

# Unrule(y) Behaviour

An Investigation into Toronto Community Housing Corporation's Human Resources Policies and Practices

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## **1.0 Executive Summary**

This investigation began in August of 2013, after the Ombudsman received numerous complaints from former and current non-unionized employees at Toronto Community Housing Corporation (TCH). The allegations ranged from improper hiring and promotions to irregular compensation and unfair terminations. The complaints suggested there had been violations of TCH's human resources policies and practices.

TCH is owned by the City of Toronto. Four members of City Council sit on TCH's Board of Directors. The other nine members include two TCH tenants and seven Board members appointed through the City's public appointments process.

The problems at TCH began in June 2012, with the arrival of a new CEO. He was given a mandate to make changes and move the corporation forward.

96 new staff were hired between June 2012 and the end of October 2013. These included a Chief Executive Officer (CEO), a Chief Financial Officer (CFO), a Chief Development Officer (CDO), a Chief Operating Officer (COO) and a new VP of Human Resources (VP HR).

There were either no records or no competitions held in 19% of the external hires. Some staff were hired without job postings. When questioned about these situations individually, the VP HR stated that the particular case in question was unusual, or that the best person for the job had been found.

There were also a total of 76 promotions and reclassifications. At the same time, 88 left TCH, 45 of whom were terminated, 32 resigned and 11 retired.

The process by which the change occurred, created chaos, with some senior staff breaking TCH human resources policies and practices.

### **Policy Framework**

TCH has, on paper, a comprehensive set of human resources policies and procedures. This policy framework is based on the principle of having a "fair, equitable, open and transparent process" that is applied consistently, and keeps in mind the goal of building a diverse workforce.

The policy framework not only covers HR matters like compensation and hiring, but also sets rules on declaring conflicts of interest, making internal complaints, and monitoring employee performance (See Section 5 for more details).

## **Improper Hiring**

Of the 76 promotions in the time period covered by this investigation, TCH could only confirm that 36 of the jobs were actually posted in accordance with TCH policy. There were no competitions for seven promotions, and TCH could not find any information demonstrating a competition had been held for the remaining 33.

When asked why no competitions were held for some of these positions, the VP of HR replied that if they had actually followed policy and run a competition, “it would have been a formality” and that they still would have selected the employee who they had already determined would be successful.

There were also plenty of problems in cases where competitions were held. Some people were awarded positions prematurely, while the competition was still open. When asked if other suitable candidates might have applied for the executive position during the four remaining days of the competition, the CEO replied, “No. Absolutely not.” He said he believed his hires had been in accordance with policy, because no one had stopped him, or advised him of any procedural requirements to the contrary.

Some successful candidates did not meet the minimum qualifications posted. Usually, this would have resulted in these candidates being “screened out” of the pool of eligible candidates. Instead, some candidates who had more than the minimum requirements on paper failed to advance, whereas those without the minimum paper qualifications succeeded.

In one case, a candidate who applied for a director position won the competition but was given a different title upon her request and more responsibilities than those advertised. There was no job description for the position, and no approvals were sought for the hiring. The newly hired director was the only candidate who was interviewed for this position (For more details, see Section 7).

## **Ignoring Conflicts of Interest**

Hiring managers and members of interview panels must declare any potential conflicts of interest about candidates appearing in hiring competitions they are running.

No declarations of conflict were found in the records supplied by TCH, even though instances of potential conflicts of interest were found in at least four hiring decisions (See Section 7.1.8).

## **Non-existent Job Descriptions**

TCH employee contracts say employees must perform their job responsibilities in accordance with the job description that is attached to their position. The Ombudsman found evidence that employees were hired and promoted to positions for which no job description existed (See Section 7.1.3 and 7.1.5).

## **Changes to Employment Contracts without Notice or Approval**

In the summer of 2012, new employment contracts were introduced for non-union employees at TCH. The contracts contained a clause stating that, upon termination without cause, employees would get only the minimum notice and severance pay that is set out in the *Employment Standards Act* (ESA). This applied not only to new hires, but also to any non-union staff who accepted a promotion. For long-serving staff, this meant a substantial reduction of their established rights under common law. In one scenario, after being promoted and then fired, a long-term employee with up to 86 weeks entitlement at common law, signed a contract limiting her to approximately 30 weeks under the ESA. That's a reduction of just under two-thirds.

Staff were not given proper notice or advised of this change. TCH determined that staff at a management level 8 or above on the pay scale could negotiate their way out of this clause in their contract. Other staff had to take it or leave it.

To make matters worse, the new practice was applied inconsistently:

- 8 executives and one director had individually tailored provisions for severance pay and notice periods in their contracts.
- 9 executives, managers and exempt staff had no clause specifying the notice period or severance pay in their contracts.
- 45 non-union employees had contracts that included the reduced severance and notification provisions of the ESA.

(See Section 7.4 for more details)

## **Terminations of Employment**

Of the 41 people who were terminated without cause, fourteen involved employees who had more than ten years of service. Fifteen of the employees who were fired without cause were in director level positions or above. In many cases the performance reviews of these employees did not indicate any problems with the quality of their work.

Staff reported the blanket dismissals created a “climate of fear” and had a “destabilizing effect” on the organization. Witnesses reported the terminations left TCH without adequate institutional memory and skill (See Section 7.5).

### **Inconsistent Compensation**

TCH’s hiring policy states that salaries should be based on the “skills, qualifications and other compensable factors required to perform the duties and responsibilities of the position.” This requires job evaluation.

81 new jobs were created at TCH between June 2012 and the end of October 2013. Only 14% of them, or 11 in total, went through the job evaluation process. The job evaluation committee, which is supposed to evaluate new jobs and determine salary, did not meet at all during this time.

Evidence showed there were also differing salary levels for similar positions. For example, of the 10 executive assistants at TCH, four were paid at level 4; five were paid at level 5; and one was paid at level 7.

One recently hired manager was promoted to a newly created director’s job after only six months in the corporation and received a salary increase of \$30,000. The position was neither posted nor evaluated. In fact, a job description did not exist until the incumbent’s position was approved by the Board of Directors sometime later.

In another case, senior managers earning \$100,000 per year were given a 12% increase without a proper job evaluation. Eight months later, their pay was increased again by 10%. The increase was given pending the outcome of a job evaluation. Ten months later, no job evaluation had been completed.

In December 2013, previously recorded overtime for one staff was reversed to keep the employee’s salary under \$100,000. The records were changed even though the overtime had already been paid out. In January 2014, the very same overtime was re-entered to show it as being earned in 2014.

The staff member in question was paid out at a management level salary and was not eligible for overtime pay. The employee instructed payroll to alert her when her 2014 salary reached the \$99,000 mark so they could change how overtime was recorded (See Section 7.2).

### **Avoiding Reference Checks**

Only two of the 30 external hiring files the Ombudsman examined in detail contained proper records of reference checks being carried out. 12 were

incomplete and there were no records for 16 or 53% of them. The Ombudsman also reviewed the files involving five internal promotions and found no reference checks were performed there either (See Section 7.1.6).

### **Missing Records**

Investigators from the Ombudsman's office requested that TCH provide all the files involved in the 233 staffing changes that took place over the period of this investigation. The corporation was only able to provide 119 files. Almost every file was incomplete (See Section 7.1.2).

### **Board Oversight**

While members of the Board asked questions, they failed to obtain the necessary information about hiring decisions and human resources practices. The Board received assurances from management and relied on them to the corporation's detriment (See Section 9).

### **Performance Management Program (PMP)**

The 2012 PMP was not carried out according to established procedure. In cases where supervisors found staff had "exceeded expectations" there was often inadequate record keeping support that rating. While an increase is not guaranteed, one of the PMP's major principles is linking pay to performance. Instead, for 2012, all eligible employees received a uniform 2% increase (See Section 7.3).

Furthermore, employees who were promoted and received a pay increase became ineligible for their PMP increase.

### **Internal Complaints about Recruitment**

No records were kept of complaints about recruitment practices, other than in the Office of Diversity, Fairness and Human Rights. Some complaints from that office were sent to the CEO and VP HR, but neither had records of them (See Section 7.6).

### **Parallel Process to Ombudsman Investigation**

TCH hired a consulting firm to conduct an audit of human resource decisions between January 1, 2011 and September 30, 2013, to see if policies were followed, and if they were "best practices."

The consultant's report cost \$47,500. The Ombudsman found that TCH's hiring of the consultant for such a review overlapped significantly with her investigation and may have undermined her process.

## **Findings**

The Ombudsman notes that her critique of the hiring process is not a finding that the successful incumbents were not qualified or unable to perform the necessary tasks of their jobs. Witnesses reported that a number of the new management and exempt staff are performing their roles very well.

- The Ombudsman found that TCH did not follow its own HR policies, practices and protocols.
- The Ombudsman found that the CEO and other officers of the corporation were not familiar with their obligations regarding recruitment.
- The CEO believed that his actions were his prerogative and that he had no responsibility for knowing the rules because it was the responsibility of his VP of HR to ensure that they were followed.
- The Vice President of Human Resources told my investigator he was not satisfied with the outdated HR policy framework he inherited. He said it was not practical to enforce outdated policies that do not reflect current practices.
- Open competitions were not held for a number of hires and promotions. This occurred up to and including the executive levels of the organization.
- Methods of hiring were often unfair and lacked transparency. There were a number of cases where hiring managers were in a potential conflict of interest when they hired persons they had previously known and/or worked with.
- The requirements of the recruitment process were frequently ignored, including the submission of staffing approvals, business plans, job descriptions, screening candidates, holding panel interviews, keeping interview notes, scoring candidates and conducting reference checks.

