shall use the Ministry of Natural Resources and Forestry/Conservation Ontario Hearing Guidelines (2005) as outlined in Attachment 1 to the Executive Committee Terms of Reference, as a guideline for conducting hearings.

6. Frequency of Meetings

The meeting schedule of the Executive Committee shall be approved annually by the Board of Directors for the upcoming year. The Committee shall meet monthly, or at a minimum of six times per year.

The Committee may act as a Hearing Board as noted in Section 5.4., and in this capacity shall meet as required.

7. Membership

- 7.1. the Chair of the Board of Directors (elected annually);
- 7.2. the Vice-Chair of the Board of Directors (elected annually);
- 7.3. two Board Members appointed by the Region of Durham, who may or may not be the Chair and/or Vice-Chair of the Board of Directors i;
- 7.4. two BoardMembers appointed by the Region of Peel, who may or may not be the Chair and/or Vice-Chair of the Board of Directors;
- 7.5. two Board Members appointed by the Region of York, who may or may not be the Chair and/or Vice-Chair of the Board of Directors;
- 7.6. six Board Members appointed by The City of Toronto, who may or may not be the Chair and/or Vice-Chair of the Board of Directors.

If the Board Member appointed by the Township of Adjala/Tosorontio and Town of Mono is elected or appointed as Chair or Vice-Chair of the Board of Directors then such Board Member shall be a member of the Executive Committee in addition to those members set out in paragraphs 7.1 – 7.6, inclusive, resulting in a 13 Member Executive Committee.

Hearing Guidelines – October 2005

1.0 PURPOSE OF HEARING GUIDELINES:

The purpose of the Hearing Guidelines is to reflect the changes to the 1998 Conservation Authorities Act. The Act requires that the applicant be party to a hearing by the local Conservation Authority Board, or Executive Committee (sitting as a Hearing Board) as the case may be, for an application to be refused or approved with contentious conditions. Further, a permit may be refused if in the opinion of the Authority the proposal adversely affects the control of flooding, pollution or conservation of land, and additional erosion and dynamic beaches. The Hearing Board is empowered by law to make a decision, governed by the Statutory Powers Procedures Act. It is the purpose of the Hearing Board to evaluate the information presented at the hearing by both the Conservation Authority staff and the applicant and to decide whether the application will be approved with or without conditions or refused.

These guidelines have been prepared as an update to the October 1992 hearing guidelines and are intended to provide a step-by-step process to conducting hearings required under Section 28 (12), (13), (14) of the Conservation Authorities Act. Similar to the 1992 guidelines, it is hoped that the guidelines will promote the necessary consistency across the Province and ensure that hearings meet the legal requirements of the Statutory Powers Procedures Act without being unduly legalistic or intimidating to the participants.

2.0 PREHEARING PROCEDURES

2.1 Apprehension of Bias

In considering the application, the Hearing Board is acting as a decision-making tribunal. The tribunal is to act fairly. Under general principles of administrative law relating to the duty of fairness, the tribunal is obliged not only to avoid any bias but also to avoid the appearance or apprehension of bias. The following are three examples of steps to be taken to avoid apprehension of bias where it is likely to arise.

- (a) No member of the Authority taking part in the hearing should be involved, either through participation in committee or intervention on behalf of the applicant or other interested parties with the matter, prior to the hearing. Otherwise, there is a danger of an apprehension of bias which could jeopardize the hearing.
- (b) If material relating to the merits of an application that is the subject of a hearing is distributed to Board members before the hearing, the material shall be distributed to the applicant at the same time. The applicant may be afforded an opportunity to distribute similar pre-hearing material.
- (c) In instances where the Authority (or Executive Committee) requires a hearing to help it reach a determination as to whether to give permission with or without conditions or refuse a permit application, a final decision shall not be made until such time as a hearing is held. The applicant will be given an opportunity to attend the hearing before a decision is made; however, the applicant does not have to be present for a decision to be made.

Individual Conservation Authorities shall develop a document outlining their own practices and procedures relating to the review and reporting of Section 28 applications, including the role of staff, the applicant and the Authority or Executive Committee as well as, the procedures for the hearing itself. Such policy and procedures manual shall be available to the members of the public upon request. These procedures shall have regard for the above information and should be approved by the Conservation Authority Board of Directors.

2.2 Application

The right to a hearing is required where staff is recommending refusal of an application or where there is some indication that the Authority or Executive Committee may not follow staff's recommendation to approve a permit or the applicant objects to the conditions of approval. The applicant is entitled to reasonable notice of the hearing pursuant to the Statutory Powers Procedures Act.

2.3 Notice of Hearing

The Notice of Hearing shall be sent to the applicant within sufficient time to allow the applicant to prepare for the hearing. To ensure that reasonable notice is given, it is recommended that prior to sending the Notice of Hearing, the applicant be consulted to determine an agreeable date and time based on the local Conservation Authority's regular meeting schedule.

The Notice of Hearing must contain the following:

- (a) Reference to the applicable legislation under which the hearing is to be held (i.e., the Conservation Authorities Act).
- (b) The time, place and the purpose of the hearing.
- (c) Particulars to identify the applicant, property and the nature of the application which are the subject of the hearing.

Note: If the applicant is not the landowner but the prospective owner, the applicant must have written authorization from the registered landowner.

- (d) The reasons for the proposed refusal or conditions of approval shall be specifically stated. This should contain sufficient detail to enable the applicant to understand the issues so he or she can be adequately prepared for the hearing.

It is sufficient to reference in the Notice of Hearing that the recommendation for refusal or conditions of approval is based on the reasons outlined in previous correspondence or a hearing report that will follow.

- (e) A statement notifying the applicant that the hearing may proceed in the applicant's absence and that the applicant will not be entitled to any further notice of the proceedings.

Except in extreme circumstances, it is recommended that the hearing not proceed in the absence of the applicant.

- (f) Reminder that the applicant is entitled to be represented at the hearing by counsel, if desired.

It is recommended that the Notice of Hearing be directed to the applicant and/or landowner by registered mail. Please refer to **Appendix A** [*not included*] for an example Notice of Hearing.

2.4 Presubmission of Reports

If it is the practice of the local Conservation Authority to submit reports to the Board members in advance of the hearing (i.e., inclusion on an Authority/Executive Committee agenda), the applicant shall be provided with the same opportunity. The applicant shall be given two weeks to prepare a report once the reasons for the staff recommendations have been received. Subsequently, this may affect the timing and scheduling of the staff hearing reports.

2.5 Hearing Information

Prior to the hearing, the applicant shall be advised of the local Conservation Authority's hearing procedures upon request.

3.0 HEARING

3.1 Public Hearing

Pursuant to the Statutory Powers Procedure Act, hearings are required to be held in public. The exception is in very rare cases where public interest in public hearings is outweighed by the fact that intimate financial, personal or other matters would be disclosed at hearings.

3.2 Hearing Participants

The Conservation Authorities Act does not provide for third party status at the local hearing. While others may be advised of the local hearing, any information that they provide should be incorporated within the presentation of information by, or on behalf of, the applicant or Authority staff.

3.3 Attendance of Hearing Board Members

In accordance with case law relating to the conduct of hearings, those members of the Authority who will decide whether to grant or refuse the application must be present during the full course of the hearing. If it is necessary for a member to leave, the hearing must be adjourned and resumed when either the member returns or if the hearing proceeds, even in the event of an adjournment, only those members who were present after the member left can sit to the conclusion of the hearing.

3.4 Adjournments

The Board may adjourn a hearing on its own motion or that of the applicant or Authority staff where it is satisfied that an adjournment is necessary for an adequate hearing to be held.

Any adjournments form part of the hearing record.

3.5 Orders and Directions

The Authority is entitled to make orders or directions to maintain order and prevent the abuse of its hearing processes. A hearing procedures example has been included as **Appendix B**.

3.6 Information Presented at Hearings

- (a) The Statutory Powers Procedure Act, requires that a witness be informed of his right to object pursuant to the Canada Evidence Act. The Canada Evidence Act indicates that a witness shall be excused from answering questions on the basis that the answer may be incriminating. Further, answers provided during the hearing are not admissible against the witness in any criminal trial or proceeding. This information should be provided to the applicant as part of the Notice of Hearing.
- (b) It is the decision of the hearing members as to whether information is presented under oath or affirmation. It is not a legal requirement. The applicant must be informed of the above, prior to or at the start of the hearing.
- (c) The Board may authorize receiving a copy rather than the original document. However, the Board can request certified copies of the document if required.
- (d) Privileged information, such as solicitor/client correspondence, cannot be heard. Information that is not directly within the knowledge of the speaker (hearsay), if relevant to the issues of the hearing, can be heard.
- (e) The Board may take into account matters of common knowledge such as geographic or historic facts, times measures, weights, etc or generally recognized scientific or technical facts, information or opinions within its specialized knowledge without hearing specific information to establish their truth.

3.7 Conduct of Hearing

3.7.1 Record of Attending Hearing Board Members

A record shall be made of the members of the Hearing Board.

3.7.2 Opening Remarks

The Chairman shall convene the hearing with opening remarks which generally; identify the applicant, the nature of the application, and the property location; outline the hearing procedures; and advise on requirements of the Canada Evidence Act. Please reference **Appendix C** for the Opening Remarks model [*staff note: Appendix C not included in the Board of Directors Administrative By-law as it is not relevant to the Board of Directors*].

3.7.3 Presentation of Authority Staff Information

Staff of the Authority presents the reasons supporting the recommendation for the refusal or conditions of approval of the application. Any reports, documents or plans that form part of the presentation shall be properly indexed and received.

Staff of the Authority should not submit new information at the hearing as the applicant will not have had time to review and provide a professional opinion to the Hearing Board.

Consideration should be given to the designation of one staff member or legal counsel who coordinates the presentation of information on behalf of Authority staff and who asks questions on behalf of Authority staff.

3.7.4 Presentation of Applicant Information

The applicant has the opportunity to present information at the conclusion of the Authority staff presentation. Any reports, documents or plans which form part of the submission should be properly indexed and received.

The applicant shall present information as it applies to the permit application in question. For instance, does the requested activity affect the control of flooding, erosion, dynamic beach or conservation of land or pollution? The hearing does not address the merits of the activity or appropriateness of such a use in terms of planning.

- The applicant may be represented by legal counsel or agent, if desired
- The applicant may present information to the Board and/or have invited advisors to present information to the Board
- The applicant(s) presentation may include technical witnesses, such as an engineer, ecologist, hydrogeologist etc.

The applicant should not submit new information at the hearing as the Staff of the Authority will not have had time to review and provide a professional opinion to the Hearing Board.

3.7.5 Questions

Members of the Hearing Board may direct questions to each speaker as the information is being heard. The applicant and /or agent can make any comments or questions on the staff report.

Pursuant to the Statutory Powers Procedure Act, the Board can limit questioning where it is satisfied that there has been full and fair disclosure of the facts presented. Please note that the courts have been particularly sensitive to the issue of limiting questions and there is a tendency to allow limiting of questions only where it has clearly gone beyond reasonable or proper bounds.

3.7.6 Deliberation

After all the information is presented, the Board may adjourn the hearing and retire in private to confer. The Board may reconvene on the same date or at some later date to advise of the Board's decision. The Board members shall not discuss the hearing with others prior to the decision of the Board being finalized.

4.0. DECISION

The applicant must receive written notice of the decision. The applicant shall be informed of the right to appeal the decision within 30 days upon receipt of the written decision to the Minister of Natural Resources.

It is important that the hearing participants have a clear understanding of why the application was refused or approved. The Board shall itemize and record information of particular significance which led to their decision.

4.1 Notice of Decision

The decision notice should include the following information:

- (a) The identification of the applicant, property and the nature of the application that was the subject of the hearing.
- (b) The decision to refuse or approve the application. A copy of the Hearing Board resolution should be attached.

It is recommended that the written Notice of Decision be forwarded to the applicant by registered mail. A sample Notice of Decision and cover letter has been included as **Appendix D** [*staff note: Appendix D not included in the Board of Directors Administrative By-law as it is not relevant to the Board of Directors*].

4.2 Adoption

A resolution advising of the Board's decision and particulars of the decision should be adopted.

5.0 RECORD

The Authority shall compile a record of the hearing. In the event of an appeal, a copy of the record should be forwarded to the Minister of Natural Resources/Mining and Lands Commissioner. The record must include the following:

- (a) The application for the permit.
- (b) The Notice of Hearing.
- (c) Any orders made by the Board (e.g., for adjournments).
- (d) All information received by the Board.
- (e) The minutes of the meeting made at the hearing.
- (f) The decision and reasons for decision of the Board.
- (g) The Notice of Decision sent to the applicant.

Appendix B

Hearing Procedures

1. Motion to sit as Hearing Board.
2. Roll Call followed by the Chair's opening remarks.
3. Staff will introduce to the Hearing Board the applicant/owner, his/her agent and others wishing to speak.
4. Staff will indicate the nature and location of the subject application and the conclusions.
5. Staff will present the staff report included in the Authority/Executive Committee agenda.
6. The applicant and/or his/her agent will speak and also make any comments on the staff report, if he/she so desires.
7. The Hearing Board is open to the public and therefore, the Hearing Board will allow others to speak, and, if necessary, the applicant in rebuttal.
8. The Hearing Board will question, if necessary, both the staff and the applicant/agent.
9. The Hearing Board will move into camera.
10. Members of the Hearing Board will move and second a motion.
11. A motion will be carried which will culminate in the decision.
12. The Hearing Board will move out of camera.
13. The Chairman or Acting Chairman will advise the owner/applicant of the Hearing Board decision.
14. If decision is "to refuse", the Chairman or Acting Chairman shall notify the owner/applicant of his/her right to appeal the decision to the Minister of Natural Resources within 30 days of receipt of the reasons for the decision.
15. Motion to move out of Hearing Board and sit as Executive Committee.

Appendix 6 – Partners in Project Green Executive Management Committee, Performance Committees, and Service Centres 2016-2018 Terms of Reference

2016-2018 Terms of Reference: *Partners in Project Green Executive Management Committee, Performance Committees, and Service Centres*

1. Background

Partners in Project Green: A Pearson Eco-Business Zone was developed by the Greater Toronto Airports Authority (GTAA), the Region of Peel, City of Toronto, City of Brampton, City of Mississauga and Toronto and Region Conservation Authority (TRCA) to transform the lands surrounding Toronto Pearson into an internationally recognized community of eco-friendly businesses. The Partners in Project Green Steering Committee was first established in 2008 in response to a recommendation in the approved Partners in Project Green: A Pearson Eco-Business Zone Strategy, 2008. After two successful terms, five governance committees were established in lieu of the original Steering Committee to yield more focused results as prescribed in the program's revised strategy introduced in 2013. To date, the new governance structure has proven effective in driving meaningful actions and innovation throughout the Pearson Eco-Business Zone and beyond.

