

Item 6
Attachment



Toronto
Community
Housing

Date: March 10, 2003
To: Board of Directors
From: Chief Executive Officer [Appendix A / Attachment](#)
Subject: DIRECTORS' CONFLICT OF INTEREST
(TCHC:200324)

PURPOSE:

To provide the Board of Directors with information and recommendations on the adoption of Conflict of Interest guidelines on an interim basis pending agreement with the Service Manager.

RECOMMENDATIONS:

It is recommended that the Board of Directors:

- (1) adopt the attached Conflict of Interest Policy for Directors of the Board, pending agreement with the Service Manager; and
- (2) authorize the appropriate TCHC staff to take the necessary actions to give effect to the above recommendation.

BACKGROUND:

At its meeting on February 17, 2003, the Governance Committee received the report and recommended it be forwarded to the Board of Directors for approval.

This report is in response to the Board's request for a Conflict of Interest Policy for the Directors of the Board that recognizes the unique composition of the Board as set out by the Shareholder.

REASONS FOR RECOMMENDATION:

Section 5.9 of the Shareholder Direction, titled 'Conflict of Interest Policy' requires that "The directors and officers of the TCHC and the Subsidiaries will strictly abide by the requirements of the OBCA, the SHRA, and any related TCHC policy in respect of conflicts of interest, including any requirements in respect of disclosure and abstention from voting."

The conflict of interest requirements currently binding on the directors of TCHC are contained in the

- *Ontario Business Corporations Act*
- TCHC By-law No. 2
- *Social Housing Reform Act, 2000*

In addition, Councillors are subject to the *Municipal Act* and the City's COI guidelines.

Governing Legislation/Direction

Ontario Business Corporations Act (OBCA) and By-law No. 2

The conflict of interest provisions contained in the OBCA and By-law No. 2 are similar and are applicable to all directors, regardless of any collateral tenant or constituent interests.

These conflict of interest provisions apply where the subject matter for discussion by the board is a *material contract or transaction or proposed material contract or transaction between the Corporation and the director or between the Corporation and a party of which the director is a director or an officer, or in which the director has a material interest (e.g. as a shareholder or partner)*. The definition in the OBCA and By-law is very specific and only covers situations involving direct and indirect business transactions with board members. The regulations under *the Social Housing Reform Act, 2000* are in addition to these provisions.

In such circumstances the director must disclose the interest and abstain from voting. Director disclosure and abstention from voting, as required by the conflict of interest provisions contained in section 132 of the OBCA and section 4.15 of By-law No. 2, relieves a director from the liability to account for any profit realized from a transaction in which the director has a direct or indirect interest.

Social Housing Reform Act, 2000 (SHRA)

Regulations under the SHRA contain conflict of interest provisions applicable to directors, officers and employees of housing providers. The regulations apply unless replaced by rules agreed to by TCHC and the City of Toronto as the Service Manager.

The rules contained in the regulation are expressly stated to be in addition to the provisions of the OBCA.

Under the SHRA regulations, a conflict of interest exists if the personal or business interests of a director are in conflict with the interests of the housing provider or if a personal gain, benefit, advantage or privilege is directly or indirectly given to, or received by, a director or a related person as a result of a decision by the housing provider.

In the context of the SHRA conflict of interest provisions, whether in fact a conflict exists for directors representing tenant or constituent interests, will depend in part on the nature of the dealings between the Director and the interest group s/he represents. The relationship will determine whether the Director has a “personal or business” interest and whether this interest conflicts with the interests of TCHC. It is incumbent on the individual director to determine and declare whether a conflict of interest, apparent or potential, exists.

In the SHRA Regulation, there is an absolute prohibition on a director entering into any situation, arrangement or agreement that results in a conflict of interest. There is also a corresponding obligation for the member to notify the Chair of the Board of Directors of every potential or actual conflict of interest. The Board of Directors is required to consider the notice and consideration of the notice must be reflected in the minutes of the meeting. The Chair is also required by the SHRA to notify the Service Manager, in writing, of the receipt of such notice and the Board of Directors is required to resolve every conflict of interest or potential conflict of interest to the satisfaction of the Service Manager. It should also be noted that By-law No. 2 provides that the Board may remove a director from office in the event of a conflict of interest that cannot be resolved in any other manner satisfactory to the Board.

TCHC Conflict of Interest Policy

The attached Conflict of Interest Policy for Directors of the Board is in addition to the requirements of the OBCA, but are intended to replace those in the Social Housing Reform Act, pending agreement with the City as Service Manager. It is felt that the SHRA, 2000 requirements are too onerous for the composition of the TCHC Board of Directors, most particularly in reference to tenant and councilor directors. While the attached policy recognizes the principles set out in the SHRA conflict of interest guidelines, it also recognizes the composition of the TCHC as determined by the City in its role as shareholder of TCHC.