- Hiring panels were abandoned and replaced with one-on-one interviews. There was often little or no documentation. Sometimes, only one candidate was considered.
- Some wage levels were arbitrarily determined. It is unacceptable for a public organization to determine salaries without an evaluation of the responsibilities and qualifications of the position. This has not only caused an inequity at TCH between employees with similar jobs, but it could very well have wasted taxpayers' dollars.
- The Performance Management Program was not followed, leading to inconsistent and prejudicial treatment of staff who deserved recognition for their work.
- The changes to employment contracts altered fundamental terms of employment, and eliminated long-held common law rights to notice and severance pay. This was a policy change that was made without proper approvals and inadequate notice to staff.
- The flood of nearly 50 terminations in a period of some 18 months, across management and exempt staff, destabilized the workplace and frightened the remaining staff. The employees who remained did not know where they stood. They could no longer rely on management to follow TCH's own policies and procedures.
- TCH violated its commitment to be fair, equitable and transparent to employees. This commitment was ignored in a time of organizational change.
- While the Board made many attempts, it resigned itself to accepting the rationalizations proffered by the CEO and other executives, without ensuring that the appropriate recruitment and selection procedures were followed. The approvals the Board gave for the senior executive positions that came before it in June 2013 were further complicated by the fact that the staff had already been hired without the required Board approvals.

## **Ombudsman Recommendations**

The Ombudsman made 12 recommendations including:

- That TCH comply with its own policy framework, and that any changes must be properly communicated to staff with appropriate notice.
- That TCH train its senior executives regarding human resource policies and requirements and that all decision makers be properly trained with respect to the recruitment rules.
- That the Board and the committee dealing with HR issues require standardized information for hiring and promotion so they are able to meaningfully evaluate the candidate and the integrity of the hiring process.
- That TCH consult with the Human Resources Division of the City of Toronto with respect to best practice policies.
- That TCH ensure its policies on record keeping with respect to human resources activities are communicated to employees and followed.
- That the Conflict of Interest Policy be expanded to capture past business relationships and other personal associations.

The Ombudsman provided timelines for all her recommendations.

TCHC agreed with all of the Ombudsman's recommendations.

## 2.0 Introduction

In 2011 Toronto Community Housing (TCH) was chosen as one of Canada's Top 100 Employers in an annual competition "to recognize the nation's best places to work."<sup>1</sup>

The Canada Top 100 website states,

What is common to all winners is that each is an industry leader: from architectural firms to community housing agencies...[and] are leaders in their industry in attracting and retaining quality employees.<sup>2</sup>

In 2012 the story changed.

This investigation chronicles how the actions of a senior group of employees has tarnished the now shaky reputation of an organization that has and is currently undergoing significant change.

The case stories that follow, illustrate some of the more egregious examples of non-compliance with the corporation's human resources policies and procedures.

### 2.1 Story # 1

Within weeks of his arrival, the CEO promoted his executive assistant to the newly created job of Executive Assistant (EA) to the CEO and Board Chair. This was done without holding a job competition or having a job description.

While other personnel performing similar functions remained at wage grades 4 or 5, the CEO increased the EA's salary to level 7, which is a management category. It is unclear how the EA came to be paid at that level. The Vice President of Human Resources guessed it was negotiated between the EA and the CEO, with an understanding she would take on additional responsibilities to the Board Chair.

In her new "management" position, the EA was not eligible for paid overtime. But the EA demanded, and the Vice President of HR agreed that she would not be considered "management" but rather an exempt employee, and as such would continue to be eligible for paid overtime.

The VP of Human Resources told my investigator that the CEO specifically directed his EA be paid at a management level 7 and

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<sup>1</sup> <http://www.canadastop100.com/national>

<sup>2</sup> *ibid*

continue receiving paid overtime. The VP told the CEO he was concerned about the difference in pay between the EA and other similarly situated employees.

The VP stated "... through accumulation of overtime pay, if [the EA] made it to the sunshine list, there would be hell to pay. We have managers who don't make \$100,000." The VP said the CEO told him he was "prepared to deal with it."

The CEO says it was his understanding that all management and exempt staff who are not on the executive leadership team are eligible to receive overtime pay, at time and a half, subject to their supervisor's approval.

That is not correct.

## **2.2 Story # 2**

An executive assistant for one of the City Councillors was looking for a new job and approached a recruitment firm for assistance. The firm contacted the CEO and informed him that the EA was looking for new opportunities. She had previously met the CEO during the course of her work.

With no job competition or posting of the job opportunity, the CEO created and gave her a new manager position.

While he acknowledged that TCH "absolutely" required that all open positions had to be advertised, the CEO stated he did not advertise for this position because, "[I]t's my prerogative when I want to give that position to the best person with experience, internally or externally ..."

The CEO promoted the manager less than six months later and appointed her to be a senior director with a raise of \$30,000.

The Board reviewed and approved this appointment in June 2013. The Chair agreed the Board should have asked questions about the process by which the person was promoted to the new position.

## **2.3 Story # 3**

The day after he began his duties, the new CEO appointed then Director of Labour Relations to the position of interim Vice President, Human Resources, Officer of the Corporation. Not only was there no job posting or competition for this acting assignment, no resumés or

applications were reviewed, no candidates were interviewed, and no reference checks were conducted.

When asked to explain his decision, the CEO replied “TCHC was in chaos ... I had to make sure that someone was protecting the interests of Human Resources ... I needed staff, I didn’t have any staff – no one to trust – and I had to put people into positions so I could move the agency over.”

One month later, again without a job competition, the CEO made the acting assignment permanent and promoted the interim VP to the position of Vice President, Human Resources.

After the Chair of the Board of Directors (Board) told the CEO he was concerned about the circumstances under which the VP, Human Resources was hired, the CEO replied, “he needed [the incumbent], [who was] the best man [for the job]. He needed to put together a team...”

## **2.4 Story # 4**

In 2013 a search was held to fill the position of Vice President, Asset Management. It was posted three separate times on websites, including Workopolis and TCH’s external website.

The third and final job posting said all applications had to be submitted by May 6, 2013. On May 2, 2013, four days before the job competition closed, the interim VP, Facilities Management was selected for the job.

But he never applied for the job, nor was he ever interviewed for the position.

The CEO confirmed he selected the employee, even though he never applied, because “he was the best candidate for the position.” When asked how he arrived at this decision, the CEO replied, “based on my experience [working with him] ... that was my prerogative ... I made the decision to give him that job before the end of that posting because there were no other candidates that could fulfill that position.”

When asked if other suitable candidates could have applied for the position between May 2 and May 6, 2013, the CEO replied: “No. Absolutely not.” The CEO believed his hiring decision adhered to human resources policies and procedures because “someone didn’t come to me and say that it wasn’t in accordance.”

The Board approved the appointment in June 2013. The Chair said members of the Board asked at the time if the job had been posted. He said they believed the affirmative reply from management suggested there “was an open and transparent process.”

## **2.5 Story # 5**

In his previous job with a different employer, the Vice President of Human Resources had worked with a lawyer at a law firm. After reviewing applications that had come forward through the job call for a director of labour relations, the VP suggested to the lawyer that she consider applying for the job.

The VP said he had personally screened all the applications received to date (without interviews), and “was not impressed” with the applicants.

After being contacted by the VP of Human Resources, the lawyer provided him with a copy of her resumé and following a meeting with him, she was offered the position.

But, instead of being the new director of labour relations, she became the Director of Labour Relations and Legal Counsel at her own request. The responsibility to provide legal services was not part of the job description.

Only one candidate was interviewed for the job and that was the lawyer who got the job.

### **3.0 How we got Involved**

1. In the summer of 2013, my office began receiving complaints from former and current non-unionized employees at TCH alleging violations of human resource policies and practices. The complaints alleged improprieties in hiring, promotion, performance reviews, compensation, and terminations.
2. My office made inquiries with TCH staff and met with numerous complainants.
3. On August 27, 2013, I began an investigation on my own motion. This investigation was not an evaluation of whether the individuals hired for their positions were qualified. Specifically, the investigation examined whether, since June 2012, TCH's human resource practices for its non-union employees adhered to policies and procedures.

### **4.0 The Investigation**

4. This investigation was assigned to a team of four investigators led by the Director of Investigations, with the support of legal counsel, a researcher, a transcriber and an administrative assistant.
5. We interviewed over 60 witnesses including current employees, former staff and members of the Board. My investigators received 16 bankers' boxes of data; we reviewed 190 employee files and 119 competition files.
6. TCH and the Board responded in a timely way to our requests for documents and information throughout the investigation. Staff cooperated fully, making themselves available to answer questions and provide additional information. Executives and members of the Board were flexible in accommodating time lines. Some senior executives' interviews lasted for a full day or more.
7. My investigators interviewed witnesses drawn from current and former employees, across seniority levels and divisions. The investigation was restricted to exempt and management staff.
8. We reviewed relevant legislation, City of Toronto and TCH policies, procedures, guidelines and governing frameworks. We examined relevant documentary evidence, including correspondence and files.
9. On November 26, 2013, I requested information on employee files for all management and exempt employees who had undergone a staffing change (hiring, promotions, acting assignments, terminations, etc.) since June 2012.

10. TCH identified 233 staffing changes for this time period, of which 196 employees were affected.
11. Of the 196 employee files requested, TCH did not provide a file for six of them.
12. I also requested all job competition files for promotions, external hires, and acting assignments that occurred during the relevant period. TCH provided 119 competition files, of which 70 were electronic files only.

## **5.0 Background**

13. A municipal election was held in October 2010. Shortly after taking office in December, the new City Council received a report from the Auditor General regarding inappropriate spending and purchasing practices at TCH.
14. Some of the Board resigned and the rest were removed by City Council who then appointed a managing director for the corporation. On March 31, 2011, the Chief Executive Officer of TCH was terminated, and the Chief Financial Officer in place at the time was appointed acting CEO.
15. A new Board Chair was appointed in June 2011 and one month later a new Board was appointed. A new CEO was selected - the current incumbent - who commenced on June 18, 2012.
16. On June 19, 2012, the CEO appointed an interim vice president of human resources. In July 2012, he was promoted from his acting assignment to a permanent position in the role.
17. A new chief financial officer was hired in July 2012 and a new chief development officer was hired in August 2012.
18. In the summer of 2012 discussions about an organizational realignment began. This included the creation of three new divisions: Asset Management, Facilities Management, and Resident and Community Services.
19. In September 2013 a new chief operating officer was hired to fill that vacancy. Her employment ended in January 2014.
20. From June 2012 to the end of October 2013, 96 new staff were hired. During this same time period, 88 people left, 45 of whom were terminated, 32 resigned and 11 retired.
21. A consulting firm, Mercer LLC, was retained in the fall of 2013 to conduct an organization-wide job evaluation, to be completed in June

2014. The Vice President of Human Resources explained the aim of the project is to provide standardized job descriptions and a revised job evaluation tool.