1.1 Toronto and Region Conservation Authority Direction

At Authority Meeting #10/15, held on November 27, 2015, Resolution #A229/15 was approved, in part, as follows:

. . . THAT the Partners in Project Green Executive Management Committee, Performance Committees and Service Centres Terms of Reference, as outlined in Attachment 1, be approved; . . .

2. Vision

The vision of Partners in Project Green is to transform the Pearson Eco-Business Zone into an internationally recognized community known for its competitive, high performance and eco-friendly business climate.

3. Executive Management Committee

3.1 Mandate

Reporting to the TRCA Board (Appendix A), the Executive Management Committee will be established as a subcommittee to TRCA with the purpose of:

- assisting businesses in the Pearson Eco-Business Zone to improve their financial and environmental performance;
- retaining and attracting green investment in the Pearson Eco-Business Zone; and,
- acting as a catalyst for new ideas, innovation, excellence and improvement in the employment lands encompassed by the Pearson Eco-Business Zone.

3.2 Roles & Responsibilities

Specifically, the Executive Management Committee will be primarily responsible for:

- providing leadership and communication among Partners in Project Green members and supporters;
- acting as a spokesperson for Partners in Project Green;
- reviewing and approving the Partners in Project Green strategy and programs as required;
- reviewing and approving the Partners in Project Green budget;
- monitoring overall Partners in Project Green priorities and performance;
- publishing an annual report; and
- providing legal, governance and issue-resolution guidance relating to Partners in Project Green activities.

Secondary responsibilities shall include:

- facilitating access to strategic partners and advisors;
- where appropriate, serving as a resource and contact for media and government relation inquiries;
- appointing Chairs to Subcommittees (i.e., Performance Committees and Service Centres); and
- facilitating, initiating and directing resources to Subcommittees.

3.3 Structure

Supported by the Secretariat, the Executive Management Committee will have a Chair and Vice-Chair (or two Co-Chairs at the discretion of the Committee), and will be comprised of fifteen (15) Voting and as many as three (3) Advisory Members.

3.3.1 Executive Management Committee Voting Members

The Executive Management Committee will consist of fifteen (15) Voting Members including the Chair and Vice-Chair, senior-level representatives of the founding agencies (TRCA, GTAA, Region of Peel and the City of Toronto), strategic partners, members of the business community and a number of government representatives as follows:

- **GTAA** (one (1) voting representative)
 - One voting member will be selected from the executive leadership team at the GTAA.
- **Business Community Leaders** (Maximum of eight (8) voting representatives)

- Eight members drawn from representatives of the Pearson Eco-Business Zone business community.
- **TRCA** (one (1) voting representative)
 - The Authority Chair or other designated member of staff (Chief Executive Officer or the Director of Watershed Management).
- **Credit Valley Conservation** (One (1) voting representative)
 - The Credit Valley Conservation Chair or other designated member of staff (Chief Administrative Officer)
- **Municipality Leaders** (Four (4) voting representatives)
 - One representative (Councillor or Designate) from each of the municipalities financially supporting PPG programming such as the Region of Peel, City of Toronto, City of Brampton and City of Mississauga.

3.3.2 Executive Management Committee Advisory Members

In addition to Voting Members, up to three (3) Advisory Members can be invited to join the Executive Management Committee and support its activities.

- **Federal, Provincial and/or Municipal Governments** (Maximum two (2) advisory representatives)
 - One Member of Provincial Parliament, and/or one Member of Parliament, and/or one municipal representative, and/or senior staff representatives from all levels of government may be invited to participate.
- **Business Community** (Maximum one (1) advisory representative)
 - An additional Advisory Member may be drawn from the Pearson Eco-Business Zone, representatives of the business community, and/or industry associations at the request of the Voting Members of the Executive Management Committee.

3.4 Appointment Process

Membership on the Executive Management Committee will be drawn from organizations with connections to the Pearson Eco-Business Zone based on the following criteria:

- *Involvement with Partners in Project Green* – the organization must be a formal member of Partners in Project Green; and,
- *Sector* – whether the organization represents a critical sector within the Pearson Eco-Business Zone; or
- *Organizational leadership on sustainability* – whether the organization has shown sustainability leadership; or

- *Location* – whether the organization is operating and/or has a connection to the Pearson Eco-Business Zone.

Executive Management Committee members will be appointed for a two-year, renewable term by TRCA.

Municipalities and other levels of governments will be formally requested to make appointments and all proposed appointments will be presented to the Authority for formal approval.

The Chair and Vice-Chair will be elected by the members of the Executive Management Committee.

Delegation of Committee roles & responsibilities shall not be encouraged, and managed by exception. All delegations will be subject to approval by Committee Chairs.

3.5 Chair and Vice-Chair

The Executive Management Committee Chair and Vice-Chair (or Co-Chairs) will provide leadership in building a shared vision and community commitment for moving forward with a blueprint for action. The Chair will have the following additional responsibilities:

- being the primary spokesperson for Partners in Project Green at public and official functions;
- presiding over Executive Management Committee meetings, setting the agenda and generally ensuring the effectiveness of meetings;
- recruiting Subcommittee members; and
- facilitating progress on Partners in Project Green initiatives in collaboration with working group chairs.

In the absence of the Chair, the Vice-Chair will perform the above functions.

3.6 Business Community & Municipality Leaders

Business Community and Municipality Leaders appointed to the Executive Management Committee, excluding the Chair and Vice-Chair, will be required to sponsor a Subcommittee (i.e., Performance Committee or Service Centre). As such, Business Community and Municipality Leaders will have the following additional responsibilities:

- assuming the responsibilities of Chair or Vice-Chair for a given Subcommittee;
- recruiting and appointing Subcommittee members;
- communicating strategic directives issued by the Executive Management Committee to the Subcommittee;

- facilitating progress on Subcommittee initiatives;
- monitoring Subcommittee progress and performance and reporting to the Executive Management Team; and
- championing green economic development in the Pearson Eco-Business Zone.

3.7 Meetings

The Executive Management Committee will meet at least four (4) times per year, roughly every three (3) months. Meetings are anticipated to be approximately two (2) hours in length – at the discretion of the Executive Management Committee – and an agenda will be distributed in advance of meetings.

It is anticipated that members will commit at least four (4) days per year to prepare for and attend Executive Management Committee meetings as well as the Annual General Meeting (AGM). The Chair will have the discretion to call additional conference call meetings if required.

3.8 Reporting

The Executive Management Committee is responsible to the broader region and community and the overall goals of Partners in Project Green. It will be accountable to the goals of Partners in Project Green by ensuring measurable goals are set and monitored, assessed and reported.

The Executive Management Committee is a subcommittee of TRCA and will regularly update the Authority on the status of Partners in Project Green initiatives, and provide updates to municipal councils and the GTAA board as requested.

3.9 Quorum & Governance

A quorum will consist of voting members in numbers greater than or equal to one-third of the total number of voting members on the Executive Management Committee.

Consensus-based decision making will be the preferred procedure. Formal decisions will be based on a simple majority vote. In the event of a tie, the Chair will cast the deciding vote.

TRCA Rules of Conduct and Purchasing Policies will be adhered to as required.

4. Performance Committees

4.1 Mandate

Reporting to two (2) Executive Management Committee members (Appendix A), Performance Committees will be established as subcommittees to the Executive Management Committee. As such, Performance Committees will be task-oriented and formed based on Executive Management Committee priorities to:

- Contribute to the realization of the Partners in Project Green vision and Executive Management Committee mandate; and
- Contribute to the successful development and implementation of new and existing Partners in Project Green programs and initiatives.

4.2 Roles & Responsibilities

Specifically, Performance Committees will be responsible for:

- advising staff on key Partners in Project Green sector specific issues;
- providing sector and subject-area expertise to inform the design and/or execution of key Partners in Project Green performance area programs;
- providing market intelligence and recommendations for new performance area program opportunities;
- leading the design and/or execution of initiatives and collective projects in line with Partners in Project Green strategic objectives;
- owning program performance metrics and reporting progress to the Executive Management Committee; and
- serving as ambassadors for the program among peer/industry groups.

4.3 Structure

Including the Chair and Vice-Chair, every Performance Committee will be comprised of seven (7) to twelve (12) senior-level representatives who have a particular interest in and/or expertise relevant to the major challenges of the corresponding performance area (Appendix A).

4.4 Appointment Process

Membership on Performance Committees will be drawn from organizations with connections to the Pearson Eco-Business Zone based on the following criteria:

- *Involvement with Partners in Project Green Project* –the organization must be a formal member of Partners in Project Green Project; and,
- *Sector* – whether the organization represents a critical sector within the Pearson Eco-Business Zone; or,
- *Organizational leadership on sustainability* – whether the organization has shown sustainability leadership; or,
- *Location* – whether the organization is operating and/or has a connection to the Pearson Eco-Business Zone.

Members of each Performance Committee will be appointed for a two-year, renewable term by the Performance Committee Chair.

Performance Committee Chairs will be appointed by the Executive Management Committee.

Delegation of Committee roles & responsibilities shall not be encouraged, and managed by exception. All delegations will be subject to approval by Committee Chairs.

4.5 Chair and Vice-Chair

Performance Committee Chairs and Vice-Chairs will be business community or municipal representatives taken from the Executive Management Committee. In order to ensure broad representation, the Chair and Vice-Chair of any given Performance Committee shall not share the same company affiliation.

In general, Chairs and Vice-Chairs will provide leadership on specific initiatives and effective communication between the Executive Management Committee and Performance Committee, and among Performance Committees as appropriate. The Performance Committee Chair will have the following additional responsibilities:

- being the primary spokesperson for the Performance Committee at public and official functions;
- setting work program and meeting schedule in collaboration with Performance Committee members and the Secretariat, and presiding over Performance Committee meetings;
- recruiting Performance Committee members;
- monitoring Subcommittee progress and performance and reporting to the Executive Management Team; and
- championing green economic development in the Pearson Eco-Business Zone.

In the absence of the Chair, the Vice-Chair will perform the above functions.

4.6 Meetings

Performance Committees will meet at least four (4) times per year including the Annual General Meeting (AGM), roughly every three (3) months or at the call of the Chair. Meetings are anticipated to be two (2) hours in length and an agenda will be distributed in advance of meetings.

It is anticipated that members will commit at least four (4) days per year to prepare for and attend Performance Committee meetings as well as the AGM. The Chair will have the discretion to call additional conference call meetings if required.

4.7 Reporting

Performance Committees are responsible to the broader region and community and the overall goals of Partners in Project Green. They will be accountable to the goals of Partners in Project Green by ensuring that all goals relevant to a given Performance Committee and approved by the Executive Management Committee are carefully monitored, assessed and reported.

Performance Committees are subcommittees of the Executive Management Committee and will regularly update the Executive Management Committee on the status of Performance Committee initiatives based on a predetermined reporting schedule.

4.8 Quorum and Governance

A quorum will consist of at least one-third of the members of the Performance Committee, including at least one of the two Chairs.

Consensus-based decision making will be the preferred procedure. Formal decisions will be based on a simple majority vote. In the event of a tie, the Chair will cast the deciding vote.

TRCA Rules of Conduct and Purchasing Policies will be adhered to as required.

4.9 Staff Liaison

Additionally, the Region of Peel, City of Toronto, City of Brampton and City of Mississauga will be requested to designate appropriate staff to liaise with Performance Committees as required.

5. Service Centres

5.1 Mandate

Reporting to the Executive Management Committee, Service Centres will be established as subcommittees to the Executive Management Committee (Appendix A). As such, Service Centres will be task-oriented and formed based on Executive Management Committee priorities to:

- contribute to the successful development and implementation of new and existing Partners in Project Green self-sustaining profit centres; and
- contribute to the realization of the Executive Management Committee's mandate.

5.2 Roles and Responsibilities

Service Centre committee Roles and Responsibilities will be developed by staff, as required, with approval from the Executive Management Committee.

6. Secretariat

The Executive Management Committee, Subcommittees and their Chairs will be supported by a secretariat led by Partners in Project Green staff from the Toronto and Region Conservation Authority. The Secretariat will provide facilitation, project and program development and implementation, research and policy analysis, administrative and recruitment support, financial management and communications.

7. Funding

Executive Management Committee and Performance Committee members will contribute their expertise as in-kind services. Compensation for transportation will be provided for attendance at meetings according to TRCA policy where these are not covered by their agency or other source. Core funding for Partners in Project Green will come from both public and private sector organizations, with specific funding for programs and projects being sought from a variety of funding sources.

APPENDIX A – Governance Structure and Delivery Chain

The following figures illustrate Partners in Project Green governance structure and intended value delivery chain.