CONCLUSION:

To establish Conflict of Interest guidelines that are different than those outlined in the Social Housing Reform Act requires agreement with the Service Manager. It is recommended that upon approval of the Conflict of Interest Guidelines as attached that staff begin discussions with the Service Manager around agreement on replacing the COI guidelines as set out in the Social Housing Reform Act, 2000 with the attached guidelines .

FINANCIAL IMPLICATIONS:

N/A

LEGAL IMPLICATIONS:

Conflict of interest resources are attached hereto as Appendix "A" and set out the various statutory and corporate rules which currently govern the Board of Directors of TCHC. The proposed Conflict of Interest Policy will stand in conjunction with these aforementioned resources, save for the Ontario Regulation 339/00 provisions which TCHC is attempting to replace by implementing this Policy with the service manager's consent.

COMMUNICATIONS IMPLICATIONS:

N/A

GOVERNANCE COMMITTEE COMMENTS:

The Governance Committee received the report and recommended it be forwarded to the Board of Directors for approval.

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Chief Executive Officer

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[Appendix A / Attachment](#)

APPENDIX A

[Back to report](#)**CONFLICT OF INTEREST
RESOURCES*****Ontario Business Corporations Act****Disclosure: conflict of interest*

132. (1) A director or officer of a corporation who;

- (a) is a party to a material contract or transaction or proposed material contract or transaction with the corporation;
- (b) is a director or an officer of, or has a material interest in, any person who is a party to a material contract or transaction or proposed material contract or transaction with the corporation; or

shall disclose in writing to the corporation or request to have entered in the minutes of meetings of directors the nature and extent of his or her interest.

by Director

(2) The disclosure required by subsection (1) shall be made, in the case of a director,

- (a) at the meeting at which a proposed contract or transaction is first considered;
- (b) if the director was not then interested in a proposed contract or transaction, at the first meeting after he or she becomes so interested;
- (c) if the director becomes interested after a contract is made or a transaction is entered into, at the first meeting after he or she becomes so interested; or
- (d) if a person who is interested in a contract or transaction later becomes a director, at the first meeting after he or she becomes a director.

Where contract or transaction does not require approval

(4) Despite subsections (2) and (3), where subsection (1) applies to a director or officer in respect of a material contract or transaction or proposed material contract or

transaction that, in the ordinary course of the corporation's business, would not require approval by the directors or shareholders, the director or officer shall disclose in writing to the corporation or request to have entered in the minutes of meetings of directors the nature and extent of his or her interest forthwith after the director or officer becomes aware of the contract or transaction or proposed contract or transaction.

Director not to vote

(5) A director referred to in subsection (1) shall not vote on any resolution to approve the contract or transaction unless the contract or transaction is;

- (a) an arrangement by way of security for money lent to or obligations undertaken by the director for the benefit of the corporation or an affiliate;
- (b) one relating primarily to his or her remuneration as a director, officer, employee or agent of the corporation or an affiliate;
- (c) one for indemnity or insurance under section 136; or
- (d) one with an affiliate.

General notice of interest

(6) For the purposes of this section, a general notice to the directors by a director or officer disclosing that he or she is a director or officer of or has a material interest in a person and is to be regarded as interested in any contract made or any transaction entered into with that person, is a sufficient disclosure of interest in relation to any contract so made or transaction so entered into. R.S.O. 1990, c. B.16, s. 132 (6).

TCHC BY-LAW NO. 2

4.15 Conflict of Interest - Disclosure of Interest in Contracts

- (1) Every Director or officer of the Corporation who is a party to a material contract or transaction or proposed material contract or transaction with the Corporation or is a Director or officer of or has a material interest in any person who is a party to a material contract or transaction or proposed material contract or transaction

with the Corporation shall disclose in writing to the Corporation or request to have entered in the minutes of the meeting of Directors the nature and extent of his interest at the time and in the manner required by the Act.

- (2) Any such contract or proposed contract shall be referred to the Board or shareholders for approval even if such contract is one that in the ordinary course of the Corporation's business would not require approval by the Board or the shareholders, and a Director interested in a contract so referred to the Board shall not vote on any resolution to approve the same except as provided by the Act.

4.16 Compliance with Conflict Policies

The Directors shall ensure that at all times the conflict of interest requirements imposed by the SHRA, and/or by the Shareholder Direction, are complied with.

Social Housing Reform Act, 2000

32 (3) Provincial rules

Until the service manager establishes accountability rules, the service manager and the local housing corporation are bound by such provincial accountability rules relating to the operation and activities of the corporation as may be prescribed. 2000, c. 27, s. 32 (3).

Ontario Regulation 339/01 (Excerpts)

PART I APPLICATION AND INTERPRETATION

Application

1. This Regulation applies as follows:

1. To every housing provider in respect of a transferred housing project referred to in section 92 of the Act that is subject to Part VI of the Act, commencing on the date in Table 1 opposite the name of the service manager for the service area in which the housing project is located.
2. To a local housing corporation in the manner required by section 32 of the Act and Part IX in respect of a housing project, commencing on the first day this Regulation applies to a housing provider in respect of a housing project in the service area in which the local housing corporation is located. O. Reg. 339/01, s. 1; O. Reg. 408/01, s. 1.