22. TCH retained a second consulting firm, PricewaterhouseCoopers LLP (PwC) on November 19, 2013. It instructed PwC to conduct an audit of human resources decisions between January 1, 2011 and September 30, 2013, to determine whether policies were followed, and if they constituted “best practices.”
23. A draft of PwC’s report, 'TCHC Recruitment Process Internal Audit: Interim draft for discussion purposes only', was submitted to the CEO on December 19, 2013. The report reviewed hiring, promotions, acting positions, voluntary terminations and the salary determination process.
24. Two additional drafts were provided to TCH: a second draft on February 14 and a final report on February 25, 2014.
25. In February 2014, the Board asked the CEO to deliver a status report on TCH's plans to demonstrate its commitment to improve human resources practices in hirings, promotions and terminations. The CEO is required to deliver his report to the Board on April 25, 2014.

## **5.1 Legislative Framework**

26. TCH is a municipal non-profit housing corporation established by the City of Toronto under the *Housing Services Act, 2011*.<sup>3</sup> The City of Toronto is the sole shareholder of the corporation.
27. As an employer, TCH is subject to both the *Employment Standards Act, 2000*,<sup>4</sup> and the *Human Rights Code*.<sup>5</sup>
28. The *Employment Standards Act, 2000* (ESA), establishes the “floor” or minimum standards by which employers in Ontario must abide. This includes the required minimum period of notice (or pay in lieu of notice) that an employer must provide to any employee it seeks to terminate.
29. Employers and employees cannot contract out of or waive the minimum standards set out in the ESA, or agree to less than the standards provided for. In addition, the common law provides higher standards which employees can seek to obtain through the courts.

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<sup>3</sup> S.O. 2011, c. 6, Sch. 1.

<sup>4</sup> S.O. 2000, c. 41.

<sup>5</sup> R.S.O. 1990, c. H.19.

30. The *Human Rights Code* (Code) prohibits discrimination on certain enumerated grounds (such as race, sexual orientation, disability) in a number of contexts, including employment:

Every person has a right to equal treatment with respect to employment without discrimination because of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, gender identity, gender expression, age, record of offences, marital status, family status or disability.<sup>6</sup>

31. The Code also states that any act or omission of an employee, officer, or official of a corporation in the course of his or her employment is deemed an act committed by the corporation itself.<sup>7</sup>

## 5.2 Governance Framework

32. Subject to a unanimous shareholder agreement, corporate directors are collectively given the power to run the business of a corporation and to administer its corporate affairs.<sup>8</sup> That collective – the Board of Directors – is given this authority by statute, not by the corporate constitution. The power is provided to the Board as a unit, not to individual Board members.<sup>9</sup>
33. Along with this power to manage corporate business and administer corporate affairs, comes an individualized statutory duty for each director to do so in the best interests of the corporation, with honesty and good faith, and with skill, care and diligence.<sup>10</sup>
34. The Board of Directors is appointed by City Council. It consists of 13 members – nine citizens and four members of Council. Two of the nine citizen members are required to be TCH tenants, and of the four requisite Council members, one must be the Mayor or the Mayor's designate.
35. The City of Toronto is the owner and sole shareholder of the Toronto Community Housing Corporation. As sole proprietor, the City has

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<sup>6</sup> *Ibid.*, s. 5.1.

<sup>7</sup> *Ibid.*, s. 46 (3) (1).

<sup>8</sup> *Business Corporations Act*, R.S.O. 1990, c. B.16, s. 115(1). See also, Toronto Community Housing Corporation By-Law No. 2, October 3, 2001.

<sup>9</sup> B. Welling, *Corporate Law in Canada: The Governing Principles*, 3<sup>rd</sup> ed. (Australia, Scribblers Publishing, 2006) at 314-15.

<sup>10</sup> *Business Corporations Act*, *supra* note 6, s. 134.

outlined its expectations of and the fundamental principles for TCH in a Shareholder Direction.<sup>11</sup>

36. City Council adopted the original Shareholder Direction in October 2001. In March 2011 - after some members of the Board resigned and others were removed in response to reports of financial mismanagement – City Council directed the City Manager to review the Shareholder Direction "to ensure that adequate accountability mechanisms [were] in place", and to bring forward amendments for Council approval.<sup>12</sup> City Council adopted an amended Shareholder Direction in November 2013.
37. Both iterations of the Shareholder Direction set out the responsibility of the Board of Directors to manage or supervise the management of the business and affairs of TCH, including, appointing the officers of TCH; establishing policies consistent with the Direction and all relevant legislation;<sup>13</sup> and, managing and directing all labour and employee relations matters.
38. In line with tasking the Board for responsibility over all labour and employee relations matters, the City also made clear its expectation that:

TCH will abide by all relevant employment and occupational health and safety legislation in the conduct of its operations, and will develop appropriate policies in areas such as, but not limited to, fair wages for contracted services consistent with that of the City of Toronto and employee compensation to address these objectives; and,

TCH will be responsible for determining how [these] obligations ... are to be carried out, recognizing its responsibilities as a public sector employer that is a model to the community.<sup>14</sup>

39. To carry out its various responsibilities, the Board can enact by-laws setting out how certain things are to be done (board procedure), or delegating powers to committees of the Board or to certain corporate officers to perform. Understandably, directors cannot predict every situation that may arise, so terms of reference given to committees or to officers are often quite loose. Essentially, directors are giving away the

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<sup>11</sup> Shareholder Direction, adopted October 2001; amended Shareholder Direction to Toronto Community Housing Corporation, adopted November 13, 2013.

<sup>12</sup> Toronto City Council decision, March 9, 2011, CC6.1.

<sup>13</sup> In addition to this, the amended Shareholder Direction (November 2013) also added that the policies must be consistent with "best practices of corporate governance and financial and risk management."

<sup>14</sup> Shareholder Direction, adopted October 2001, section 8.2 (Employment and Related Matters).

power to make some decisions which they are statutorily bound to supervise and the Board, for all intents and purposes, can be held responsible for its delegates actions.<sup>15</sup>

40. The Board created a by-law that empowers it to establish committees to which it can delegate any of its authority and responsibility.<sup>16</sup> In order to assist the Board in fulfilling its oversight responsibilities regarding human resources, executive compensation, and talent management, the Board established the Governance, Risk and Human Resources Committee (Committee).<sup>17</sup>
41. The role of the Committee is to oversee the design, implementation, and reporting of human resources, talent development/retention, compensation policies, initiatives by management, and report and make recommendations to the Board on such matters. In addition, it recommends to the Board, in consultation with the CEO, the appointment, dismissal, or re-assignment of senior executives, including the terms and conditions of such, for execution by the CEO, and the senior executive structure, succession plans, performance reviews and compensation structure.<sup>18</sup>

### 5.3 Policy Framework

42. TCH has a range of human resources policies, procedures and process documents, comprising the organization's human resources policy framework. The framework focuses on the principle of conducting a "fair, equitable, open and transparent process" that is applied consistently.
43. All recruitment practices are to be aligned with the organizational goal of having a diverse workforce that reflects the Toronto and TCH residents.
44. The policy framework covers not only compensation and hiring, but also sets rules about declaring conflicts of interest, making complaints, and monitoring employee performance.

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<sup>15</sup> *Corporate Law in Canada*, supra note 7 at 321.

<sup>16</sup> Toronto Community Housing Corporation By-Law No. 2, October 3, 2001.

<sup>17</sup> *Terms of Reference for the Governance, Risk and Human Resources Committee*, Toronto Community Housing Corporation, December 13, 2011, section C.

<sup>18</sup> The Governance, Risk and Human Resources Committee's terms of reference have since been amended (June 19, 2013) to reflect that the Committee is responsible to recommend to the Board the hiring, reassignment or termination of "Officers" (as opposed to "senior executives"), and the "Officer structure" (as opposed to "senior executive structure"). Prior to this amendment, the Committee was reviewing the hiring, reassignment or termination of both senior executives and officers. At present, the Board retains responsibility for senior executive compensation policies and calculations. See amended Shareholder Direction to Toronto Community Housing Corporation, adopted November 13, 2013, section 5.1.

45. Some of these documents are as recent as 2013. Others date back to 2003. Some have been officially approved by the executive leadership team, and others remain in draft form, although they are applied by HR. A summary of these documents is located at Appendix A.
46. While it is indeed unusual to make and state a finding upfront and virtually at the outset of my investigation report, it is necessary in this instance to comment on the policy framework TCH has in place in order to evaluate its actions, decisions and human resources practices through the remainder of this report.
47. Overall, I find TCH's human resources policy framework is well developed and covers the spectrum of HR topics. Viewed solely on the existence and substance of these topics, the policies are adequate on paper but they are not followed.
48. Some policies are older, and require a review, and some have never been formally adopted. However, put simply, the framework is in place – and it is a good one.

## **6.0 Context**

### **6.1 Mandate, Mission and Values**

49. TCH's core mandate is articulated in the City's current Shareholder Direction:

[T]o provide affordable and subsidized rental housing in a state of good repair to low and moderate income households in Toronto.<sup>19</sup>

50. Identical to its 2010-2012 mission statement, TCH's 2013-2016 mission statement champions respect as a value:

We respect people as individuals and create environments where fairness, trust and equitable treatment are the hallmarks of how we work.

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<sup>19</sup> Amended Shareholder Direction to Toronto Community Housing Corporation, adopted November 13, 2013, s. 4.1.

51. Accountability is a value heralded by the corporation:

We are accountable for our actions, accept responsibility for our performance and share the results of our work in an open, honest and transparent manner.<sup>20</sup>

## **6.2 Strategic Plan**

52. The Board Chair described the goals that were set out for the CEO: “the transformation of the company to garner stakeholder and shareholder confidence” and to move TCH “to be recognized as a landlord of excellence.”
53. In order to become a landlord of excellence, the strategic plan for 2013-2016, entitled, “Homeward 2016”, emphasizes a focus on “Social Housing 101: Back to Basics.” This includes accountability to residents, transparency and improving the state of good repair.
54. The three main challenges identified in the strategic plan are: transformation / change; funding; and credibility.
55. The strategic plan states that transformation is underway in how TCH conducts business, serves residents, organizes its staff, and is accountable to the public.