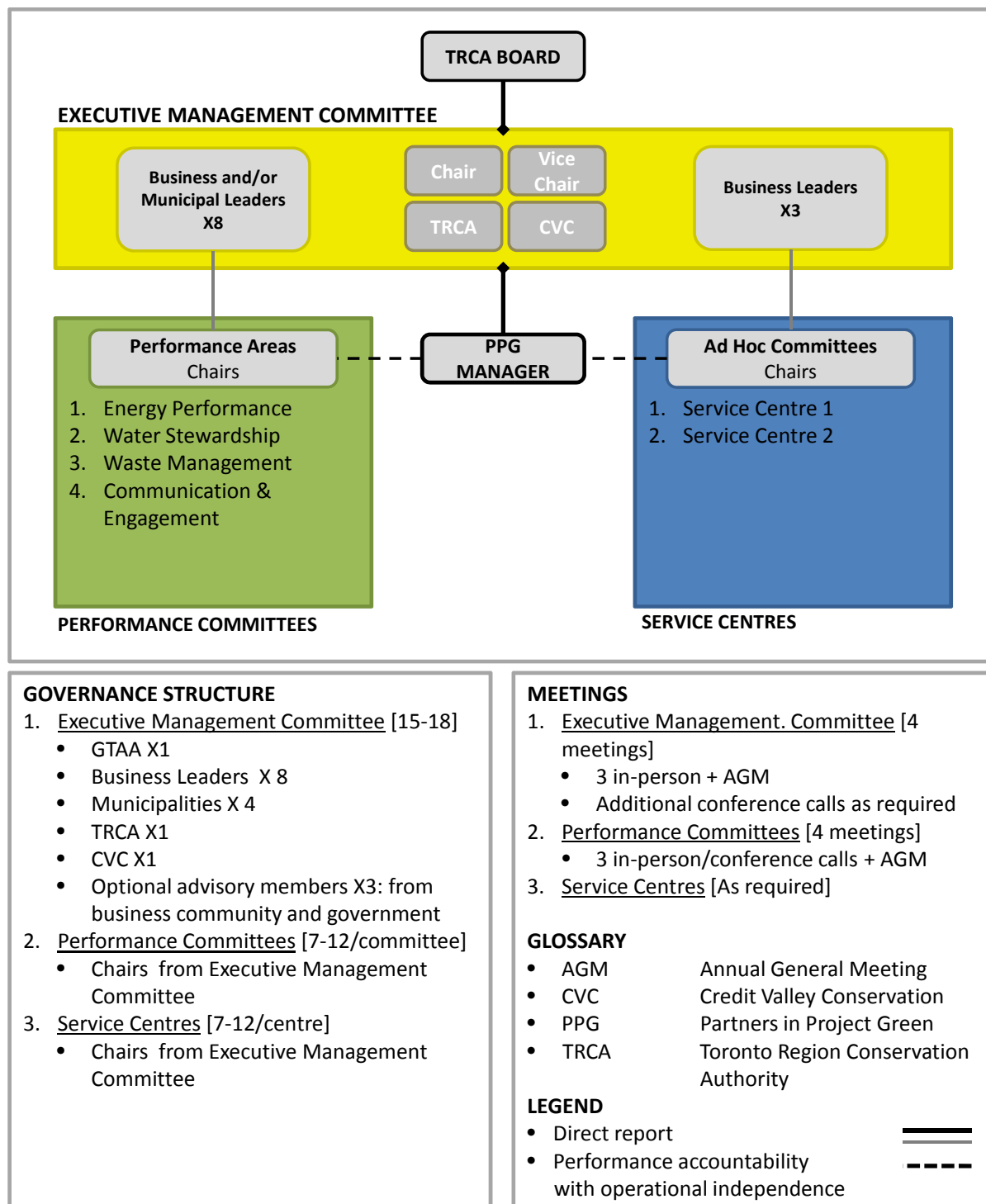


Figure 1 - Governance Structure

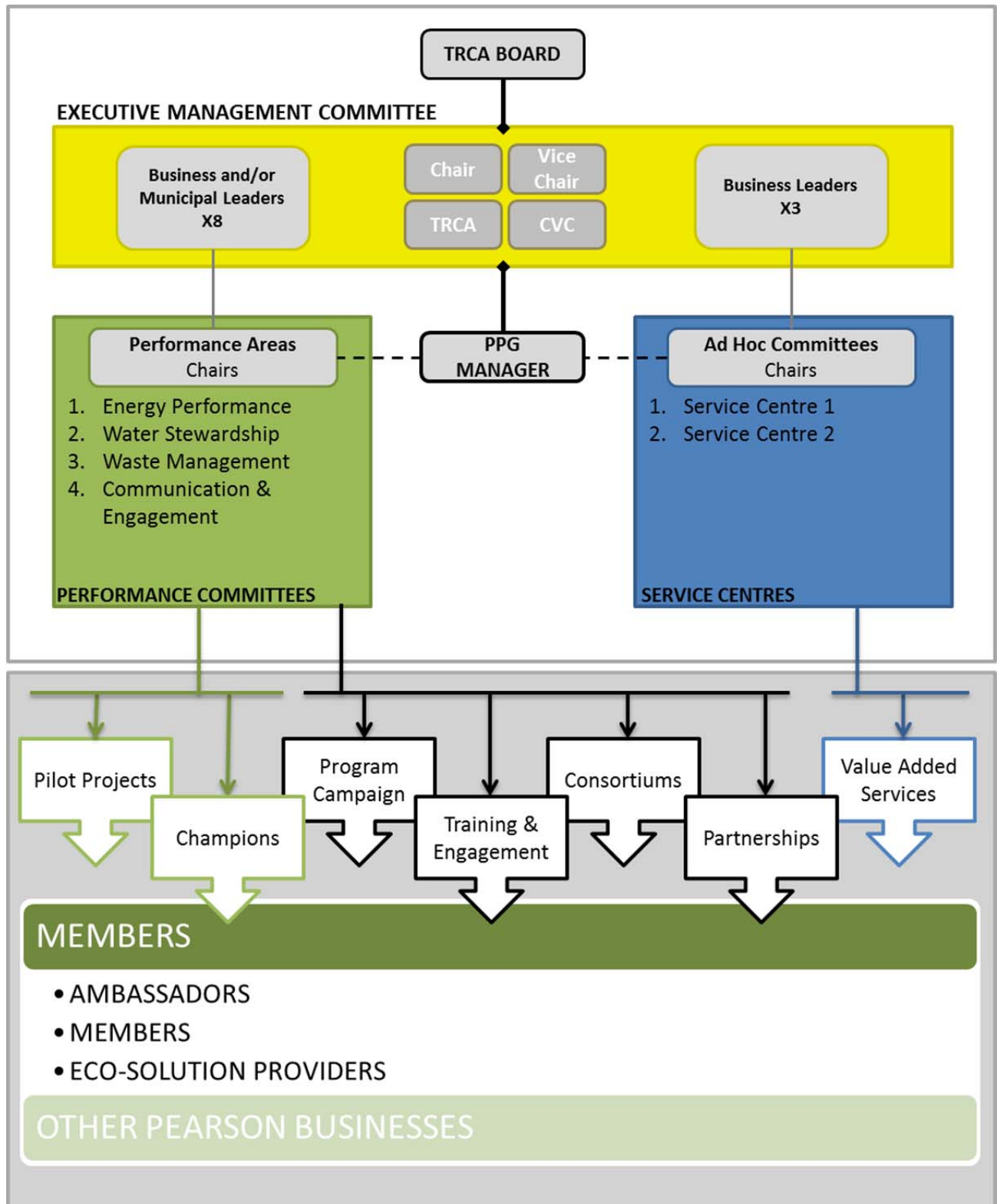


Figure 2 - Governance Delivery Chain

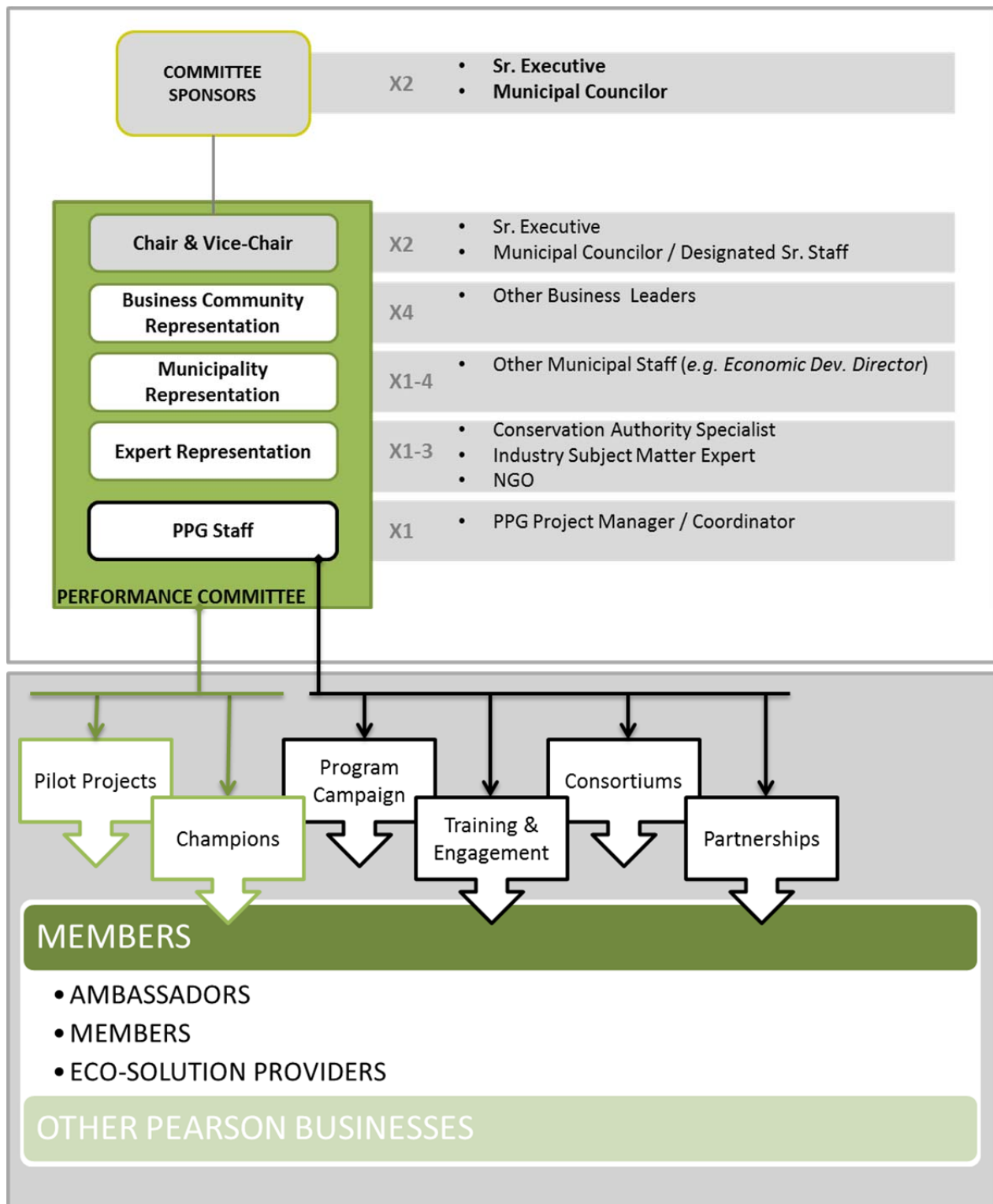


Figure 3 – Typical Performance Committee Structure and Delivery Chain

Appendix 7 – Regional Watershed Alliance Terms of Reference

1.0 Background

Since the 1980s, Toronto and Region Conservation Authority's (TRCA, also known as the Authority) watershed and waterfront committees and task forces have been instrumental in supporting the development and implementation of TRCA's watershed management activities. The Rouge Comprehensive Basin Management Strategy (1988), was TRCA's first initiative supported by a citizen based "public committee." The 1989 Greenspace Strategy committed to a program of watershed strategy development for each of TRCA's watersheds in cooperation with a public advisory committee for each watershed. Over the past two decades, the Duffins-Carruthers Watershed Resource Group, Rouge Park Alliance, Don Watershed Regeneration Council, Humber Watershed Alliance and Etobicoke-Mimico Watersheds Coalition have played a significant role in building community stewardship capacity to help TRCA deliver on priorities of watersheds and waterfront. Watershed and waterfront residents and stakeholders are also engaged through Conservation Lands stewardship committees and integrated/multi-objective or sector-based programs such as Sustainable Neighbourhood Retrofit Action Plans (SNAP) and Partners in Project Green: A Pearson Eco-Business Zone (PPG).

TRCA's 2013-2022 Strategic Plan highlights regional sustainability challenges of increasing scope and scale - such as preparing for the impacts of climate change, transitioning to a low carbon economy, managing urbanization and growth pressures. The Plan also calls for regional engagement of a broad cross-section of the population at both local and regional scales within TRCA's jurisdiction. As such, in 2015, upon the completion of the existing terms for the Don, Humber and Etobicoke-Mimico watershed committees, the Authority directed staff to update TRCA's community-focused engagement model in light of new trends and opportunities in civic engagement and to facilitate the implementation of the Strategic Plan.

On June 23, 2017, at Authority Meeting #8/17, The Community Engagement Strategy along with a new citizen governance model was adopted. The new citizen governance model includes the Regional Watershed Alliance (RWA), and its subcommittees; Youth Council, Watershed/Waterfront Working Groups. An Indigenous Liaison Committee to the Board of Directors has also been approved as part of the proposed governance model (Figure 1). The RWA is a formal citizen advisory board of TRCA which will report to the Board of Directors on regular basis.

Authority Direction

Resolution #A178/17 from Authority Meeting #8/17, held on October 27, 2017.

2.0 Mission and Mandate

Mission: Create healthy watersheds and waterfront that achieve The Living City Vision of sustainable communities, regional biodiversity and healthy rivers and shorelines through advocacy, knowledge sharing and collective action.

Mandate: Reporting to the Board of Directors (Figure 1) and working closely with Toronto and Region Conservation Foundation, the Regional Watershed Alliance will be established as a subcommittee to TRCA with the purpose of:

<i>Advocacy</i>	Advocacy for awareness, policy innovation and action within members' sectors, communities and jurisdictions on regional and local environmental and sustainability issues.
<i>Advisory</i>	Input on TRCA initiatives, act as a sounding board to TRCA staff, and advise the Board of Directors on matters of community interest.
<i>Collective Action</i>	Priority setting and collective investment in key sustainability and environmental issues for cross-jurisdictional and cross-sectoral actions. Support and leadership to the development of platform and campaigns to bring actors and stakeholders together to drive solutions through collective action and resource sharing.
<i>Reporting</i>	Reporting on collective outcomes on regional sustainability to the public, TRCA municipal partners and stakeholders. Reporting to the Board of Directors on its work.

3.0 Roles and Responsibilities

The Regional Watershed Alliance shall:

- 1) Adhere to the basic principles of sound ecosystem management and sustainability that recognizes the interrelationships between cultural heritage, physical characteristics, biological conditions and economic needs, and the integration of conservation, restoration, social and economic activities necessary for the health of the watersheds;
- 2) Forge partnerships and collaborations that build our collective capacity to advance the goals of TRCA's Strategic Plan: Building The Living City 2013-2022, and provide a platform for collective action on cross-jurisdictional and cross-sectoral priorities;
- 3) Work with staff in setting regional and local priorities that help advance TRCA's and its municipal partners objectives of sustainable communities, recommendations of TRCA's 2017 Community Engagement Strategy, watershed plans, watershed report cards and The Living City Report Card;
- 4) Advocate on regional and local environmental policy issues through discussion papers, briefs and comments etc. and providing advice and comments to staff and the Board of Directors on relevant programs and policies impacting TRCA watersheds and communities. Examples include: TRCA's Terrestrial Natural Heritage System Strategy; Sustainable Near-urban Agriculture Policy; watershed plans; TRCA Trails Strategy; and TRCA Greenspace Strategy;
- 5) Implement the recommendations of the Toronto and Region Remedial Action Plan as they pertain to the TRCA waterfront and watersheds;
- 6) Work collaboratively with TRCA staff and partners to develop state of the watershed reports and The Living City Report Card which will address jurisdiction-wide sustainability issues;
- 7) Through watershed forums, events and on-line engagement, provide a forum for

- watershed communication by maintaining and enhancing contacts within the community. Mobilize and empower networks of local communities to build capacity and influence people's behavior;
- 8) Act as a resource to TRCA, TRCA's municipal partners and Toronto and Region Conservation Foundation by providing advice on matters of community interest;
 - 9) Work with TRCA and Toronto and Region Conservation Foundation to identify priorities, seek new partnerships, public sector investment and other sources of funding;
 - 10) Where appropriate, and when requested, serve as a spokesperson for media and government relations on behalf of staff;
 - 11) Establish subcommittees/working groups or standing committees as needed, the Watershed/Waterfront Working Groups and Youth Council, and collaborate with the Indigenous Liaison Committee as needed;
 - 12) Seek political support at all levels of government;
 - 13) Collaborate with other conservation authorities, municipalities, environmental non-government organizations (ENGO) and groups on opportunities that transcend TRCA jurisdictional boundaries;
 - 14) Maximize the collective impact of TRCA and other environmental and sustainability champions in the region through resource and data sharing, measuring, and reporting on regional priorities; and
 - 15) Report to the Board of Directors on a regular basis.