...

PART II CORPORATE GOVERNANCE

Conflict of interest

4. (1) This section applies to a housing provider in addition to the provisions of the Act listed in subsection 3 (1) [reference is to *Ontario Business Corporations Act*] to which the housing provider is subject. O. Reg. 339/01, s. 4 (1).

(2) A conflict of interest exists if any of the following situations occur:

1. The personal or business interests of a director, officer, agent or employee of a housing provider are in conflict with the interests of the housing provider.
2. A personal gain, benefit, advantage or privilege is directly or indirectly given to or received by a director, officer, agent or employee of the housing provider or a person related to one of them as a result of a decision by the housing provider. O. Reg. 339/01, s. 4 (2).

(3) A director, officer, agent or employee of the housing provider shall not enter into any situation, arrangement or agreement which results in a conflict of interest. O. Reg. 339/01, s. 4 (3).

(4) Directors, officers, agents and employees of the housing provider must notify the chair of the board of directors of the housing provider of every potential or actual conflict of interest no later than the first meeting of the board after the director, officer, agent or employee becomes aware that he or she has entered into a situation, arrangement or agreement that results in or may result in a conflict of interest. O. Reg. 339/01, s. 4 (4).

(5) The board of directors shall consider the notice given under subsection (4) no later than the second meeting of the board after the notice is given and consideration of the notice must be reflected in the minutes of the meeting. O. Reg. 339/01, s. 4 (5).

(6) The chair of the board shall notify the service manager in writing of the receipt of every notice under subsection (4) and the board of directors shall resolve every conflict of interest or potential conflict of interest to the satisfaction of the service manager. O. Reg. 339/01, s. 4 (6).

(7) Despite subsection (3), a director, officer, agent or employee or a person related to one of them may directly or indirectly receive a gain, benefit, advantage, privilege or remuneration from the housing provider if all of the following conditions are satisfied:

1. A notice of the conflict of interest or potential conflict of interest is given in accordance with subsection (4).
2. The service manager agrees that there is no reasonable alternative for the housing provider other than entering into the situation, arrangement or agreement that results in or may result in the conflict of interest. O. Reg. 339/01, s. 4 (7).

(8) For the purposes of this section, a person related to a director, officer, agent or employee includes a parent, spouse, same-sex partner, child, household member, sibling, uncle, aunt, nephew, niece, mother-in-law, father-in-law, sister-in-law, brother-in-law or grandparent, or a person with whom the director, officer, agent or employee has a business relationship. O. Reg. 339/01, s. 4 (8).

(9) In this section,

“child”, in relation to an individual, means a child of the individual born within or outside marriage (unless that child has been adopted by one or more other individuals in Ontario or according to the law of another jurisdiction), a child adopted by the individual in Ontario or according to the law of another jurisdiction, and a child whom the individual has demonstrated a settled intention to treat as a child of his or her family, but does not include a child placed in the individual’s home as a foster child for consideration by another person having lawful custody;

“parent”, in relation to an individual, means a natural parent of the individual (unless the individual has been adopted by one or more other persons in Ontario or according to the law of another jurisdiction), an adoptive parent of the individual who has adopted the individual in Ontario or according to the law of another jurisdiction, and a person who has demonstrated a settled intention to treat the individual as a child of his or her family, but does not include a person in whose home the individual has been placed as a foster child for consideration by another person having lawful custody;

“same-sex partner”, in relation to a person, means,

- (a) an individual of the same sex as the person, if the individual and the person have together advised the housing provider that they are same-sex partners, or
- (b) an individual of the same sex as the person who resides in the same dwelling place as the person, if the social and familial aspects of the relationship between the individual and the person amount to cohabitation and,
 - (i) the individual is providing financial support to the person,
 - (ii) the person is providing financial support to the individual, or
 - (iii) the individual and the person have a mutual agreement or arrangement regarding their financial affairs;

“spouse”, in relation to a person, means,

- (a) an individual of the opposite sex to the person, if the individual and the person have together advised the housing provider that they are spouses, or

- (b) an individual of the opposite sex to the person who is residing in the same dwelling place as the person, if the social and familial aspects of the relationship between the individual and the person amount to cohabitation and,
 - (i) the individual is providing financial support to the person,
 - (ii) the person is providing financial support to the individual, or
 - (iii) the individual and the person have a mutual agreement or arrangement regarding their financial affairs. O. Reg. 339/01, s. 4 (9).

Replacement of conflict of interest rules

5. The conflict of interest provisions set out in section 4 may be replaced for a housing provider by rules agreed to by the housing provider and the service managers for all areas in which its housing projects are located, in accordance with subsection 93 (3) of the Act. O. Reg. 339/01, s. 5.