## **6.3 CEO's Mandate**

56. The Board Chair explained that during recruitment for the CEO, the need for transformation was conveyed to candidates as “a need to bring best practices and [a] change agent” in order for TCH to move forward.
57. The Chair stated that the Board understood there would not be “a massive restructuring of the company.” Though there were no written terms of reference to establish the need for change, the Chair recalled the CEO being told that the Board wanted “better operating principles and procedures.”

## **6.4 Organizational Changes**

58. The CEO has not presented a restructuring plan to the Board, but has described three different restructuring processes under his leadership, including one that is in the planning stages. Senior management described the first restructuring to have commenced in the summer of

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<sup>20</sup> TCH Website, *Our Values*, <[www.torontohousing.ca/our-mission](http://www.torontohousing.ca/our-mission)>.

2012, when the Housing Services Incorporated (HSI) subsidiary was dissolved, and staff from the subsidiary were absorbed.

59. Three new divisions were created: Asset Management (formerly Operations); Facilities Management (formerly HSI); and, Resident and Community Services (formerly the Community Health Unit). A new vice president position was created within each new division, all reporting to the CEO.
60. The CEO described a second realignment in September 2013 involving the recruitment of a new chief operating officer to lead these divisions. The purpose of this realignment was to reduce the reporting of management directly to the CEO, and to make changes to operations.
61. The CEO stated the restructuring came from his office and did not require Board approval other than its approval of a new organizational chart. He explained that the changes did not arise as a mandate from the Board, but at his own initiative. No formal proposal was provided to the Board.
62. The CEO reported creating a “90 day plan” in July/August 2012 that he presented to the Board Chair. Board approval was neither sought nor required.
63. Other organizational changes occurred at divisional levels, including the creation of a more robust procurement unit in the Finance Division following the Auditor General’s report, and additional staffing and realignment in the Development Division following structural reorganization by a new chief development officer (CDO).
64. The CFO began organizational changes to his team in November 2012 and continues to staff up the new organizational structure. There are a number of ongoing vacancies at the time of this investigation report.
65. After review and approval by the CEO and VP of HR, the CDO began organizational changes to his team in November 2012 and continued through July 2013. The job evaluation process has not been completed for the new roles to which staff were promoted.
66. Human resources also underwent organizational change, including a number of terminations. Senior positions were eliminated in health and safety, and the human resources function was put under a new director of labour relations and a new director of human resources. Changes in HR began in the summer of 2012 and have continued.

## 7.0 Facts

### 7.1 Recruitment

67. Fair and unbiased hiring practices need to be an organizational value. Having fair hiring practices assists in attracting and retaining talented staff. When recruitment is based on consistent and objective criteria, candidates are evaluated on their skills, experience and qualifications and not on irrelevant or improper criteria. Fair hiring and promotion practices boost staff morale and loyalty, and strengthen an organization's reputation as a fair employer.
68. Recognized as a best practice employer, the City of Toronto hiring policy lists a number of guiding principles, namely, that the process of filling job vacancies must be "fair, equitable, open and transparent," that applicable law and internal policies will be followed in hiring, and that hiring will be based on "required skills, qualifications and seniority as applicable." It notes that "the City is best served by a public service that reflects its communities."
69. TCH's hiring policy emulates that of the City. Its purpose is to retain and recruit "qualified and high performing individuals" and to support the development of a diverse workforce.
70. Candidate selection is to be based on a thorough assessment of a candidate's skills and qualifications that are required for a specific job description.
71. The hiring guidelines state that it should be a "fair, equitable, open and transparent" process, that promotions and hiring should be based on evaluation of the necessary skills and qualifications for the job and TCH's goal of having a diverse workforce.
72. The staffing process and operational procedures manual also requires that staffing processes be fair, equitable and consistently applied.
73. Jobs lasting longer than three months must be posted, and new positions must go through a job evaluation process so they may be compared to similar jobs in the corporation. A job evaluation committee must approve the job rating and salary band.
74. The manual also requires an outreach strategy and completion of a diversity tracking sheet for each candidate interviewed.

75. In addition, there is a requirement that all documents related to the competition be retained. The manual outlines a detailed recruitment process.<sup>21</sup>

### 7.1.1 Staffing Changes

76. We requested competition files for all staffing changes, including, acting assignments, promotions and hires that occurred since June 2012. TCH documented 233 staffing changes for the time period June 2012 to October 2013. Of these changes, there were 96 external hires, 76 promotions and reclassifications, and 61 acting assignments.

77. In some cases, employees went through more than one staffing change during the time period.

<b>Staffing Changes - June 1, 2012 to October 28, 2013</b>				
<b><i>Division</i></b>	<b><i>Staffing Changes</i></b>	<b><i>New Hires</i></b>	<b><i>Promotions, Reclassified Positions</i></b>	<b><i>Acting Assignments</i></b>
Asset Management	31	3	6	22
CEO's Office	10	3	5	2
Community Safety Unit	16	5	7	4
Internal Audit	4	3	1	-
COO's Office	2	2		-
Development	31	14	13	4
Facilities Management	10	3	3	4
Finance	23	11	9	3
Housing Connections	11	4	3	4
Human Resources	30	20	6	4
Information Technology	7	5	1	1
Legal	14	7	4	3
Public Affairs	21	11	8	2
Resident and Community Services	23	5	10	8
<b>TOTAL</b>	<b>233</b>	<b>96</b>	<b>76</b>	<b>61</b>

<sup>21</sup>See Appendix A

### 7.1.2 Record Keeping

78. While record keeping is a general responsibility for the corporation, human resources specifically are required to keep full and accurate records for all job competitions.
79. Many of TCH's record keeping standards are informed by policy and procedural requirements.
80. The competition file standards document indicates all competitions must include: staffing approval, hiring documentation checklist, job posting, copy of interview guides with answer key, all correspondence from the hiring manager, and a score sheet. In addition, there must be a list of internal or external candidates with copies of correspondence to candidates, notification to screened out internal candidates and feedback documentation.
81. We sought all competition files to support the 233 staffing changes that TCH identified. The corporation was able to provide 119 competition files. Seventy of the files were electronic and did not exist in hard copy until our request was made. Every file was incomplete.
82. The chart below provides an overview of which documents were found in 35 files that we examined in detail.

<b>Summary of Documents Found in 35 Competition Files</b>			
<b>Document</b>	<b>Complete</b>	<b>Incomplete</b>	<b>Not Found</b>
Staffing Approval Form	19 <sup>22</sup>	0	16
Applications	9	5	21
Screening Summaries	5	0	30
Summary Score Sheet	9	3	23
Interview Notes	9	5	21
Diversity Tracking Sheet	1	0	34
Reference Check Documentation	2	12	21
Feedback Summary Form	0	0	35
Competition Tracking Sheet	0	0	35

83. When we spoke with recently hired HR staff, they said they relied primarily on practices other employees taught them.
84. The Vice President of Human Resources was not familiar with the competition file standards document, and did not know when it had last been approved. He speculated it might have been created in the

<sup>22</sup> Of these 19 staffing approval forms, six of them had approval signatures that were not dated.

summer of 2013 as part of an ongoing policy development process that had not been finalized.

85. He acknowledged that for every competition, it is the recruiter's responsibility to ensure there are competition files for staffing changes and that the files are to be kept centrally.
86. The VP confirmed that ultimately, he is responsible for ensuring accurate and complete recruitment records are kept.

### **7.1.3 No Competition or Job Posting**

#### **7.1.3.1 External Hires**

87. TCH identified 96 external hires between June 2012 and October 2013, and disclosed that there was no competition held for eight of them. The corporation could not find documentation to confirm postings for ten additional hires. Together, these 18 hires for which a job posting did not exist or could not be found represent 19% of the total number of external hires.
88. Files relating to the 78 staffing changes for which there was a job posting do not capture whether the incumbent, in fact, applied for the position, or whether the remainder of the hiring process was followed.
89. My investigators found evidence of hires for which there were no postings.
90. In the summer of 2013, the interim director of human resources left on maternity leave. Instead of hiring a new candidate to fill this vacancy, the Vice President of HR, created a new position - associate director of human resources.
91. In August 2013, he then hired a candidate for this new position on a one-year contract. The candidate was referred to him by the interim director who was on maternity leave.
92. The VP confirmed that the position was not posted, and no other candidates apart from the one hired were considered.
93. When asked why a competition was not held, the VP explained that he wanted to keep the position vacant because the interim director had suggested she might return early from her maternity leave.
94. He confirmed there was no agreement that the interim director would return early. In fact, she did not, and six months into the maternity leave, he hired a permanent director through an open competition.

95. When asked if anyone from HR had raised concerns about whether the proper process was followed, the VP responded, "Even if they had [raised concerns], I would have known this is an anomalous situation, and one that I felt was warranted; that the actions that were taken were warranted and ... justifiable."
96. In another instance, the Vice President of HR hired an executive assistant for himself in October 2012 on a permanent basis. He explained that before she was hired, the CFO had posted a job call for two executive assistants, one to work in Finance and one for HR.
97. He said the core competencies for both executive assistants were the same.
98. The job posting found in the competition file for the CFO's executive assistant did not contain any information to suggest it was also to be used to recruit an executive assistant for the VP of HR. The posting did not specify where the executive assistants would be working, nor did it list any finance or human resource-specific qualifications or experience required.
99. The VP of HR explained that the CFO had screened the applications, and that he did not feel any of them were suitable candidates.<sup>23</sup> The VP did not review any of the applications screened out by the CFO.
100. Both the Vice President, HR and his executive assistant confirmed the events leading to her hire. She was recruited to the position after the VP had sent her a message on LinkedIn (a social networking website used mainly by professionals), asking whether she would be interested in working at TCH. The VP believed her past experience (as listed on the networking site) would be an asset.
101. The VP of HR confirmed he did not interview other candidates for the position. He also confirmed he conducted the interview without a panel. Interview notes were not taken.
102. When asked why he had approached the candidate himself instead of posting a separate job call, the VP of HR explained that he had wanted an external hire, and that it is "disingenuous to post [a job] internally if you have no intention of considering internal applicants."
103. When asked why he did not want to consider internal applicants, he said he "needed someone in the role who did not have allegiances or loyalty to anyone else in the organization."