4.0 Structure

Supported by TRCA staff, the Regional Watershed Alliance will have a Chair, Vice-Chair, and will be comprised of approximately 45 voting members.

4.1 Membership

4.1.1 Voting Members

The Regional Watershed Alliance members will be recruited based on a diverse skill set, sector and community specific expertise, network connections, demonstrated leadership, experience, and knowledge of the watersheds within TRCA's jurisdiction.

- **Toronto and Region Conservation Authority** (up to five voting representatives, Ex-officio)
 - Preferably one representative from each of TRCA's appointing member municipalities from the Board of Directors or interested members.

- **Watershed Residents** (up to 20 voting representatives)
 - Up to 20 watershed residents selected from across TRCA's nine watersheds and waterfront, having equal geographical and demographic representation.
- **Sector Experts and Organizations** (up to 10 voting representatives)
 - Up to 10 members from non-government, think-tanks, business and special interest groups, representing diverse sectors including youth and Indigenous groups.
- **Municipal Representatives** (up to eight voting representatives, Ex-officio)
 - Representatives of municipalities within TRCA's jurisdiction. These representatives could be political representatives representing the municipality or an Environmental Advisory Committee (EAC) representative. Non-voting senior staff liaison can also be appointed.
- **Provincial Representative** (up to one voting representative, Ex-officio)
 - Up to one political representative or senior staff from the Province of Ontario.
- **Federal Representative** (up to one voting representative, Ex-officio)
 - Up to one local political representative or senior staff from the Government of Canada.

4.1.2 Non-Voting Experts

In addition to voting members, one to two non-voting experts with extensive experience in public sector or subject matter expertise can be invited to join to the Regional Watershed Alliance. These experts could be former TRCA or other conservation authority (CA) staff and are not required to be a resident of TRCA's watersheds.

4.1.3 Guests

The Regional Watershed Alliance meetings are open to the public. Municipal or other agency staff may be invited as guests to offer presentations or participate in discussions on relevant issues. Guests will not have voting privileges nor be eligible for travel expenses to and from meetings.

4.1.4 Chair or Vice-Chair

The Chair and Vice-Chair of the Regional Watershed Alliance will be elected from amongst its members for the term of the Alliance. The Board of Directors may appoint an interim Chair until such time as an election can take place. The voting procedures used will be that outlined in TRCA's Rules of Conduct.

The Regional Watershed Alliance Chair and Vice-Chair will provide leadership in building a shared vision and commitment for moving forward with the Regional Watershed Alliance's mission, mandate and responsibilities.

The Chair will have the following additional responsibilities:

- Presiding over Regional Watershed Alliance meetings, setting the agenda and generally ensuring the effectiveness of meetings; and
- Recruiting new members to the Regional Watershed Alliance when openings arise.

In the absence of the Chair, the Vice-Chair will perform the above functions.

4.2 Appointment Process

4.2.1 Board of Directors Representatives

Board Members will be appointed by the Board of Directors as Ex-officio voting representatives.

4.2.2 Watershed Residents

Applications from watershed residents will be solicited through direct recruitment, announcements in newsletters, local newspapers, web sites, volunteer networks, and through various social media platforms. A committee of TRCA staff and/or board members will select the Regional Watershed Alliance resident members through the application process using a set of criteria to ensure suitability and eligibility.

4.2.3 Sector Experts and Organizations

Select organizations and agencies will be requested by TRCA to appoint a representative.

4.2.4 Municipal Representatives

Formal request for appointment of municipal representatives will be made to municipal councils. These representatives will be Ex-officio members.

Provincial and Federal representatives

Federal and provincial representatives (member of Parliament or staff) with specific interest in TRCA's work and jurisdiction in the TRCA watersheds/waterfront will be invited to participate as Ex-officio members.

4.3 Term of Appointment

Regional Watershed Alliance will be established with a revolving term of up to four years. Members will be appointed for a two term with a possible extension of up to two more years. This will allow for a staggered replacement process maintaining a balance between new and experienced members. The membership will be reviewed on an annual basis. Members, excluding Ex-officio members, unable to fulfill their commitments may be replaced as per the Board of Directors Administrative By-law.

Notice of resignations and recommendations for new members will be presented to the Board of Directors for approval on an 'as required' basis.

4.4 Meetings

Members are required to attend quarterly evening meetings of the Regional Watershed Alliance and one annual Watershed Forum. Meetings are expected to be approximately three hours in length, at the discretion of the Regional Watershed Alliance. An agenda will be circulated in advance of meetings.

The Chair will have the discretion to call additional meetings, if required. Additional meetings may be required to deal with specific issues from time to time. Some meetings may be held during regular work hours depending on the preference and availability of members and staff or via conference call or online meetings.

Light meals and refreshments will be provided at evening meetings.

4.5 Reporting

The Regional Watershed Alliance is considered an advisory board of TRCA. The Regional Watershed Alliance will report to the Board of Directors on projects and progress through their meeting minutes or seek Board of Directors approval as necessary on specific initiatives.

The Regional Watershed Alliance is not a formal commenting body regarding review and approval of planning applications or permits.

4.6 Quorum and Governance

A quorum will consist of voting members in numbers greater than or equal to one-third of the total number of voting members on the Regional Watershed Alliance.

Consensus-based decision making will be the preferred procedure. Formal decisions will be based on a simple majority vote. In the event of a tie, the vote fails.

4.7 Rules of Conduct

The Regional Watershed Alliance will adhere to the Board of Directors Administrative By-law as adopted by Resolution #___ at Authority Meeting #___, held on ___, and as amended periodically or superseded by any bylaws enacted as per the *Conservation Authorities Act*. Other policies and legislation may be applicable in regard to code of conduct, conflict of interest and Volunteer Policy.

4.8 TRCA Staff Support

The Regional Watershed Alliance will be supported by a team of staff from Watershed Strategies Division including:

- Director, Watershed Strategies;
- watershed specialists;
- projects managers;
- administrative support staff.

Staff will provide the following support functions:

- Coordination of Regional Watershed Alliance meetings;
- Administrative and financial support;
- Strategic guidance on alignment of RWA work plan priorities with other strategic opportunities;
- Coordination of work with the Toronto and Region Conservation Foundation;
- Toronto and Region Conservation Foundation support for management of any funds collectively raised by the Regional Watershed Alliance or any of its subcommittees that support the implementation of their work plans; and
- TRCA technical expertise on projects and initiatives of the Regional Watershed Alliance and its subcommittees.

4.9 Funding

Funding will be available for projects and activities of the Regional Watershed Alliance based on approved work plans and available TRCA budget. Members are encouraged to assist in securing other resources and partnerships for Regional Watershed Alliance projects and activities, whenever possible through collective public investment opportunities. In-kind or other support for the projects and activities of the Alliance are welcome from businesses, industries, government agencies, private foundations, educational institutions and others in accordance with TRCA policies. In-kind or other support will be coordinated with the assistance of Toronto and Region Conservation Foundation, where appropriate.

5.0 Compensation For Regional Watershed Alliance Members

At regular Regional Watershed Alliance meetings, as well as Watershed/Waterfront Working Groups, members will be eligible for travel expenses and any other expenses approved in advance by TRCA's Director, Watershed Strategies, according to TRCA policy, where these are not covered by their agency or other source. As per the Board of Directors Administrative By-law, Incidental childcare expenses as a result of attending Regional Watershed Alliance meetings or authorized business may be reimbursed where the Chair of the Alliance deems financial hardship would otherwise result, and such expenses shall be pre-approved by the Chair. The TRCA policy on volunteers is also applicable and can be accessed at: <http://trca.on.ca/get-involved/volunteer/volunteers-and-interns.dot>. Members shall not receive a per diem or honorarium for attendance at meetings and functions.

6.0 Watershed/Waterfront Working Groups

The watershed/waterfront working groups will be subcommittees of the RWA and formed as deemed appropriate by the Regional Watershed Alliance. These committees may solicit local community representatives or experts to participate as needed. Mandate of these subcommittees can be watershed-wide or specifically focused around projects such as watershed plans. The Watershed/Waterfront Working Groups will report to the Regional Watershed Alliance. The supporting TRCA staff will coordinate regular reports to the Regional Watershed Alliance on the activities of these groups.

Items pertaining to the working groups will be a standing item on the agenda of Regional Watershed Alliance meetings.

7.0 Youth Council

The Youth Council will be comprised of community youth champions, existing youth group representatives and new recruits. The Youth Council will report to the Regional Watershed Alliance.

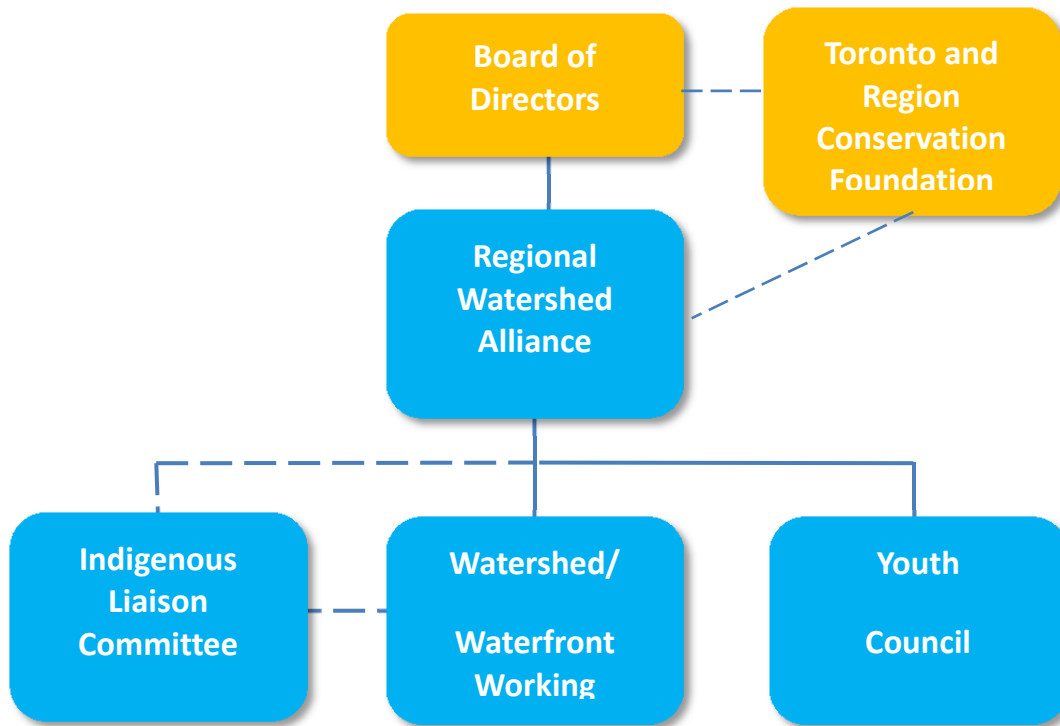
The mission, mandate and goals, along with the Terms of Reference for the working groups, Youth Council will be developed by TRCA and the Regional Watershed Alliance in consultation with relevant stakeholders.

8.0 Indigenous Liason Committee

The Indigenous Liaison Committee will be comprised of members and experts from different Indigenous communities in TRCA's jurisdiction. They will liaise on Indigenous interests and help build stronger relationships between TRCA and the larger Indigenous population in the jurisdiction. This Committee will advise the Board of Directors and staff on matters of community interest and liaise with the Regional Watershed Alliance on mission-driven collective projects. The Committee will not have a reporting relationship with the Regional Watershed Alliance or the Board of Directors.

The member(s) of this Committee may have membership on the Regional Watershed Alliance. This Committee will have opportunities to work with the Watershed/Waterfront Working Groups and Youth Council. TRCA staff and relevant stakeholders will collaborate on the development of a Terms of Reference for this Committee

Figure 1: TRCA Citizen Governance Model



Appendix 8 – Toronto and Region Outdoor Education Task Force Terms of Reference

1. Context

- 1.1.** Establishment of a multi-stakeholder task force to develop and recommend strategic future directions related to out-of-class learning in the Toronto region.
- 1.2.** Meet the future needs of the student population in the Toronto region as it relates to outdoor education, and ensure equity of access to programs and services.

2. Objectives

- 2.1.** Develop and identify strategic priorities and make recommendations related to the long-term provision of out-of-class learning experiences that meet the needs of student populations in the Toronto region to the year 2040.
- 2.2.** Provide recommendations to strengthen and enable partnerships and collaboration between public sector agencies that maximize the use and value of public assets and infrastructure.
- 2.3.** Provide expertise and recommendations on strengthening experiential connections between the urban and natural environments, with consideration for the impact of urban intensity on student access to greenspace and natural systems.
- 2.4.** Provide recommendations related to long-term financial sustainability, including, but not limited to:
 - 2.4.1.** Government funding programs;
 - 2.4.2.** Private grants, fundraising and endowments;
 - 2.4.3.** Alternative business models (co-operatives, social enterprises, etc.);
 - 2.4.4.** Other funding models.

3. Authority and Boundaries

- 3.1.** To study and make recommendations to the TRCA Board of Directors on improvements and future needs related to outdoor education in the Toronto region.
- 3.2.** The minutes of the Task Force will be received by the Board of Directors.
- 3.3.** The work of the Task Force is to meet needs located wholly or partially within the school boards of TRCA's municipalities.

4. Composition and Elections

- 4.1.** Membership to consist of:
 - 4.1.1** School Board Trustee from each of the area school boards (11);
 - 4.1.2** Board Member representing each participating municipality (five).
- 4.2.** Term of appointment is 18 months.
- 4.3.** The Chair and Vice-Chair will be elected from amongst its Members for the term of the Task Force. The Board of Directors may appoint an interim Chair until such time as an election can take place. The voting procedures used will be that outlined in the Board of Directors Administration By-law.
- 4.4.** Establish subcommittees/working groups or standing committees as needed.