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<sup>23</sup> Though the competition file for the CFO's EA was missing several documents, it showed two applicants were screened out without an interview.

104. In another case, an executive assistant for one of the City Councillors, who subsequently was hired by TCH, said she was looking for alternative work and approached a recruitment firm for assistance.
105. The CEO and the executive assistant had previously met during the course of her work with the Councillor.
106. The recruitment firm contacted the CEO and informed him that she was looking for new opportunities.
107. The executive assistant recalled that the CEO wanted someone that could liaise effectively with Councillors and address their enquiries.
108. The CEO created a manager's position and without conducting a job competition or posting the job opportunity, placed the EA into it.
109. Although acknowledging to my investigators the requirement that all positions "absolutely" be advertised, the CEO confirmed he did not post this position because, "[I]t's my prerogative when I want to give that position to the best person with experience, internally or externally ..."<sup>24</sup>

#### **7.1.3.2 Internal Promotions**

110. TCH advised my investigator that 76 promotions and reclassifications occurred between June 2012 and October 2013. Of the 76, TCH confirmed there was a job posting for only 36. Competitions were not held for seven promotions, and TCH could not find information to demonstrate a competition was held for the remaining 33.
111. One day after commencing his duties as the new CEO, he appointed then director of labour relations to the position of interim Vice President, Human Resources.
112. No job competition was held for this acting assignment. No job posting, no resumés or applications were reviewed. There were no candidate interviews, and no reference checks done.
113. The CEO explained his decision.

TCHC was in chaos ... I had to make sure that someone was protecting the interests of human resources ... I needed staff, I didn't have any staff – no one to trust – and I had to put people into positions so I could move the agency over.

114. One month later, the CEO made the acting assignment permanent and promoted the incumbent to Vice President, Human Resources.

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<sup>24</sup> The CEO, upon hire, received policy and procedure manuals as part of his onboarding process.

115. Again, there was no job competition.
116. The Chair of the Board had raised concerns with the CEO about the circumstances under which the VP of HR was selected. He was told by the CEO that “he needed [the incumbent], [who was] the best man [for the job]. He needed to put together a team ...”
117. The Chair confirmed that although the Board did not approve the permanent appointment of the Vice President, Human Resources, it should have come before the Board for consideration.
118. Later, in August 2012, after recognizing that the institutional head of the human resources division should also serve as an officer of the corporation, the Board considered and appointed the VP Human Resources as an officer of TCH. The Chair explained that at the time of the Board's approval, the incumbent was already in the VP of HR position.
119. In another advancement reviewed during this investigation, an employee was promoted to the newly created position in the CEO's office in September 2012, and then to a managerial role in the same unit in April 2013.
120. The Vice President of Human Resources confirmed there was no competition or posting for either opportunity.
121. The employee who received the promotion explained to my investigators that he was part of the team responsible for the CEO's onboarding and that the CEO "was really impressed", and asked him to work in his office.
122. When asked whether he had any concerns about not posting these positions, the Vice President of HR stated:

We could have gone through a competition for the sake of going through a competition ... and then [the employee] would have been successful... It would have been...a formality. And that involves a lot of time, effort, resources from my staff and other people who are going to apply... knowing that there's somebody who is capable of doing the job and they're occupying a role within the organization...
123. When asked about the promotions, the CEO explained that the employee was "the best person for the job." He confirmed no other candidates were considered for either position.

124. When asked what process he followed to promote for both these positions, the CEO answered, "If...I want someone in that position, I will say to Human Resources, do a job description, [review] whatever policies and procedures, and adhere to [them], period."
125. He explained that nobody in HR had raised any concerns about the promotions. The CEO said that not having heard otherwise, he assumed that recruitment policies and procedures were being followed.

### **7.1.3.3 Acting Assignments**

126. The stated purpose of the acting assignment policy is to "establish fair and consistent practices for selecting, appointing, and compensating employees assigned temporary job opportunities."
127. To assist in meeting this purpose, the procedure for acting assignments requires an open competition for jobs expected to last more than three months.
128. TCH advised there were 61 new acting assignments between June 2012 and October 2013. Fourteen of the acting assignments were posted, and of the remaining 47, TCH said there was no posting for 42, and no documentation for the remaining five.
129. In June 2013, then manager of organizational development was appointed interim director of human resources. A competition was not held for the acting assignment.
130. Less than one month after her new appointment, the interim director took maternity leave.
131. The Vice President, Human Resources explained that he appointed the manager to the acting assignment because she had expressed a desire to return early from her maternity leave, and to eventually apply for the permanent position when it was posted. He said there was a need to have the position filled on an interim basis.
132. In another acting assignment we reviewed, a staff member was moved in April 2013 from her base position in HR, to a six-month special assignment in the CEO's office. A letter to the employee confirming her assignment does not provide a job title or job description.
133. A competition was not held.
134. When asked about this assignment, the CEO confirmed that he "needed an assistant in [his] office for all the calls, emails and texts and so forth." When asked why the incumbent was hired without a

competition, the CEO replied: "as President and CEO, I needed another person in my office, which is my right ... I can move people."

135. The Vice President of HR told my investigators the CEO instructed him to put the staff member in this assignment to "help assist with his backlog" of work. He said the staff member was selected specifically because she had previously worked with the CEO's executive assistant.
136. The VP acknowledged that acting assignments should not continue for years, but remarked that "the [staffing] complement is such a mess right now, [it is difficult] to figure out whose base position is what so you can untangle the web."
137. While he also confirmed that policies required a competition for acting assignments longer than three months, the Vice President of HR said it was "hugely impractical." He noted that for the three month assignment, it would take two months to fill "at minimum."

#### **7.1.4 Unsolicited Applications**

138. The hiring guidelines and staffing and operational procedures manual state that late resumé submissions and unsolicited applications are not to be accepted in a competition.
139. In his previous employment with a different employer, the Vice President, Human Resources had worked with an associate at a law firm retained by that employer.
140. The VP explained that after reviewing applications that had come forward through the job call for a director of labour relations,<sup>25</sup> he suggested to the associate that she consider applying.
141. He said he was trying to reach another lawyer who was on leave. He recalled the associate mentioned she was considering "making a move" and indicated that he made the suggestion because he was "familiar with the quality of her work."
142. The VP of HR could not recall whether the time to apply for the position had passed, but confirmed he had personally screened all the applications received to date (without interviews), and "was not impressed" with the applicants.
143. The job competition file contained no screening records.

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<sup>25</sup> Initially, when my office requested the job competition file for the director of labour relations position, only a printout of the job posting was provided. Approximately three months later, the Vice President, Human Resources provided a number of applications relating to the competition that were found in his office.

144. Some of the qualifications required for the job included:
- A minimum of ten years progressive human resources experience with a focus in labour relations and the past 5-7 years at a management level; and,
  - Labour relations experience in a multi-union environment.
145. A review of the 20 applications from this job call showed there were applicants who appeared to meet the minimum qualifications for the position. They included an individual with 23 years experience as chief negotiator on both labour and management sides of the bargaining table; a manager of labour relations at an Ontario hospital; and, a human resources director from a multi-union municipality with 20 years of experience in private and public sector labour relations.
146. HR staff said all the applications for the competition were printed but there was neither a resumé nor an application from the associate.
147. The associate provided a copy of her resumé to the VP of HR in November 2012. According to the associate, the two then met “[possibly] at a restaurant” the same month, and then, after a subsequent meeting at TCH – where “interview-type questions” were asked – she was offered the position.
148. However, instead of director of labour relations, the associate assumed the position of Director of Labour Relations and Legal Counsel – a position for which the VP estimated one-third of the work required the provision of legal services.
149. This responsibility did not form part of the job description posted publicly by TCH during its recruitment search for a director of labour relations.
150. Only one candidate was interviewed for this “distinct” director of labour relations and legal counsel position – the associate who got the job.
151. The evidence showed that the candidate was not given a new job description to reflect her amended position. The change in job title and responsibilities was not supported by a new staffing approval form or submitted for CEO or CFO approval.

#### **7.1.5 Promotions Without Job Descriptions**

152. TCH employee contracts contain a clause requiring the employee to perform their job responsibilities in accordance with an attached job description.

153. My investigators found evidence that employees were promoted to positions for which no job description existed.
154. Less than six months after being hired as a manager, the CEO appointed the incumbent to a newly created senior director position with a salary increase of \$30,000.
155. The senior director's signed employment agreement did not include a job description. She was unable to provide my office with a copy, and a job description was not found in her employee file.
156. The hiring manager for this position – the CEO – was unsure if a job description was attached as part of the employment contract.
157. The senior director informed my investigators that a job description for her position was subsequently created as the Board reviewed and approved her appointment in June 2013.
158. The Board also confirmed that it had received a job description at the time of its approval in June 2013, but that one was not available in March 2013 when the Governance, Risk and Human Resources Committee had considered and questioned the appointment.
159. When asked why this appointment came before the Board and required its approval, one Board member deferred the question to "management", while the Chair could not recall: "[We had asked management] where she came from ... and we were advised she was the best candidate for the job."
160. The Chair agreed the Board should have asked more questions about the process by which the senior director was promoted.
161. The Vice President of Human Resources was also promoted to his permanent position, and he too signed an employment agreement that did not have a job description attached to it.
162. When the CEO, who as hiring manager had appointed the Vice President of HR, was asked why the contract did not specify duties and responsibilities, he said he did not know, and told my investigators to refer to the VP's performance management plan instead.
163. The VP of HR told my investigators he did not know why a job description was not attached to his employment agreement. When asked whether he had any concerns signing an agreement that did not contain a job description, he said, "[a job description is] not a finite set of responsibilities, and they are a broad review of the major roles and responsibilities of the position. And they are subject to change at any time."

### **7.1.6 Reference Checks**

164. According to the hiring guideline, for all external hires, TCH requires that three reference checks be performed, while for internal hires, two references are to be done.
165. Of 30 external hiring competition files we examined in detail, the records show that three reference checks were conducted in two competitions; and, one or two reference checks were performed for each eligible candidate in 12 competitions. The remaining 16 did not contain any record of references having been checked.
166. The Vice President of Human Resources confirmed reference checks were not conducted for the director of labour relations and legal counsel, and that they “probably were not” done for the associate director of human resources. In the former instance, he said he knew her work and in the latter, the VP provided no reason.
167. Of the five internal hiring competition files reviewed, there were no records to validate whether any reference checks had been performed.
168. In another competition file for a director there was no information documenting reference checks for any of the candidates.
169. The director told my investigators she did not recall providing references.