5. Resources and support

- 5.1** TRCA staff to act as Clerk, arranging meeting logistics, preparing the agenda, maintaining meeting minutes, tracking and delegating action items, with support from the Clerk's Office.
- 5.2** Director, Education, Training and Outreach to provide general support in regards to the activities and actions of the Task Force.
- 5.3** At regular Task Force meetings, Members will be eligible for travel expenses and any other expenses approved in advance by TRCA's Director, Education, Training and Outreach, according to TRCA policy, where these are not covered by their agency or other source. Members shall not receive a per diem or honorarium for attendance at meetings and functions.

6. Expectations of each member

- 6.1** Work collaboratively with Task Force Members to study and develop recommendations related to the mandate.
- 6.2** Represent their school board;
- 6.3** Board Members to represent the interest of TRCA and/or those of their participating municipality;
- 6.4** Attend meetings to be held bi-monthly, or more frequently as required;
- 6.5** Act as a resource to TRCA, TRCA's municipal partners and Toronto and Region Conservation Foundation by providing advice on matters of community interest;
- 6.6** Collaborate with other conservation authorities and lower tier municipalities on opportunities that transcend TRCA jurisdictional boundaries;
- 6.7** Maximize the collective impact of the Task Force through resource and data sharing, measuring, and reporting on regional priorities;
- 6.8** Report to the Board of Directors on a regular basis.

7. Roles of specific members

- 7.1** The Chair will have the following additional responsibilities:
 - 7.1.1** Presiding over Task Force meetings, setting the agenda and generally ensuring the effectiveness of meetings;
 - 7.2.1** In the absence of the Chair, the Vice-Chair will perform the above functions.

8. Governance

- 8.1** Chair to set agenda for meetings.

8.2 Quorum to consist of one-half of the Members. If there is no quorum within one half hour after the time appointed for the meeting, the Chair for the meeting shall declare the meeting adjourned due to a lack of a quorum, or shall recess until quorum arrives, and the Clerk shall record the names of the Members present and absent. If during a meeting a quorum is lost, then the Chair shall declare that the meeting shall stand recessed or adjourned, until the date of the next regular meeting or other meeting called in accordance with the provisions of the Board of Directors Administrative By-law. Agenda items may be covered and presented and issues discussed, but no formal recommendation may be made by the remaining Members which do not constitute a quorum.

8.3 Task Force is an advisory board of the Board of Directors and as such does not have decision-making power, but shall make recommendations to the Board of Directors.

9. Communication

9.1 The Task Force makes recommendations to the Board of Directors.

9.2 Each member reports back to their appointing agency as required.

Appendix 8 – Related Documents

This By-law references the following TRCA policy documents:

1. Signing Officers
2. Records Management
3. Open Information and Data
4. Indemnification
5. Use of Resources During an Election
6. Workplace Harassment
7. Conflict of Interest - Employee Participation in Municipal, Provincial or Federal Elections
8. Sustainable Near-urban Agriculture
9. Accounts Receivable
10. Employee Business Expenses, Travel and Conference Protocols
11. Volunteer

Appendix 9 – Sections of the *Conservation Authorities Act*

Section 19

By-laws

19.1 (1) An authority may make by-laws,

- (a) respecting the meetings to be held by the authority, including providing for the calling of the meetings and the procedures to be followed at meetings, specifying which meetings, if any, may be closed to the public;
- (b) prescribing the powers and duties of the secretary-treasurer;
- (c) designating and empowering officers to sign contracts, agreements and other documents on behalf of the authority;
- (d) delegating all or any of its powers to the executive committee except,
 - (i) the termination of the services of the secretary-treasurer,
 - (ii) the power to raise money, and
 - (iii) the power to enter into contracts or agreements other than those contracts or agreements as are necessarily incidental to the works approved by the authority;
- (e) providing for the composition of its executive committee and for the establishment of other committees that it considers advisable and respecting any other matters relating to its governance;
- (f) respecting the roles and responsibilities of the members of the authority and of its officers and senior staff;
- (g) requiring accountability and transparency in the administration of the authority including,
 - (i) providing for the retention of records specified in the by-laws and for making the records available to the public,
 - (ii) establishing a code of conduct for the members of the authority, and
 - (iii) adopting conflict of interest guidelines for the members of the authority;
- (h) respecting the management of the authority's financial affairs, including auditing and reporting on the authority's finances;
- (i) respecting the by-law review required under subsection (3) and providing for the frequency of the reviews; and
- (j) respecting such other matters as may be prescribed by Regulation.

Conflict with other laws

(2) If a by-law made by an authority conflicts with any provision of the *Municipal Conflict of Interest Act* or the *Municipal Freedom of Information and Protection of Privacy Act* or a provision of a regulation made under one of those Acts, the provision of the Act or regulation prevails.

Periodic review of by-laws

(3) At such regular intervals as may be determined by by-law, an authority shall undertake a review of all of its by-laws to ensure, amongst other things, that the by-laws are in compliance with any Act referred to in subsection (2) or any other relevant law.

By-laws available to public

(4) An authority shall make its by-laws available to the public in the manner it considers appropriate.

Transition

(5) An authority shall make such by-laws under this section as are required for its proper administration,

- (a) in the case of an authority that was established on or before the day section 16 of Schedule 4 to the *Building Better Communities and Conserving Watersheds Act, 2017* comes into force, within one year of that day; and
- (b) in the case of an authority that is established after the day section 16 of Schedule 4 to the *Building Better Communities and Conserving Watersheds Act, 2017* comes into force, within one year of the day the authority is established.

Same

(6) Despite the repeal of section 30 by section 28 of Schedule 4 to the *Building Better Communities and Conserving Watersheds Act, 2017*, a regulation that was made by an authority under that section continues in force after the repeal until the earlier of,

- (a) the day that is one year after the day section 16 of Schedule 4 to the *Building Better Communities and Conserving Watersheds Act, 2017* comes into force; and
- (b) the day the regulation is revoked by the authority.

Direction by Minister

(7) The Minister may give an authority a written direction to make or amend a by-law on any matter described in subsection (1), in accordance with the direction, within such period of time as may be specified in the direction.

Compliance

(8) The authority that receives a direction under subsection (7) shall comply with the direction within the time specified in the direction.

Regulation where failure to comply

(9) If an authority fails to adopt a by-law in accordance with the direction made under subsection (7), the Minister may make regulations in relation to the matters set out in the direction that are applicable in the area of jurisdiction of the authority.

Same

(10) Any regulation made by the Minister under subsection (9) prevails over any conflicting by-law that the authority may have adopted.

Section 21(1)

Programs and services

21.1 (1) The following are the programs and services that an authority is required or permitted to provide within its area of jurisdiction:

1. Mandatory programs and services that are required by regulation.
2. Municipal programs and services that the authority agrees to provide on behalf of municipalities situated in whole or in part within its area of jurisdiction under a memorandum of understanding referred to in subsection (3).
3. Such other programs and services as the authority may determine are advisable to further its objects. 2017, c. 23, Sched. 4, s. 20 (1).

Mandatory programs and services

- (2) Programs and services referred to in paragraph 1 of subsection (1) shall be provided in accordance with such standards and requirements as may be set out in the regulations. 2017, c. 23, Sched. 4, s. 20 (1).

Memorandum of understanding with municipalities

- (3) An authority may enter into a memorandum of understanding with a municipality situated in whole or in part within its area of jurisdiction in respect of programs and services that the authority will provide on behalf of the municipality. 2017, c. 23, Sched. 4, s. 20 (1).

Note: On a day to be named by proclamation of the Lieutenant Governor, section 21.1 of the Act is amended by adding the following subsection: (See: 2017, c. 23, Sched. 4, s. 20 (2))

Memorandum available to public

- (3.1) An authority shall make a memorandum of understanding referred to in subsection (3) available to the public in such manner as may be determined in the memorandum. 2017, c. 23, Sched. 4, s. 20 (2).

Periodic review of memorandum

- (4) An authority and a municipality who have entered into a memorandum of understanding described in subsection (3) shall review the memorandum at such regular intervals as may be determined by the memorandum. 2017, c. 23, Sched. 4, s. 20 (1).

Municipal programs and services

- (5) Programs and services that an authority agrees to provide on behalf of a municipality shall be provided in accordance with the terms and conditions set out in the memorandum of understanding or in such other agreement as may be entered into by the authority and the municipality. 2017, c. 23, Sched. 4, s. 20 (1).

Consultation

- (6) An authority shall carry out such consultations with respect to the programs and services it provides as may be required by regulation and shall do so in the manner specified by regulation. 2017, c. 23, Sched. 4, s. 20 (1).

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

2017, c. 23, Sched. 4, s. 20 (1) - 12/12/2017; 2017, c. 23, Sched. 4, s. 20 (2) - not in force

Note: On a day to be named by proclamation of the Lieutenant Governor, the Act is amended by adding the following section: (See: 2017, c. 23, Sched. 4, s. 21)

20 Questions Directors of Not-For-Profit Organizations Should Ask About **Fiduciary Duty**

Jane Burke-Robertson, B.SOC. SCI., LL.B.

How to use this publication

Each “20 Questions” publication is designed to be a concise, easy-to-read introduction to an issue of importance to directors. The question format reflects the oversight role of directors which includes asking a lot of questions.

The questions are intended to be relevant to most not-for-profit organizations. The “answers” or comments that accompany the questions summarize the legal background as well as current thinking on the issues and practices of not-for-profit governance. Examples and recommended practices are provided to help directors apply the information provided to their specific circumstances.

Readers who want more details on specific topics may refer to the section on “Where to Find More Information.” Most of the CICA 20 Questions series of publications for directors were written for business boards but are relevant to not-for-profit boards.

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INSTITUTE
OF CORPORATE
DIRECTORS

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This publication was originally published by The Canadian Institute of Chartered Accountants in 2009. It has been reissued by Chartered Professional Accountants of Canada.

DISCLAIMER

This publication is provided for general information and convenience only, and does not constitute legal advice. The law governing fiduciary duty varies from jurisdiction to jurisdiction and is subject to change, and legal advice must always be tailored to the situation at hand. Readers should seek appropriate, qualified professional advice about any particular situation before acting or omitting to act based upon any information provided through this publication.

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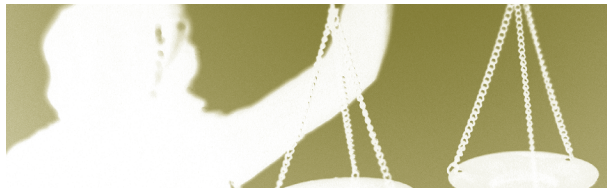
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Preface

The Risk Management and Governance Board of the Canadian Institute of Chartered Accountants (RMGB) has developed this briefing to help members of not-for-profit boards of directors understand and fulfill their fiduciary duties.

Directors of not-for-profit organizations in Canada are faced with a confusing array of duties and obligations, and yet successful fulfillment of their fiduciary role is critical both in terms of the wellbeing of the organization, and in order to protect themselves from liability.

Not-for-profit organizations are very diverse and range from small all-volunteer groups to large, sophisticated enterprises. This publication will focus on the fiduciary duties of directors of organizations in the corporate form, both those that are registered charities and those that are not.

The law on directors' duties is complex and this paper is a general overview of the subject. Directors should seek expert advice on particular issues as they arise.

The Risk Management and Governance Board acknowledges and thanks the members of the Not-for-Profit Organizations Task Force for their invaluable advice, Jane Burke-Robertson, who wrote this briefing under their guidance, and the CICA staff who provided support to the project.

Brian Ferguson, CA
Chair, Risk Management and Governance Board

Introduction

Directors of not-for-profit organizations have various duties and responsibilities. The most fundamental of these responsibilities is the duty of directors to act in the best interests of the organization they serve at all times, even at the expense of their own self-interest. This is known as a fiduciary duty.

The term “fiduciary” is a legal term intended to refer to a person who, because of the position they hold, has a responsibility to act primarily for another’s benefit. There are many different types of fiduciaries but this publication will focus on the role of directors as fiduciaries and the specific responsibilities involved.

Directors are sometimes referred to as the “directing mind” behind the organization they serve. Directors are the “public face” of an otherwise artificial structure. For this reason, the law and the public look to the directors to ensure accountability.

But where do these duties come from? Some of these duties and responsibilities are codified in written laws in the form of statutes, while others are not. Much of the material on this subject is part of the common law and is generated through court decisions. While the law varies to some degree across the country, the basic fiduciary duties of directors are substantially the same.

Many not-for-profit organizations are not incorporated. Some are established as trusts, while others exist as ‘unincorporated associations’. Whatever the title, and whatever the type of organization, there are some similarities with respect to the legal duties, responsibilities, and obligations of directors and trustees. However, there are some important differences as well, so it is advisable to understand the type of organization one is involved with.

What is a not-for-profit corporation? A corporation is an entity recognized by the law as having its own separate identity and it exists as a separate legal “person”. It is independent of the directors, officers, and members of the corporation and is responsible separately for its own debts and obligations. As such, the liability of directors, officers and members is limited by reason of the separate legal existence of the corporation. It is subject to written laws in the

form of corporations’ legislation.¹ This legislation also sets out certain duties, responsibilities and liabilities of the corporation’s directors. In the context of not-for-profits, corporations are incorporated as non-share corporations so that instead of shareholders, not-for-profit corporations have members.

What is an unincorporated association? An unincorporated association is a group of individuals that come together for a common purpose. The association has no legal identity separate from the people who make up the association. Unlike a corporation, there is no legislation governing unincorporated associations which provides legal protection to the individuals involved. Instead, individuals involved in unincorporated associations must rely on laws made by the courts. Often the individuals involved in an unincorporated association will write a contract (sometimes called a constitution) to set out how the organization is to be managed and/or operated. This does not create a separate identity for the association; but rather defines the legal relationship among the individuals (or members) of the association.

What is a trust? A trust is a type of legal relationship which is created when one or more persons holds legal title to property, but another person or persons has the right to the enjoyment or benefit from that property. Trusts are sometimes used for charitable purposes so that a group of persons (trustees) holds charitable property which must be used for charitable purposes (or public benefit). The powers and duties of the trustees are spelled out in the trust document and in provincial trustees’ legislation. Trustees are exposed to personal liability in the conduct of their position as trustees.

When getting involved with an organization, it is important to find out what type of organization it is. Ask the following preliminary questions:

- Is the organization incorporated? If not, what type of organization is it?