### **7.1.7 Offering Employment before Competition Closed**

170. In some of the cases reviewed, candidates were given offers of employment before the closing date of the competition.

#### **External Hire**

171. In March 2013, the CFO hired a new manager. A copy of the posting in the competition file listed the corporate controller as the hiring manager for the position.
172. The hiring manager confirmed that she interviewed the candidate but it was the CFO's decision to hire the person. She said it was a "personality fit interview...I wasn't that involved."
173. The successful candidate was working at TCH at the time as a third party auditor for the CFO. The CFO had informed the candidate about the opportunity. The candidate said "he mentioned a couple of job postings...This was while I was working for PwC while they [TCH] were my client."

174. The candidate sent her resumé to the CFO's executive assistant, and the CFO asked the hiring manager to interview the candidate on March 5, 2013, to make sure she was "comfortable" with the hire.
175. After the interview on March 5 – but on the same day – the CFO instructed the hiring manager in an email to have Human Resources draft an offer letter to the candidate.
176. The job call deadline, according to the posting, was March 20, 2013.
177. Records show that the Vice President, Human Resources was informed of the employment offer to the candidate on March 14, 2013 – six days prior to the competition closing date.
178. When my investigators asked the VP of HR, he said he was unsure of the date of the candidate's hiring, but that if she had been hired before the closing date, he would have been aware of it.
179. When asked whether a division could hire an employee without obtaining approval from HR, the Vice President stated, "[it] should not be able to."
180. The CFO stated that the PwC contract was costing the corporation a considerable amount of money and he thought that they could find savings by having her come on staff, hence he took the unusual step of speaking to her about applying.
181. The VP of HR observed that he had counseled the CFO, telling him to make sure the consultant was alright with this, because PwC did a lot of work for TCH. He said that he had told the CFO to "manage the relationship" and check the contract to make sure that there was no language that prevented TCH from hiring one of PwC's employees.
182. The CFO indicated he had interviewed one other candidate. The competition file my investigator reviewed contained no information about other applicants or candidates.

### **Internal Promotion**

183. In early 2013, a competition was held for the position of Vice President, Asset Management. The position was posted on websites, including Workopolis and TCH's external website, on three separate occasions.
184. The competition file contained a number of applications for the first job call, but none for the subsequent two calls.
185. The closing date for the third and final job call was May 6, 2013. On May 2, 2013 – four days before the job call closed – the interim VP,

Facilities Management was awarded the position, and appointed VP of Asset Management.

186. He did not apply for the position, nor did he interview for it.
187. The CEO confirmed the incumbent did not apply for the position but that he personally selected him because “he was the best candidate for the position.” When asked how he arrived at this conclusion, the CEO replied:
- based on my experience [working with him] ... that was my prerogative ... I made the decision to give him that job before the end of that posting because there were no other candidates that could fulfill that position.
188. When asked if it was possible other suitable candidates could have applied for the position between May 2 and May 6, 2013, the CEO replied, “No. Absolutely not.”
189. The CEO explained his belief that the hiring decision adhered to existing human resources policies and procedures because “someone didn’t come to me and say that it wasn’t in accordance.” When asked who the CEO believed to be responsible to point out the procedural requirements for hiring, the CEO responded, “the VP of Human Resources.”
190. The Vice President of HR explained that it was the CEO’s decision to promote the VP to the position, and that he agreed the incumbent was “a good fit [for the role].”
191. The job description for position called for, in part:
- Minimum 10 years of progressive experience in fields such as asset management, asset planning and preservation, capital planning, project management, property management or related areas;
  - A degree/designation in engineering, architecture, real estate, portfolio planning, information management, property management, business, urban planning, or related area (asset);
  - Experience with strategic planning and implementation;
  - Experience and knowledge of real estate, property management and energy conservation;
  - Experience in preparing, implementing and managing large budgets, including financial analysis, tender

development and selection, contract management/negotiation and vendor management.

192. The incumbent told my investigator he had seven years of experience in property management and a Bachelor of Arts degree in English. He agreed he did not meet all the qualifications for the job, but said "on a balance, I would say I do."
193. The appointment was approved by the Board in June 2013. The management reports submitted to the Board that described the recruitment process undertaken to fill this position did not provide a closing date for each of the three postings.
194. The Chair explained that, at the time of consideration and approval, members of the Board had asked if the job was posted, and believed management's affirmative reply to suggest that there "was an open and transparent process."

#### **7.1.8 The Business of Past Relationships**

195. TCH's hiring guidelines state that it should be a "fair, equitable, open and transparent" process that is based on evaluation of the necessary skills and qualifications for the job.
196. TCH's conflict of interest policy applies to all employees and supplements the code of conduct to address perceived, potential or actual conflicts of interest. The policy clarifies that personal gain is not restricted to gaining something for oneself. It also includes providing a benefit to friends, family or business colleagues.
197. The hiring guidelines require each selection panel member to declare in writing that s/he has no conflict with the candidates, or if they do, to describe the nature of the conflict. If a potential conflict is identified, the manager or panel member must contact HR for assistance. A conflict of interest form is provided to each member of a hiring panel to be returned to HR.
198. The Vice President, Human Resources confirmed that hiring managers and interview panel members are required to declare conflicts of interest, or potential conflicts of interest, for hires within their purview. In the summer of 2013, he introduced a standard form to be used for declaring conflicts of interest.
199. He confirmed he had not received declarations of potential conflict of interest from either the CEO or the CFO for any of their hires, and that he himself, had not declared any potential conflicts of interest. He did,

however, confirm he knew the Director of Labour Relations & Legal Counsel prior to hiring her.

200. From our review, no written declarations were discovered, even though instances of a potential conflict of interest were found in relation to some of the CFO hires and one hire by the VP of HR.
201. The CFO hired individuals with whom he had had previous working relationships.
202. In November 2012, he hired a manager who had reported directly to him in a previous place of employment in the private sector. He said he had recruited the candidate, but did not make the final decision on her hire.
203. The hiring manager responsible for this position, and to whom the new manager would be reporting, stated she did not make the final decision for this hire as she commenced her own employment with TCH on November 19, 2012 – five days after the new manager signed her employment contract with TCH on November 14, 2012.
204. The hiring manager confirmed that HR had conveyed a request from the CFO for her to meet the candidate prior to her own first day of work, “to see if they could work together.” She said she had assumed the CFO and HR had already completed interviews and screened out other candidates.
205. TCH did not provide my office with a competition file for this hiring.
206. The CFO confirmed he did not have records of her recruitment and could not recall if any other candidates were considered for the job but thought the hiring manager would have met with other candidates.
207. The CFO hired his executive assistant in November 2012. He confirmed he knew her from his previous job and had worked with her, though she did not report directly to him.
208. Late on April 21, 2014, the CFO provided documentation that indicated he used the executive assistant as a reference when he competed for the CFO position.
209. He recalled interviewing at least two candidates for the position. The file we reviewed contained letters to two candidates stating they would not be interviewed as they did not meet the screening requirements. The file also contained incomplete interview notes from the successful candidate’s interview.

210. The CFO stated he did not perceive any potential conflict of interest in the hiring of his executive assistant.
211. As discussed earlier in this report, in March 2013, the CFO hired a new manager in his division, who at the time was working under the direction of the CFO as a third party auditor for TCH.
212. The CFO had recruited the manager into her role at TCH. When asked whether he perceived any conflict of interest in hiring someone with whom he had a professional relationship, the CFO stated he did not.
213. When asked if he called references, the CFO said:
- I would guess that HR might have done that. Again, we were working directly with the staff every day so we kind of knew her. So again, a need for a reference check is not as prevalent as in cases where you don't know the employee.
214. The hiring and appointment of the chief financial officer of the corporation is another case that raised concerns of potential conflict of interest.<sup>26</sup>
215. Prior to his appointment as CFO in September 2012, he was a member of TCH's Board of Directors and served as Chair of the Audit Committee.
216. In early 2012, an external search firm was retained by the Board to initiate a search for a CEO and a chief financial officer. The Board later decided to suspend the CFO search until the new CEO was recruited.
217. Approximately six months later, when the search for a CFO was re-initiated, the search firm approached the incumbent to gauge his interest in the position.
218. On June 26 at 11:59 PM, the incumbent sent an email to the search firm attaching his bio and profile "as requested", and confirming a meeting with the firm for June 28. Minutes later he sent an email to the Chair stating his intention to recuse himself from the Board for a 30 day period. His email did not state the day the recusal was to commence.
219. The search firm said that interviews took place between June 18 and June 28. The incumbent was interviewed on June 28, 2012 and again on July 9.
220. We reviewed information indicating the recusal was effective July 1.

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<sup>26</sup> A competition file for the CFO position was not provided to my office.

221. A June 29, 2012 email from the Chair to the CEO also states that the incumbent had asked for a thirty day leave from the Board for "personal reasons", effective July 1, 2012, but that he would "participate in the Special Committee on Housing in a briefing of the group on the strategic setting of TCH income statement and balance sheet."
222. An additional letter from legal counsel to the City's Civic Appointments Committee, dated July 9, 2012, states the incumbent had requested a leave of absence for the month of July 2012. An email from the Chair of the Board to his executive assistant on June 29, 2012, also confirmed the incumbent's recusal for the month of July.
223. While on his leave of absence, the incumbent accepted the CFO position on July 20, 2012 and tendered his resignation as a Board Director that same day.
224. When asked whether any concerns about potential conflict of interest were raised at the time of the CFO's hiring, the Vice President of Human Resources replied, "the appropriateness of that is not for me to decide. The Board and/or Board Chair ... were aware that he was taking a leave for this specific reason – [for] applying for a staff position. We take direction on governance from our Board."
225. A member of the Board, as well as the Chair, stated that they had advised the incumbent to recuse himself from his position as a board member prior to engaging in the recruitment process for CFO, but could not confirm whether such recusal came before or after the incumbent had applied for the position.