¹ See in Alberta *Societies Act* R.S.A. 2000 Chapter S-14, in British Columbia *Society Act*, R.S.B.C. 1996, c. 433, under federal jurisdiction, *Canada Corporations Act*, R.S.C. 1970, c. C-32, in Manitoba, *The Corporations Act*, R.S.M. 1987, C. C225, in New Brunswick, *Companies Act*, R.S.N.B. 1973, c. C-13, in Newfoundland *Corporations Act*, R.S.N.L. 1990, c. C-36, in Northwest Territories and Nunavut, *Societies Act*, R.S.N.W.T. 1988, c. S-11, in Nova Scotia, *Societies Act*, R.S.N.S. 1989, c. 435, in Ontario *Corporations Act*, R.S.O. 1990, c. C38, in Prince Edward Island, *Companies Act*, R.S.P. E. I. 1988, c. C-14, in Quebec, *Companies Act*, R.S.Q. 1977, c. C-38, in Saskatchewan, *The Non-profit Corporations Act*, 1995, S.S. 1995, c. N-4.2 and in the Yukon, *Societies Act*, R.S.Y. 2002, c. 206.

- If the organization is incorporated, under what jurisdiction? (i.e. Ontario, Saskatchewan, Canada, etc.)
- Can I review a copy of the legal documents setting up the organization, e.g. letters patent and by-laws?
- Is the organization a registered charity under the *Income Tax Act*?

The discussion that follows will focus on the fiduciary duties of directors of not-for-profit organizations, particularly organizations in the corporate form. While it will refer to some potential liabilities faced by directors of not-for-profit organizations, the liability of directors will not be the focus of this publication. The law on directors' duties is complex and this paper is a general overview of the subject. Directors should seek expert advice on particular issues as they arise.



1. What is the role of a director of a not-for-profit organization?

A director is a person who participates in the administration, guidance, and supervision of the affairs of an organization by being part of the governing body of the organization—the board of directors. A director, in the not-for-profit context, is one person in a collective body that governs the organization and provides strategic leadership for the organization. In most provinces and territories in Canada, a not-for-profit corporation must have at least three (3) directors. The title may not even be ‘director’. The title could be governor, trustee, or administrator.

In a small organization, the directors may not only set the direction for the organization, they may be involved in the day-to-day management of the organization. A director may also have separate roles as an officer and perhaps as a member of the organization.

Directors have an overall responsibility for the organization and the strategy for achieving its legal purpose. As a director, it is essential to understand why the organization exists, how it is legally structured, the interests of its stakeholders and how it manages the risks it faces. Directors should also be involved in the approval of, and at times the development of, the strategic plan.

FOR MORE INFORMATION SEE THE CICA PUBLICATION *20 QUESTIONS NOT-FOR-PROFIT DIRECTORS SHOULD ASK ABOUT GOVERNANCE*

Each province and territory in Canada has its own statute that sets out the rules that both the not-for-profit corporation and its directors must follow. The same is true for federal not-for-profit corporations. Similarly each jurisdiction also has its own ‘standard’ against which directors are judged. For example, in some provinces directors are held to the same standard (which is called an objective standard) while in others directors are judged against their own abilities, experience, and education (called the subjective standard). This can mean that some directors will be judged at a higher standard than other directors—within the same corporation and sitting on the same board of directors. This will be discussed below.

2. Are there different kinds of directors?

A “true” director of a not-for-profit organization is an individual who is elected or appointed to sit on the board of directors of the organization and who has full voting privileges as a director.

Individuals who sit on an advisory board, or who are *ex-officio* non-voting or honorary directors, are generally in a different legal position than “true” directors.

Ex-officio directors are individuals who qualify as board members by virtue of their office. In other words, the by-laws usually say that they are entitled to be directors by reason of holding some other office. Also, depending on the by-law, they may be voting or non-voting. An example of a by-law provision providing for an *ex-officio* non-voting director is:

The President of ABC Non-Profit corporation shall be entitled to be a non-voting director of XYZ Non-Profit Corporation, *ex-officio*.

An honorary director is often an individual who is given the title as appreciation for their service and is usually a non-voting director. An advisory board consists of individuals (often past directors) not actively involved with the organization but that provide advice to the board as needed.

Whatever title is given, technically speaking, a “director” who does not have voting privileges is not a director and does not have the same duties and responsibilities as a voting director. That said, if a non-voting director or other individual acts like a voting director, making decisions along with the rest of the board, there is a risk that he or she could be found by a court to be subject to the same fiduciary duties and other obligations as well as liabilities as an elected or appointed director.

A non-voting director is generally permitted to attend but not vote at board meetings, and may or may not be entitled to attend in-camera meetings of the board. However, if the limitations on the role, duties, and rights of a non-voting director are not clearly set out in the by-laws of the organization, *ex-officio*, honorary or advisory directors may be mistaken for full directors and run the risk of being treated by the courts as such should anything happen.

Example

Jasmine has spent many years volunteering on behalf of Small Town Ontario Figure Skating Club and has acquired a tremendous amount of knowledge about the organization. Jasmine does not want to be a director of the organization, so in appreciation for her many years of hard work, the organization suggests that Jasmine take the role of honorary director. She is invited to attend board meetings and provide her views on the matters the board must discuss—including the direction the skating club will take over the next several years. However, Jasmine is not entitled to vote on any matters discussed by the board.

Considerations: Do the by-laws of the organization provide for honorary directors? If so, are the duties of this role clearly set out? Could an outside observer mistake Jasmine for a “true” director and assume that she is a director like all the others?

Issue: Pierre and Manon collide at centre ice when each is practicing for an upcoming competition. Manon suffers a concussion and Pierre breaks his leg. Neither will be able to compete and will, arguably, not be spotted by the national coach looking for a new protégé.

Problem: If the by-laws of the organization do not clearly set out the rights and restrictions of an “honorary” director, there could be confusion about Jasmine’s role and even though neither she nor the organization intended for her to be a director, it could very well appear to others that she is a full director. If the organization and its directors are sued as a result of Pierre’s and Manon’s injuries, Jasmine may also be named as a defendant in the lawsuit.

3. What does an individual need to know before agreeing to become a director of a not-for-profit organization?²

Directors have various legal duties and obligations as well as liability risks associated with being a director. It is therefore important when thinking of becoming a director of an organization to consider a number of things. Asking the kinds of questions set out below will assist a potential director in acquiring the right kind of information about an organization before agreeing to become a director. Undertaking appropriate due diligence is an important part of agreeing to be a director and it will serve the organization well to understand the structure and other issues clearly. It is also important for a director to be knowledgeable in order to discharge the fiduciary obligations associated with being a director.

Think about the following issues and ask questions such as the following:

- What legal form does the organization take? Is it an unincorporated association? Is it a trust? Is it a corporation? It is important to be knowledgeable about the legal form of the organization.
- Is it a registered charity and if so, is its charitable registration in good standing? If the organization is a registered charity, it has additional and sometimes onerous compliance requirements under the *Income Tax Act* that directors should be aware of as a part of their duty of care and diligence.

Note: An organization could be incorporated as a not-for-profit organization with charitable purposes, but that does not mean that it is automatically a registered charity. Charitable registration takes 2 steps: first there must be an organization of some type, and second, that organization must apply for registration as a charity and must meet the criteria established in the *Income Tax Act* and through the courts in order to qualify as a charity.

Check the organization’s status as a charity at: <http://www.cra-arc.gc.ca>

- Does the organization have a board manual which you could review? Typically a board manual will include a copy of the letters

² Adapted from Chapter 1 of Industry Canada’s *Primer for Directors of Not-for-Profit Corporations*, listed in “Other Publications”.

patent, by-laws and operating policies and is a helpful resource.

- Is there a director code of conduct (usually includes a conflict of interest policy) which clearly outlines the expectations of the directors? This may or may not be part of a board manual.
- Is the mandate of the organization clear, i.e. why does it exist? What do the corporate objects say? Are its programs permitted by its objects? If the organization is carrying on programs that don't appear to be permitted by its objects, you could be exposing yourself to liability as a director.
- Where does the organization carry on its activities? If the organization carries on programs outside the country there could be additional compliance requirements.
- Do you have any existing conflicts of interest which could be problematic should you become a director? You should consider asking if there is an existing conflict of interest policy.
- Does the organization carry directors' and officers' liability insurance? This is an important consideration for most directors but it is also important to understand the kinds of things that are not covered by insurance.
- Does the organization have indemnification procedures in place for its directors? This would be in either the by-laws or policy and could entitle you to be indemnified in the event of a lawsuit involving the organization which names you personally. Some organizations are also prepared to provide directors with indemnification agreements which provides additional protection to directors (since by-laws and policy can be changed).

FOR MORE INFORMATION SEE
THE CICA PUBLICATION *LIABILITY
INDEMNIFICATION AND INSURANCE
FOR DIRECTORS OF NOT-FOR-PROFIT
ORGANIZATIONS*

- Ask questions about the structure of the organization, i.e. are there branches, chapters, and/or divisions? It is important to have an understanding of the size and structure of the organization.

- How many employees are there? Are there written contracts of employment with the organization?
- Is the organization up-to-date in the filing of its withholdings under the *Income Tax Act*? The organization has a duty to comply with statutory requirements under the *Income Tax Act* and the directors, as fiduciaries, must oversee its compliance. In addition, Subsection 227.1(1) of the *Income Tax Act* (Canada) imposes personal liability on directors for unremitted taxes. Directors of not-for-profit corporations must meet the same standard of care as their business counterparts if they want to avoid liability under subsection 227.1(1) of the *Income Tax Act*.

Depending on the information you obtain as a result of these inquiries, you may or may not agree to become a director of the organization you are considering. Don't be afraid to ask questions. Understanding the scope of an organization's activities and having a grasp on some of the important legal considerations is key to making a well-informed decision.

4. What is a "fiduciary"?

Directors of not-for-profit corporations are fiduciaries and are generally subject to the same common law fiduciary obligations as directors of business corporations.

A fiduciary is a person having a legal duty to act primarily for another person's benefit and is a person who (a) owes another person the duties of good faith, trust, confidence, and candor; and (b) must exercise a high standard of care in managing another's property. As a general matter, fiduciary duties are imposed by the law to protect those who are vulnerable from those who have power over them.

Why are directors in a fiduciary relationship? Because of the position they occupy within a corporation. The assets belong to the corporation which can only act through its directors.

Another example of a fiduciary relationship is a trust relationship. The trust property is held and owned by trustees who have complete control over it and the beneficiary is to all intents and purposes at the mercy of the trustees. The law

imposes a fiduciary duty on the trustees to safeguard the rights of the beneficiary.

Being a fiduciary means that directors will be held to high standards of good faith, fair dealing, and loyalty regarding the organization. The specific fiduciary duties are similar across corporate sectors (for-profit and not-for-profit) and have been imposed by statute in some Canadian jurisdictions. The standard of care against which directors' conduct is measured varies across the country.

5. What fiduciary duties do directors have?³

Directors' fiduciary duties can be divided into two main branches: the duty of care and duty of loyalty.

Duty of Care: Directors have a duty of competence i.e., a requirement to act with a certain level of skill. The duty of care describes the level of attention required of a director and can be described as a "duty to be informed" and to act with competence and diligence. A director must generally be informed about an issue before making a business decision relating to it. However, the law does not require directors to be experts but rather to act in accordance with a particular standard of care. The standard of care expected of directors is explained in questions 13 and 14.

It is also generally accepted that a heightened duty of care is owed by directors of a charitable not-for-profit corporation. For more information on the duty of care of directors of charities, see Question 14.

Duty of Loyalty: The duty of loyalty requires that a director act honestly and in good faith in the best interests of the organization. The duty of loyalty is a personal duty and cannot be delegated (the "no-delegation rule"). This means, among other things, that a director generally is not allowed to profit from his/her office and must avoid all situations in which his/her duty to the organization conflicts with his/her interests or duties to others (the "no-conflict" rule).

Example

A not-for-profit corporation's mandate is to work with underprivileged children. One of its projects is to sponsor underprivileged kids for summer camps. Scholarships are awarded to children who meet certain criteria developed by the board of directors. Gisele, a director on the board of directors, has a brother who has fallen on hard times and cannot afford to send his daughter to music camp this summer. Gisele's niece is a very talented pianist and the summer camp experience would help her improve her playing to the point where she might win a scholarship to university to study music. However, Gisele's niece does not meet the criteria for scholarships set by the board of directors.

Issue: Gisele could be in a conflict position. She has a fiduciary duty to the organization (a duty of care and a duty of loyalty). Even though she would prefer to recommend her niece for a scholarship, Gisele is required, by law, to do what is in the best interests of the not-for-profit corporation, rather than what is in the best interests of her niece.

Remember that directors retain many of their fiduciary duties even after they resign or retire. For example, competing with an organization for a lucrative contract which a director became aware of while on the board of an organization is a breach of the duty of loyalty. Similarly former directors should not disclose confidential information obtained while they were in office.

³ Adapted from Chapter 2 of Industry Canada's *Primer for Directors of Not-for-Profit Corporations*, listed in "Other Publications".

6. To whom are fiduciary duties owed?

It is important to keep in mind that directors owe a legal duty to the organization. Some people think that by joining the board of directors of an organization they will be in a position to help family and/or friends; however, they must keep the best interests of the organization ahead of their own personal interests or those of their family and friends at all times.

In a not-for-profit organization, the board of directors owes a fiduciary duty to the organization itself. Although directors are accountable to the members of the organization—the body who elected the directors and usually has the ability under the by-laws to remove the directors, directors do not owe the members a fiduciary duty. There are situations where the interests of the members and the interests of the organization are at odds and it is important to realize that directors' duty is to the organization, not to the members.

In a charitable organization, boards of directors are considered to have “trustee-like” attributes and they are subject to a fiduciary duty to act as a quasi-trustee of the general charitable property of the organization. These fiduciary duties are owed to the charitable purposes of the organization, the charity itself and some would argue even to its donors.

7. How can a director fulfill the duty of care?

The duty of care requires that directors pay attention and try to make good decisions for the organization.

This duty is comprised of the following responsibilities:

(a) The duty to act honestly

- Directors must deal honestly with the organization and not act for an improper purpose.
- Directors should also be candid about informing the chair if they can no longer afford the time commitment of being a director.

(b) The duty of diligence

- Directors must be diligent in attending to their legal duties. This is done by being familiar with the organization, being informed and by preparing for and attending meetings whenever possible.
- Where advice of a specialised nature is required, the board should obtain the services of qualified professionals.
- Directors should exercise their best judgment when voting on any decisions, and not simply vote with the majority for no well-informed reason.
- Directors must properly maintain minutes of the organization and ensure that all other corporate books and records are being maintained in proper order.

(c) The duty to exercise power

- Directors are ultimately responsible for the organization. Directors can breach their fiduciary duty through inaction and inattention. They are responsible for furthering the corporate goals and objectives. Directors must make decisions.
- Directors should develop standards for measuring performance of senior management and carry out annual performance reviews.
- In the case of a charity, funds received from the public for a specific charitable purpose must be held in trust for the charitable purpose and directors have an obligation to apply the funds or cause them to be applied in accordance with the charitable purpose.

(d) The duty of obedience

- Directors must comply with all applicable laws and the organization's governing documents (letters patent, by-laws etc.)
- Directors should ensure that corporate decisions are being implemented.



8. How can a director fulfill the duty of loyalty?⁴

The duty of loyalty is often considered the most important fiduciary duty and arises most often in the context of a conflict of interest. A conflict of interest can develop in two general ways:

- A personal conflict between the director's duty to act in the best interest of the organization and the director's own self-interest.

Example

- A director stands to gain financially from a proposed contract between the director (or his/her corporation or firm) and the organization; or
 - A director has a child, relative, or friend he/she would like to see benefit from the organization.
- A conflict of duties that the director owes to the organization he or she serves and to another organization.

Example

A director is the director of 2 corporations—and owes the same duty of loyalty to each—and the corporations are involved in one or more transactions.

The courts are very strict about the no-conflict rule as it relates to personal conflicts. Not only must a director avoid actual conflict, but also the appearance of conflict.

⁴ Adapted from Chapter 2 of Industry Canada's *Primer for Directors of Not-for-Profit Corporations*, listed in "Other Publications".

Fulfilling the duty seems simple enough:

1. Directors must act in the best interests of the organization and not their own interests; and
2. They must avoid situations in which they have competing fiduciary duties.

In other words, directors must not engage in transactions or conduct that creates a conflict between their duty to act in the best interests of the organization and their own personal interests—or the interests of another corporation to which they owe a fiduciary duty.

But not all situations in which directors find themselves are clear cut: Many organizations have directors who are in a conflict of interest immediately upon their election or appointment as a result of an inherent conflict (such as being a beneficiary of the organization's programs). Some of these conflicts of interest are unavoidable where a specific board composition is considered desirable and especially where the perspective of certain types of directors is important to running the corporation's programs. For example, it is easy to see why it may be desirable for the board of a golf club to include directors who are members of the club or for the directors of a school for disabled children to include parents of children attending the school. That said, it is important to remember that a director has continuing fiduciary obligations to the organization they serve even outside of the confines of a board meeting.

In order to help avoid conflict of interest situations, or deal with conflicts as they arise, the following tips may be useful:

- Remind yourself of the reason you wanted to join the organization as a director.
- Ask yourself who you want to benefit: the organization or yourself, a family member or friend.
- Your primary duty is to the organization. If you are going to benefit in some way (either directly or indirectly), then you will likely be in a conflict situation.
- If the organization has a conflict of interest policy, review it on a regular basis, understand it, and apply it to the situations you face as they come up.

Note that if the organization is charity, it may be necessary to seek court approval to allow you to sit on the board of the charity where you also receive a direct or indirect benefit (see next question).

One might also argue that it is very difficult for directors to discharge some of their fiduciary obligations where directors sit as representative directors. For example:

Sitting as a “representative director”

A director sits on the board of a chapter of a national non-profit and also sits on the national board of directors. The board of the chapter considers that the director sits on the national board in a “representative” capacity. In other words that the director will further the chapter’s agenda. The director owes fiduciary duties to both the parent organization and the chapter organization and should declare a conflict where there are potential conflicts involving the two organizations. Where the chapter’s best interests are not necessarily aligned with those of national, the director will be in an untenable situation.

If you sit as a director of two “related” boards in an association structure, consider the following tips:

- Apply each organization’s conflict of interest policy to conflicts as they arise, which will likely involve declaring conflicts on a regular basis and abstaining from both discussion and voting with respect to various issues during the course of meetings.
- If being on two boards in a given organization results in continuing conflicts of interest both inside and outside the boardroom, consider speaking to the chair of each board to voice your concerns and if your concerns are not or cannot be addressed to your satisfaction, consider resigning from one or both boards.
- Consider whether there should be a review of the by-laws of either or both organizations where the related boards have few directors on the board without a conflict of interest. It may be time to change the board composition.

FOR MORE INFORMATION SEE THE CICA PUBLICATION *20 QUESTIONS DIRECTORS SHOULD ASK ABOUT CODES OF CONDUCT*

9. What should a director do if faced with a conflict of interest?

If faced with a potential conflict of interest, a director should:

- Immediately declare the conflict and abstain from voting where the conflict arises at a board meeting;
- Review the organization’s conflict of interest policy to determine if there are additional requirements imposed by the organization or whether there is an identified process which must be followed with respect to declaration of the conflict;
- Speak to the chair of the board or another officer identified by the conflict of interest policy concerning the nature of the conflict, particularly where the director is unsure if a conflict truly exists;
- If not a charity, look to the corporate legislation to determine if there is a declaration of conflict process which can be followed;
- Where the conflict places you in a situation in which you believe you cannot act in the best interests of the organization as a result of the conflict, resign;
- Where possible, avoid the potential conflict or where the conflict has already materialized, resign as a director if the organization is a charity and the director stands to benefit directly or indirectly.

Most non-profit corporate legislation in Canada provides for a narrow exception to the no-conflicts rule where a director has an interest in a contract or proposed contract with the organization, declares the conflict and follows the process outlined in the legislation⁵.

It is important to understand that this kind of statutory exception is not generally available

⁵ For example, section 98 of the *Canada Corporations Act* states that it is the duty of a director to declare an interest (whether direct or indirect) in a contract or proposed contract with the organization at a meeting of directors. The section contains specific requirements relating to timing and content of the declaration of interest and with limited exceptions, prohibits directors from voting on the contract or proposed contract in which the director is interested. The Act specifically provides that a director who has complied with the declaration of interest provisions is not accountable to the organization or its members by reason of the director’s fiduciary relationship for any profit realized by such contract and the director will escape any liability where the existence of the profit on the part of the director has been confirmed by the members of the corporation.

to directors of charities (as opposed to not-for-profits that are *not* charities), depending on the province in which the charity operates. Because of the premise that charities are there for the public good, directors of charities must avoid any interest in a contract unless court approval is given ahead of time.

10. How knowledgeable do directors have to be in order to discharge their duties?

The law does not require directors to be experts. While directors of not-for-profit organizations owe a duty of care, it is not realistic to expect directors to understand in detail all of the operations, laws and government policies affecting the organization. However directors should be well informed.

Examples

The organization has paid staff: Directors should know that there are employment laws, human rights laws, income tax laws, Canada Pension Plan and unemployment insurance laws affecting the organization and its relationship with employees and know when to seek legal advice.

The organization is an incorporated charity: Directors should be aware of applicable legislation governing the organization including income tax, corporate laws, trust laws, provincial charities and fundraising registration laws and at times provincial and federal lobbyist legislation. Directors should seek legal advice where needed.

The organization owns heritage property: Directors will need to understand what they are permitted to do with the property, within the province or territory (and usually within the city or town in which they are located).

The courts recognize that directors must be guided by what is referred to as a “business judgment rule”. The courts look to see that the directors made a reasonable decision, not a perfect decision. In coming to a decision, directors must show that they acted prudently and on a reasonably informed basis.⁶

As a result, directors should:

- have a general knowledge of what laws affect the type of organization, and
- inform themselves about the governance model of the organization, the structure of the organization, what the organization does, how it does it and who its beneficiaries are.

The following guidelines have been established by the courts:

- Directors are not liable for mere errors of judgment;
- Directors are not required to give continuous attention to the organization's affairs;
- The responsibilities of directors are intermittent and performed at periodic board and committee meetings;
- Directors need not attend all board meetings to discharge their fiduciary obligations;
- Directors may entrust certain matters of business to officers of the organization; and
- Directors are justified, in the absence of grounds for suspicion, in trusting that officers of the company will perform in their duties honestly.⁷

⁶ *Peoples Department Stores Inc. (Trustee of) v. Wise* [2004] 3 S.C.R. 461, 2004 SCC 68

⁷ *Re City Equitable Fire Insurance Company Limited* [1925] 40 ChD 41

11. What if directors permit the organization to act outside the scope of its authority?

In addition to the statutory powers set out in the corporate legislation, a not-for-profit organization is only allowed to carry on those activities and do those things that are set out in its objects described in its letters patent. Objects are essentially corporate “purposes” and set out a list of things that the organization can do. Directors have a fiduciary obligation to safeguard the organization’s corporate objects and to make sure that the organization’s activities and programs are permitted by its objects.

If directors cause or permit the organization to act outside the corporate objects, then the actions taken by the directors are void and “*ultra vires*” and the directors may be held personally liable for any loss or damage that results from such action.

Example

The letters patent of a not-for-profit corporation state that the corporation’s object is to relieve poverty by gathering and distributing used clothing to the homeless in Ottawa. The corporation applies for charitable status and is approved. Some time later, the directors realize that what is really needed in the area are soup kitchens as winter is fast approaching and people need food as much as they need clothing.

Unless the corporation amends its letters patent to add a soup kitchen program as an object of the corporation, it is not allowed to do so. This is called “acting outside the corporate objects and powers”.

To avoid a situation like this, it is important to review the organization’s objects and statutory powers on a regular basis and in particular when discussing programs an organization wants to provide to determine whether or not the organization is actually allowed to undertake such a program.

12. Can directors of charities receive remuneration or other benefits?

This question is a common one and is not easily answered.

Depending on the province in which the organization operates and on whether the organization is a charity, the duty of loyalty and the no-conflict rule may prohibit directors from receiving any direct or indirect benefit from the organization.

The issue can come up for directors of charities in different ways:

Examples

The founder of a charity is also a director and as the charity grows, the founder becomes a paid executive director.

An organization’s by-laws provide for a beneficiary of the organization (a person receiving benefits or services from the organization) to sit as a director.

A particular organization requires its directors to travel significantly in order to attend board meetings which are held on a frequent basis. The board wishes to pay a small honorarium or stipend to its directors due to the level of involvement and time required.

An organization develops a practice over time that the chief staff person will be a member of the board of directors.

Leaving aside any conflict issues that these arrangements could involve, the question of whether the director can receive any benefit will depend on the province in which the organization operates. For example, in Ontario directors of charities are prohibited from receiving remuneration or other benefits whether directly or indirectly. In limited circumstances it can be possible at times to obtain a court order authorising the payment of remuneration to a particular director. But it should be emphasised that these cases are rare. Legal advice is generally recommended.

It is important to understand that while tax⁸ and corporate statutes⁹ do not generally prohibit directors of charities from being paid, the common law and in some cases provincial trust laws may prohibit payment to a director without a court order. To complicate matters further, an organization may be considered to be charitable at common law but not be registered federally as a charity under the *Income Tax Act*.

Note that there is generally no such prohibition on directors of not-for-profit organizations (that are not charitable at common law — as opposed to being registered charities under the *Income Tax Act*) who can usually receive remuneration and/or other benefits from the organization they serve.

Example

André is a director of a charitable organization whose mission is to relieve poverty in Africa by providing food, housing, and marketable skills to those in need. The organization is incorporated in Ontario and has its head office address in Ontario. André spends most of his time in Africa working with the local population to carry out the charity's mission. André has no source of income. The charity pays him a stipend which covers his travel, accommodation, food and clothing.

In Ontario, André would be required to either (a) resign from the board of directors, or (b) obtain court approval in order to remain a director while being paid by the charity. In other jurisdictions in Canada, André may be able to be paid by the charity, without any restrictions. Professional advice is recommended before paying directors of charities.

Remember that there is a difference between being paid by the organization and being reimbursed for legitimate out-of-pocket expenses incurred. Directors are almost always entitled to be reimbursed for out-of-pocket expenses subject to any provision to the contrary in the by-laws or operating policies of the organization.

⁸ The guideline used by Canada Revenue Agency is "reasonableness".

⁹ Some non-profit corporate statutes (e.g. Ontario and Saskatchewan) specifically allow directors to receive reasonable remuneration. But directors of charities are also subject to the common law and provincial trust laws.

13. What does it mean to have a "standard of care"?

Directors must carry out their obligations with an appropriate degree of skill and care and in accordance with the relevant "standard of care". Directors may incur liability where their conduct falls short of the prescribed standard of care.

The standard of care for directors of not-for-profit corporations varies across the country. In some provinces and territories, the incorporating statute is silent as to the relevant standard and the common law subjective standard applies.¹⁰ In others, the statutes explicitly provide for an objective standard.¹¹

What is the difference between a subjective and objective standard of care?

The objective standard judges all directors against the same criteria. Directors are required to exercise the degree of care and skill of a "reasonably prudent person".

The subjective standard judges directors against their own personal characteristics, attributes, skill level, education, experience, and profession. Directors are required to exercise the degree of care and skill that may reasonably be expected of a person of the director's particular knowledge and experience. The more sophisticated the director, the greater care he or she must exercise. As a result, if a director is a professional such as a lawyer or accountant, the law expects the director to apply that expertise in the individual's role as a director and the director will be held to a higher standard. Likewise a director with sophistication in running a business or other organization, whether or not he or she also carries a professional designation, will also be held to a higher expectation.

It is recommended that prospective directors familiarize themselves with the applicable standard of care to be exercised in carrying out their duties since there is a risk to directors who do not pay attention to the affairs of the organization they serve.

¹⁰ This is the case in Alberta, New Brunswick, Nova Scotia, Nunavut, Ontario, Prince Edward Island, Quebec and the Yukon.

¹¹ This is the case in British Columbia, Manitoba, Newfoundland and Saskatchewan.

14. Are directors of charities held to a higher standard of care?¹²

Where a not-for-profit organization is also charitable (either a registered charity or charitable according to provincial case law), board members may be required to meet additional expectations—and a higher standard of care. This is especially true when the organization carries on all or some of its activities in the province of Ontario.¹³ Ontario charities legislation specifically characterizes the legal nature of a charitable corporation as that of a trustee and Ontario case law has determined that directors of charities “are, to all intents and purposes, bound by the rules which affect trustees”.¹⁴

This means that they must take pro-active steps to protect charitable property. Any loss of charitable assets due to the inactivity or failure to act of the directors could make the directors liable for breach of their fiduciary duties, or possibly even breach of trust.

While the law is not uniform or even settled on this point across the country, it is prudent for directors of charities to carry out their duties as though they have charge of property that is subject to a trust. This “trustee standard” is generally considered a more demanding standard in law, and goes beyond what is ordinarily expected of either a not-for-profit or a for-profit director. This standard requires directors to exercise the degree of skill and prudence comparable to a reasonable and prudent person in the management of his or her own affairs. Under this standard, directors of charities must maintain the trust property or cause it to be maintained and are responsible for making prudent and safe investment decisions, subject to any requirements of provincial trust statutes.