#### **7.1.9 Diversity in Recruitment**

226. Of 35 competition files examined in depth, my investigators found only one with a completed diversity tracking sheet. No records of outreach strategies employed by TCH during the recruitment process were found in any of the files.
227. When asked about the requirement for diversity tracking sheets to be completed during the recruitment process, the Vice President of Human Resources indicated he was not aware of such a sheet.
228. He also stated he was not aware of the diversity tracking requirement or the workplace diversity policy itself.

## **7.2 Compensation**

229. Fair and equitable compensation practices help prevent bias in decision making, and create a structure so that staff are paid at equitable rates for comparable work (equal pay for work of equal value).
230. They provide consistency and an objective standard to be applied to compensation decisions. Following such policies will protect against favouritism and inconsistent approaches from one manager to another.
231. Fair compensation practices provide a systematic method to recognize and reward staff contributions for work done. Practices need to be transparent so that employees can understand and accept the decisions of management.
232. The hiring policy states that wage rates must be based on the “skills, qualifications and other compensable factors required to perform the duties and responsibilities of the position.”
233. A wage range chart sets out salary bands and the minimum and maximum wage for each. Exempt/confidential clerical positions are at levels 1 to 4; manager and directors at levels 5 to 10; vice presidents at levels 11 or 12; and, corporate officers at level 13.
234. The staffing process and operational procedures manual requires job evaluation of all new jobs, which, once complete, are to be sent to a compensation analyst and to the job evaluation committee for review, approval and rating.
235. Overtime pay and lieu time are also addressed in policy. With pre-approval of the supervising manager, the policy permits employees to work extra time beyond their usual hours. Staff can later take off time from work with pay in the amount of overtime hours worked.
236. Management accumulate overtime on a straight time basis, and cannot receive a payout; they must take this as leave with pay. Any unused lieu time is forfeited at the end of each year.
237. Exempt employees receive overtime at a rate of time and a half, and can take that time as lieu with pay, or have the overtime paid out.

### **7.2.1 Job Evaluation**

238. My investigator asked the Vice President of Human Resources about the process used to obtain staffing approval for a new position. During this interview, the VP advised that he had never seen the Job Evaluation Committee operate. When asked why, he explained the

composition of the committee was not conducive to ensuring an appropriate result:

...[Y]ou need to have HR professionals in there who understand the organization and where the role fits into the organization to make sure that job evaluation form is completed properly... to net the appropriate result. Otherwise you get jobs that are inflated.

239. The Vice President confirmed he is responsible for ensuring consistency in compensation across TCH, and explained that a third-party consultant, Mercer LLC, was retained in the fall of 2013 to conduct an organization-wide job evaluation.
240. When my investigators asked what the deliverables for the review would be, the Vice President advised there would be standardized job descriptions for different levels of employees, a revamp of the job evaluation tool, and that all jobs in the corporation would be benchmarked against the new evaluation tool.
241. The information provided by TCH revealed that of the 81 new jobs created between June 2012 and October 2013, 11, or approximately 14%, went through the job evaluation process.
242. The Vice President of Human Resources explained the lack of job evaluation for some positions that my investigators queried. An evaluation was not done for the new associate director of human resources position because the job was intended to backfill the director of human resources. The VP decided the associate director should be paid at the same wage level as the director.
243. He also confirmed job evaluation was not conducted for either the manager of corporate issues and council liaison, or the senior director of community safety, corporate issues and council liaison.
244. Both positions were held by the same individual.
245. For the manager of corporate issues and council liaison position, there was no job description, so "there was no basis" on which to complete an evaluation. Because a job evaluation was expected to take place by Mercer LLC, a decision was made not to evaluate either job.
246. The Vice President acknowledged there was "a case to be made" for job evaluation of the director of labour relations & legal counsel position, but confirmed it was not done as he did not consider the role to be new.
247. One senior manager expressed the following about the lack of job evaluations: "You can't just think off the top of your head what [salary]

you want [to offer an employee]. Pay equity is also part of job evaluation, so you are putting the organization at risk by not following process."

### 7.2.2 Salaries for External Hires

248. In response to our request for documents that guide compensation decisions, TCH provided a wage grade chart for management/exempt staff which lists wage levels and corresponding salary ranges.

<b>Management/Exempt Wage Levels (2011-2013)</b>		
Level	Grade Minimum	Grade Maximum
1	\$35,782.91	\$43,583.34
2	\$23,278.08	\$42,676.48
3	\$45,688.22	\$55,717.34
4	\$52,002.56	\$63,393.95
5	\$58,936.56	\$71,937.28
6	\$66,489.36	\$81,099.69
7	\$75,280.32	\$91,747.88
8	\$86,299.97	\$105,243.87
9	\$96,452.91	\$117,625.50
10	\$107,596.37	\$131,245.30
11	\$121,835.25	\$148,579.58
12	\$142,141.12	\$173,342.84
13	\$162,447.00	\$198,106.10

### 7.2.3 Inconsistent Salary Grades

249. TCH provided information about current positions and their corresponding wage levels. From this, my investigators found evidence of inconsistent salary grades for like positions.
250. For example, of the ten executive assistants employed in October 2013, four were paid at level 4; five were paid at level 5; and one was paid at level 7.
251. While the wage grade chart identifies that exempt staff are to be paid at levels 1 to 4, senior managers confirmed that some exempt staff are paid at level 5. After one job evaluation exercise, a number of executive assistants were evaluated at level 5 in consideration of additional duties they are required to perform (although they all retain their "exempt" status). Senior managers reported that no exempt staff are to be in a level 6 or higher.

#### **7.2.4 Pay Increases for Employees**

252. Information collected during this investigation showed that compensation increases were awarded to employees in the absence of job evaluation.
253. Three employees in the Development division were promoted from senior manager to director in late 2012. Their hiring manager confirmed there was no posting or job competition for the promotions.
254. As senior managers, they earned \$100,005 a year. On promotion, their salaries increased to \$112,000.
255. In July 2013, the Vice President, Human Resources wrote to each of the three directors confirming their pay would be increased to \$121,835.25, pending the outcome of job evaluation. Their responsibilities had increased following the departure of a fourth director.
256. Evaluation of the director positions was not done. The Vice President of HR stated that he had asked the CDO to hold off on starting the job evaluation because he expected to have the organization-wide job evaluation done by Mercer LLC, and did not want to evaluate the positions independent of that review.
257. The CDO explained that the pay increases came at a time when another director had left for the private sector. He said that he had consulted with the CEO and VP of HR and decided not to fill this vacancy but to split the work among the directors. In addition, he explained that employee retention was critical and believed the directors were underpaid, relative to the private sector. He felt there was a risk of losing these employees and that it would affect his division's ability to deliver.
258. The CDO stated that when he requested higher salaries for the directors, the VP of Human Resources cautioned him against offering anything higher than \$121,823.25 in the absence of a job evaluation.
259. The manager who was promoted to Senior Director, Community Safety, Corporate Issues and Council Liaison received an increase of \$30,000.
260. When asked about this pay increase, the Vice President of Human Resources confirmed the position had not been evaluated.
261. The CEO, who had promoted the senior director to this position, informed my investigators that he approved her salary but did not negotiate it.

### **7.2.5 Executive Assistant to the CEO and Board Chair**

262. For the 2013 calendar year, the final pay statement for the Executive Assistant to the CEO and Board Chair shows her gross pay was reduced by \$2,844.90 (42.25 hours). Timesheets document that on December 11, 2013, staff reversed previously recorded overtime that had already been paid out, and then on January 8, 2014, re-entered the very same recorded overtime.
263. Email records show that payroll staff noticed the deduction on December 13, 2013, and flagged it to staff, including the CEO and the Vice President, Human Resources. One email explains that the deduction could not be made, as the payroll system could not process a negative net pay for the EA's next paycheck.
264. The CEO wrote back the same day, "[P]lease make the necessary adjustments to [the EA's] pay. Thank you." The VP of HR also wrote to payroll staff at the end of that day: "... as per our conversation, this adjustment must be made ... and reflected on the upcoming pay. Please confirm when this has been completed."
265. Staff exchanged emails stating that the full deduction would not be processed, and that in the meantime, the EA's December 19, 2013 net pay would be brought down to \$0. Staff also stated that this deduction would affect the T4 submission.
266. When asked what instruction he gave to his executive assistant or to staff regarding the deduction and re-entry of the overtime hours, the CEO responded, "I get many emails across my desk ... I see emails and I am hoping that my staff are just doing their due diligence. So when it comes across my desk ... It was a payroll issue, so I [said] go ahead and do it."
267. Email records also show that the EA herself instructed staff to keep her informed as to when her 2014 salary goes over \$99,000, and that when it in fact does, to start inputting the overtime hours as lieu time, instead of being paid at time and a half.
268. When we interviewed the EA, she advised that she was not aware there was any concern about her salary exceeding \$100,000 until the media reported on it in February 2014.

269. When asked whether anyone had raised concerns with respect to his EA's overtime hours being deducted and then re-entered, the CEO stated to my investigators that no one from Human Resources had raised any concerns with him:

The person that whistleblown [sic] it to the Ombudsman and to other people should have come up through the process and said [CEO], this is wrong. No one came to me ... and no one in Human Resources came to me and said that you cannot do this, so I approved taking it out, I approved it going back in. Nobody said anything about, this is wrong, we should not do that. If someone would have said something like that, I would have reversed that decision and said this is what we should have done. I was not trying to violate the sunshine law.

270. The Ontario Ministry of Finance's Public Sector Salary Disclosure lists the EA's salary for 2013 at \$107,708. That 2013 salary was higher than two director-level employees, including the Director of Compliance and Legal Counsel.
271. When we raised the issue with the Chair of the Board, he was "... flabbergasted to hear [the EA] made that type of money." He confirmed he first learned of the matter concerning the EA's overtime pay when the Internal Auditor raised the issue with him in January 2014. The Chair then retained external counsel to investigate the issue since TCH General Counsel had only recently commenced her employment with the corporation.
272. The Chair noted that discovering the EA's pay issue "saved the company", as the T4 information would have been incorrect and "[there was] fifteen-twenty thousand dollars worth of money on which remittance wouldn't have been made to Revenue Canada."