From a practical perspective, this means that directors of charities should pay close attention to risk management issues affecting the organization especially as they pertain to the organization’s finances. In particular, directors should require regular financial reporting especially with regard to donations received, terms or conditions attached to donations and as well as ensuring the proper application of restricted donations and

investment of the organization’s funds. Directors of charities should also ensure that the organization develops and maintains an investment policy which is in accordance with applicable legal requirements.

15. What duties do directors of charities have with regard to special purpose or restricted gifts?

Fundraising is important to most charities. Whether the fundraiser is a walk-a-thon, a read-a-thon, a door-to-door canvas or a gift through an estate, directors of charities must pay attention to the way in which a charity fundraises¹⁵, how the money is used, how it is accounted for and reported to Canada Revenue Agency¹⁶ and how it is receipted by the organization¹⁷.

In addition, directors of charities have a legal duty to apply special purpose or restricted gifts to the purpose specified by the donor. If they fail to do so, directors may face personal liability. The heightened duty of care of directors of charities referred to in Question 14 is applicable to directors who manage property that is subject to a trust.

Examples

- A charity completes a fundraising drive, the purpose of which is to raise funds for a particular educational conference. The fundraising material tells prospective donors that their gifts will be used to hold the conference.
- June Bukowski leaves \$10,000.00 in her Will to the Anytown School with instructions that the money is to be used for the charity’s reading program offered specifically to special needs children.

In both of the above examples, a trust may be created (called a special purpose charitable trust) and the money received by the charity through the fundraising drive or under the will must be used for the specific charitable purpose. Note

¹² Adapted from Chapter 2 of Industry Canada’s *Primer for Directors of Not-for-Profit Corporations*, listed in “Other Publications”.

¹³ *Charities Accounting Act*, R.S.O. 1990, c. C10 Section 1(2)

¹⁴ *Ontario (Public Guardian and Trustee) v. Aids Society for Children (Ontario)* 39 E.T.R. (2d) 96.

¹⁵ The provinces of Alberta, Saskatchewan, Manitoba and PEI all have fundraising registration requirements for charities or fundraising companies working for charities.

¹⁶ Canada Revenue Agency has released a draft policy on fundraising and is undergoing a public consultation on the proposed draft. The purpose of the draft policy is to provide information for registered charities on the treatment of fundraising under the *Income Tax Act*.

¹⁷ The *Income Tax Act* and Canada Revenue Agency policy has strict rules on the receipting of gifts by registered charities.

that the terms attached to the charitable trust may be created by the charity or by the donor. The overriding duty of the directors is to carry out any restrictions attached to a special purpose charitable trust. Directors may be found in breach of trust if they do not comply with the terms of a special purpose charitable trust, meaning that they could be found personally liable if the terms of the trust are not complied with.

Directors should:

- Be aware of the terms of any special purpose trust funds and comply with those terms;
- Oversee the organization's fundraising program so that they are aware of the fundraising methods being used by staff or professional fundraisers that may result in a special purpose trust fund being created;
- Where the terms of any special purpose trust are no longer capable of being fulfilled by the charity, apply for a court order to vary the terms of the trust.

16. What if a director breaches his or her fiduciary duty?¹⁸

Directors who breach their fiduciary duties are at risk of being found personally liable if the organization suffers a loss which can be attributed to the actions or omissions of the directors.

If a director breaches his/her fiduciary duty, in order to be held liable (and to pay damages), the breach has to result in a loss which can be traced back to the individual director. In the case of a charitable organization, the loss could be to charitable property comprising a special purpose charitable trust. For example, directors could be held personally liable for breach of trust if they mismanage the charity's assets — meaning that they can be personally responsible for the full amount of any loss to the charitable assets.

In each case, liability will depend upon the particular facts and circumstances at play and legal advice is critical.

¹⁸ Adapted from Chapters 2 and 3 of Industry Canada's *Primer for Directors of Not-for-Profit Corporations*, listed in "Other Publications".

- To protect themselves from liability, directors should always consider whether the decision(s) or action(s) being taken are in the best interests of the organization.
- They must discharge their duties of skill and diligence, as well their duty of loyalty, including acting honestly and in good faith, not improperly delegating their responsibilities, and avoiding conflicts of interest.

It should be noted that the organization's indemnification by-law or policy on indemnification may not be available to directors who have breached their fiduciary duty and insurance coverage may similarly not be available.

17. As fiduciaries, can directors delegate their authority and/or their responsibility?¹⁹

Directors are entitled to delegate the performance of some of their responsibilities to committees, officers, or even members of the organization. However, directors should be aware that even though they may have delegated a particular task, delegation does not relieve them of responsibility. They must continue to monitor performance.

In Québec, directors of *Companies Act* corporations may not delegate powers to any committee other than an executive committee composed exclusively of directors and created by a by-law adopted by 2/3 of the members present at a special meeting.

Wholesale delegation is never permitted and a director cannot delegate all of his/her responsibilities as a director to another person. The reason: wholesale delegation would usurp the role of the organization's members in electing directors.

If it is intended to delegate core responsibilities, it is wise to set out such delegation in the by-laws or policy of the organization that has been approved by resolution. The scope of delegation, the duration of the delegation, the requirements for reporting back to the full board, and the relationship between the board and the body to which the matter is delegated should be included. Further, such delegation should ideally only be made to a board committee authorized by the by-laws.

¹⁹ Adapted from Chapter 2 of Industry Canada's *Primer for Directors of Not-for-Profit Corporations*, listed in "Other Publications".

Where directors of charitable organizations may be considered to be trustees, their ability to delegate decisions with respect to treatment of charitable property may be even more constrained. At common law, trustees are not allowed to delegate these types of decisions. However, provincial legislation governing trustees should be consulted to determine if such legislation permits some delegation by trustees. The following are examples of both permitted delegation and non-permitted delegation:

Example #1: Permitted Delegation

The directors hire an executive director. The executive director runs the day-to-day activities of the organization and reports to the board of directors at each meeting of the board. Day-to-day activities include hiring and supervising the office staff and volunteers, running programs, arranging board meetings, etc.

Example #2: Non-permitted Delegation

The directors hire an executive director and delegate all responsibilities of the organization to the executive director. The executive director purchases a building, sets his/her own salary, and files an application for supplementary letters patent to change the objects of the organization. None of these matters may be delegated by the directors.

18. What if a director disagrees with the decision taken by the rest of the board?

It is important to remember that a decision made by the board of directors, whether a majority, two-thirds or some other level of decision-making, means that the board has spoken on behalf of the organization. Every director is responsible for the decision, whether or not the director is present at the meeting. It also means that every director is jointly and severally liable along with the remaining directors should a loss occur as a result of the decision.

What can a director do?

If a director disagrees with a decision, silence is never a prudent course. It is important for a director who disagrees with a decision made by the board to voice his or her objection at the meeting and to ensure that his or her dissent is recorded in the minutes of the meeting, preferably with

reasons. Follow up to ensure that the minutes properly record the dissent should be done at the beginning of the next board meeting. A properly recorded dissent may, depending on the circumstances, result in the director limiting his or her personal liability. In addition to discharging the duty of diligence, attendance at board meetings can be helpful in limiting director liability in certain instances and provided appropriate steps are taken when the director disagrees with the rest of the board.

If a director is unable to attend a meeting, obtain copies of the minutes and any materials considered at the meeting. Read the minutes and be sure to immediately state any objection you may have in writing in the form of a written dissent to the secretary or chair of the board.

If a director is concerned about liability, independent legal advice should be sought.



19. When should a director seek independent legal advice?

When a director retains a lawyer to provide advice which is paid for by the director personally, he or she is seeking independent legal advice—that is, independent from the organization and the board.

Disputes and disagreements among directors can arise. A director may disagree with the direction

the organization is going in and may be a minority voice on the board. At other times, the board may not function effectively and a director may feel that he or she cannot fulfill his or her fiduciary duties for a variety of reasons. While it may be sufficient in order to limit liability to require that the organization record the director's dissent in the minutes of a board meeting, there are times when a director may need specific legal direction—usually in order to minimize his or her exposure to liability.

While there are any number of instances in which independent legal advice may be advisable to obtain, as a general rule if a director feels he or she cannot properly discharge his or fiduciary obligations for any reason or if a director considers that he or she may have personal liability, the director should seek independent legal advice.

The following examples may assist in determining when a director of a not-for-profit organization should consider obtaining independent legal advice:

- A director believes that a particular program may not be permitted by the organization's objects and the board has decided not to seek legal advice concerning this issue;
- A director is concerned about a particular issue or matter involving the organization and does not feel that his or her concerns have been properly answered or addressed by the board or the chief staff person;
- A director believes that the board may be found negligent as a result of particular decision or omission;
- A director considers that several board members have an insurmountable conflict of interest regarding a particular matter which is being ignored by the board as a whole;
- A director is unable to obtain certain financial or other information concerning the organization from the board and staff and the director is concerned about meeting his or her fiduciary obligations;
- A director is concerned about his or her personal liability regarding an ongoing program and requires advice concerning the effects of his or her resignation;
- The organization is insolvent and the director wishes to determine if he or she will have liability for debts of the organization, particularly those involving employees and taxes.

20. What tools can be used by directors to assist them in discharging their duties?

Directors have many tools available to them in order to discharge their fiduciary duties. The following are helpful, particularly to new directors:

Board manuals including the following items:

- The letters patent and supplementary letters patent of the organization;
- Current by-laws of the organization;
- Code of conduct for directors;
- Financial information;
- Charitable registration information;
- Minutes of meetings;

Board policies (which may also be included in board manuals) such as:

- Conflict of interest;
- Risk management;
- Fundraising;
- Personnel;
- Corporate audit policies.

Educational sessions on subjects such as corporate governance, corporate audits and risk management can be very enriching and informative for boards. As well, board retreats allow directors, and often the senior staff, to get together for an extended period of time to review the vision, mission and/or strategic plan of the organization without outside distractions.

Professional assistance is a key tool which should be used by boards in discharging their fiduciary duties. It is important for boards to seek professional advice for various matters including, legal issues, accounting issues, investment advice, etc. An organization should not hesitate to call in professional help as needed and should include an amount for professional assistance in the organization's budget.

When in doubt, a director should not hesitate to ask the chair or senior paid staff for the information that they need in order to fulfill the duties associated with their position. While charities and non-profit organizations will be at various stages in their organizational development and some may not have board manuals and well developed policies, it often takes just one motivated director to bring these tools into existence for the benefit of future boards.

Where to find more information

CICA Publications on governance

THE 20 QUESTIONS SERIES*

- 20 Questions Directors and Audit Committees Should Ask about IFRS Conversions
- 20 Questions Directors Should Ask about Building a Board
- 20 Questions Directors Should Ask about CEO Succession
- 20 Questions Directors Should Ask about Codes of Conduct
- 20 Questions Directors Should Ask about Crisis Management
- 20 Questions Directors Should Ask about Crown Corporation Governance
- 20 Questions Directors Should Ask about Director Compensation
- 20 Questions Directors Should Ask about Directors' and Officers' Liability Indemnification and Insurance
- 20 Questions Directors Should Ask about Executive Compensation
- 20 Questions Directors Should Ask about Governance Assessments
- 20 Questions Directors Should Ask about Internal Audit (2nd ed)
- 20 Questions Directors Should Ask about IT
- 20 Questions Directors Should Ask about Management's Discussion and Analysis (2nd ed)
- 20 Questions Directors Should Ask about Responding to Allegations of Corporate Wrongdoing
- 20 Questions Directors Should Ask about Risk (2nd ed)
- 20 Questions Directors Should Ask about their Role in Pension Governance
- 20 Questions Directors Should Ask about Special Committees
- 20 Questions Directors Should Ask about Strategy (2nd ed)

THE CFO SERIES*

- Deciding to Go Public: What CFOs Need to Know
- Financial Aspects of Governance: What Boards Should Expect from CFOs
- How CFOs are Adapting to Today's Realities
- IFRS Conversions: What CFOs Need to Know and Do
- Risk Management: What Boards Should Expect from CFOs
- Strategic Planning: What Boards Should Expect from CFOs

THE NOT-FOR-PROFIT SERIES*

20 Questions Directors of Not-for-profit Organizations Should Ask about Fiduciary Duty

20 Questions Directors of Not-for-profit Organizations Should Ask about Governance

20 Questions Directors of Not-for-profit Organizations Should Ask about Risk

20 Questions Directors of Not-for-profit Organizations Should Ask about Strategy and Planning

THE CONTROL ENVIRONMENT SERIES*

CEO and CFO Certification: Improving Transparency and Accountability

Internal Control: The Next Wave of Certification. Helping Smaller Public Companies with Certification and Disclosure about Design of Internal Control over Financial Reporting

Internal Control 2006: The Next Wave of Certification — Guidance for Directors

Internal Control 2006: The Next Wave of Certification — Guidance for Management

Understanding Disclosure Controls and Procedures: Helping CEOs and CFOs Respond to the Need for Better Disclosure

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*Available for purchase in hard copy or free download at www.rmgb.ca

WEBSITES

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Altruvest Charitable Services www.altruvest.org

Canadian Society of Association Executives www.csae.com

The Charity Commission for England and Wales, Charities and Risk Management, 2007.
<http://www.charity-commission.gov.uk/investigations/charrisk.asp>

Charity Village www.charityvillage.ca

Imagine Canada www.imaginecanada.ca

United Way of Canada: Board Development www.boarddevelopment.org

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Jane Burke-Robertson practices in the area of charity and not-for-profit law. Ms. Burke-Robertson has consistently been recognized as a leading expert in charity and not-for-profit law by Lexpert and The Best Lawyers in Canada.

Primarily advising charities and not-for-profit organizations, Ms. Burke-Robertson's practice includes registration of charities under the *Income Tax Act*, international agency relationships and charitable joint ventures, affiliation agreements, strategic alliances, foundations and other vehicles for fundraising purposes, issues related to special act corporations and various other types of not-for-profit corporations. She is also highly experienced in dealing with membership disputes, board and membership control issues, structural considerations in national and international charitable and not-for-profit organizations, mergers, amalgamations and continuances.

Ms. Burke-Robertson is co-author of *Non-Share Capital Corporations* published by Carswell. She is also a contributor to Industry Canada's *Primer for Directors of Not-for-Profit Corporations*, published in 2002. Ms. Burke-Robertson is a frequent speaker and lecturer on charitable and not-for-profit matters and has written extensively in this subject area. Ms. Burke-Robertson recently taught an advanced seminar on the law of charities and non-profit organizations at the Faculty of Law, University of Ottawa.