### **7.3 Performance Management Program**

273. In response to our request for documentation relating to the performance management program, TCH provided my office with its 2012 guide to performance management process.
274. We focused on the 2012 program because the 2013 one was still in progress at the time of our investigation and was not the subject of any complaints we received.
275. TCH's performance management program (PMP) is developed to ensure its employees understand the competencies and expected outcomes for their respective jobs. It is also designed to create a link

between performance and salary increases, and to assist employees to grow and develop.

276. The PMP is important because it ensures that the concrete plans of each division, unit and employee, are aligned with the goals set out in the organization's strategic plan. At year-end, progress towards the goals is measured and staff are eligible to be recognized for success in meeting those goals and outcomes.
277. The main components are performance planning at the beginning of the year; a mid-year "check-in"; and a final assessment by the manager in December. The guide to the performance management process also states "calibration sessions"<sup>27</sup> and final communication to employees of salary increases are to occur in January 2013.
278. Former and current employees interviewed told us the 2012 PMP was not carried out in keeping with the program's principles and past practices.
279. Employees recounted that the requisite "calibration sessions" did not occur despite being designed to ensure that the ratings given to employees are valid.
280. Employees within the organizational development unit that oversee the PMP, confirmed these meetings did not take place. In the absence of these sessions, an audit was completed of the documentation that managers submitted in support of the performance assessments they gave to staff.<sup>28</sup>
281. The audit revealed there were "very few plans with detailed comments and sufficient evidence to demonstrate performance."<sup>29</sup>

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<sup>27</sup> The Guide indicates there would be a "calibration session" to catch the "easy graders" and "tough graders", and to help managers "rate their employees more realistically." Managers are required to attend divisional calibration sessions with a prepared preliminary rating, and a completed assessment. Executives are required to review and approve the recommended ratings, and to provide "an additional check on fairness."

<sup>28</sup> The audit involved a review of 31 evaluations for employees that were rated, "exceeds expectations", and a spot audit of 50 other assessments from across the organization.

<sup>29</sup> Presentation entitled "2012 PMP Year-End", Organization Development Unit, HR Division, April 2013.

282. Employees also complained that the increases were not linked to performance and were not retroactive to January 1 as they had been in previous years. One staffer said:

There was no transparency in the process or in the link to compensation... the increase is supposed to happen on January 1<sup>st</sup>... Out of the blue last year they decided to give everyone 2% on April 1<sup>st</sup>. No discussion on any link to compensation, they just gave it to everyone across the board.

283. While an increase is not guaranteed under the PMP program, one of its major principles is pay linked to performance. As they gain experience and competence, employees rely on the program to create opportunities to move through the salary range based on their performance.

284. The VP of HR sent an email to all directors and senior managers on June 4, 2013 confirming a 2% increase for all eligible staff effective April 1, 2013. He directed that this information be shared with affected staff "as soon as possible." The email indicates employees rated "exceeds expectations" will also receive a learning and development "recognition package" including access to coaching, mentoring and "a learning and development incentive."

285. Payroll staff confirmed a two percent PMP salary increase was given to eligible employees regardless of their performance rating. The increase was made effective April 1, 2013. Staff confirmed the increase was not applied retroactive to January 1 as in previous years.

286. We heard from employees that staff who had been promoted to new positions or that had advanced through acting assignments were not given a PMP increase.<sup>30</sup>

287. One HR employee said:

Then they provided the 2% but anyone who got promoted...or those put in a new acting assignment during a certain time didn't get it. They were just making up their own rules as they go.

288. The VP of HR's email confirms this, indicating "employees paid a promotional increase of two percent or more between July 1 and December 31, 2012, are ineligible for the increase." There is no explanation for this decision in the email.

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<sup>30</sup> The Guide provides direction to managers for the evaluation of staff that are promoted or acting assignment for a portion of the year.

289. The CEO, when asked, explained that it was a decision of the executive leadership team to not provide the two percent increase to promoted staff, as it considered this would be "double-dipping."

## **7.4 Employment Contracts**

### **7.4.1 Overview**

290. In the summer of 2012, the Vice President of Human Resources introduced a new employment contract for use with all management/exempt employees.
291. On the subject of the employment agreements that had previously been used, the Vice President said:
- There were no employment contracts previously. You got a letter saying welcome to TCHC, here is the job title, here is where you work and here is what your salary [is].
292. However, two examples<sup>31</sup> of offer letters in use prior to introduction of the new employment contracts revealed the following.
293. The offer letters included the employee's title, reporting relationship, start date, salary grade level and salary. They both provided for a six-month probationary period and specified that there would be a performance review after six months in the position as provided for by the PMP.
294. The offer letters also addressed benefits and vacation entitlement and indicated the employee was obligated to understand and adhere to the organization's policies. Each letter was signed by a representative of TCH and the employee.
295. The employment contracts introduced by the Vice President of HR covered a number of the same topics. They also contained additional provisions dealing with termination, return of TCH property, non-disclosure of confidential information, and non-solicitation of employees. The contract contained a clause indicating the employee had the opportunity to seek independent legal advice prior to signing.
296. When asked why he introduced the new employment contract, the VP of HR said he wanted a contract that protected the organization and captured issues such as confidentiality, non-solicitation and the "cost of severance."

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<sup>31</sup> July 2012 consultant position and a 2010 director's position.

297. Numerous terminations of employees with long service occurred during the period covered by this investigation.
298. Under the “old” regime, a senior employee entitled to common law notice of termination would estimate his or her claim in months. A simple guideline for employees with long service would be approximately one month for every year of service subject to various legal considerations.
299. The VP of Human Resources confirmed the new contract was introduced without formal notification to the executive leadership team, as the team had been temporarily dissolved. He also confirmed no memorandum or discussions with that team took place. He did say that he had discussed the provision with General Counsel at the time, who did not support it and recommended further discussion prior to implementation.
300. He said the new contract did not require the approval of the Board of Directors or the executive leadership team, and indicated it was not captured in any new human resources policies or procedures.
301. He stated that most members of the executive leadership team were aware of the new contracts because "just about all of them" had already signed their own. Our review of their contracts, revealed that not one of them contained this provision.

#### **7.4.2 The ESA Clause**

302. The *Employment Standards Act* (ESA) sets out the minimum standards that employers in Ontario must meet, for notice or pay in lieu of notice for terminations without cause. Employees also have common law rights to notice or pay in lieu of notice which are generally more substantial than the minimum standards found in the ESA.
303. For example, the maximum individual notice of termination is eight weeks. If you have completed more than five years of continuous employment with an employer such as TCH, an individual could also receive severance pay of an additional one week per year of service, up to a maximum of 26 weeks.
304. Coupled with notice, this means that the maximum entitlement for an individual under the ESA is 34 weeks.
305. By contrast, the maximum claim that an employee of 26 years might make at common law for reasonable notice might be 24 months, dependent on the circumstances.

306. The potential difference is 70 weeks of pay.
307. We heard from a number of former and current employees that the new employment contract contained a clause stating that upon termination without cause, TCH would provide only the notice, or pay in lieu of notice, and benefit continuation according to the minimum notice set out in the ESA. Employees said the clause was found in contracts for new hires, and for those offered promotions.
308. When asked, the Vice President of Human Resources confirmed the ESA clause was introduced in the new employment contract during the summer of 2012. He confirmed he gave instruction to staff to begin using it for new employees and those promoted to new positions.
309. Our review of employee files who had undergone staffing changes since June 2012, showed that the language of the ESA clause in the new contract changed in December 2012.
310. The previous version of the contract included the following term specifying when the employment agreement could be terminated without cause:

By TCHC for reasons other than Cause, Retirement or Resignation, upon providing the employee with prior written notice or pay in lieu of notice in accordance with the provisions of the Employment Standards Act, 2000, as amended from time to time.

311. After the Director of Labour Relations and Legal Counsel (Director) joined in December 2012, she amended the clause further. The more recent ESA clause includes the following term relating to when the employment agreement could be terminated without cause:

By TCHC without cause, upon providing only the notice or pay in lieu of notice, benefit continuation, severance pay (if applicable) and/or any other required payments prescribed under the Ontario Employment Standards Act, 2000, as amended from time to time. The employee understands and agrees that provision of notice, pay in lieu of notice, benefit continuation and/or severance (if applicable) and any other payments required under the Ontario Employment Standards Act, 2000, shall constitute full and final satisfaction of any claims, rights, entitlement and/or demand that you might have arising from or related to the termination of your employment whether pursuant to statute, contract, common law, tort or otherwise;

312. In her role, the Director said she has responsibility for reviewing employment agreements: "typically they all come through me." She confirmed an employment contract containing the ESA clause was in use prior to her arrival, and that she "didn't change the entitlement" but "tinkered with it" shortly after she started.
313. She explained the new clause specifically references benefit continuation as being limited to the ESA notice period in order to address recent case law and to ensure the clause was valid. The Director advised that since she has been at TCH, all new hires receive an agreement with this clause. She also said, "if you get a promotion, you get the new employment agreement."
314. The Vice President of HR advised my investigators that only managers at wage level 8 or above have the ability to negotiate the substance of the clause. He explained that this meant anyone in pay levels 6 and 7 could not negotiate the clause out. He confirmed that this approach is not documented anywhere. He said that for clerical staff or supervisory positions "from my stand point, the risk is too great not to have it in there."
315. The Director stated that new hires had the option of seeking legal advice and "push back." She stated that managers and above are able to "discuss" the clause, but otherwise no exceptions have been made. She did not clarify which wage levels she considered to be managers. The new employment contracts do not reference wage levels despite the fact that several of them overlap.
316. With respect to the ability to negotiate the ESA clause, the Director said:
- Naturally, when you're a manager you have a bit more negotiating power... these are difficult positions to fill and they have increased obligation to the company, so in turn we're perhaps more open-minded negotiating contracts.
317. She noted that she has seen contracts specifying a number of months for every year of service up to 18 months "typically for executive level employees."
318. Since the minimum amount of severance under the ESA is almost always less than the amount likely to be received under the common law, employees told my investigators they felt it was unfair to require a long-standing employee to "sign away their common law rights" upon promotion.

319. When my investigator asked the Vice President of HR if he had any concerns about fairness, he said:
- ...You either take a job to work and perform in the role, or you take the job with the expectation of getting fired. If your position is the latter, where you are expecting to get fired, then that [ESA clause] is more of a concern for you... We have a very long tenured staff in general. We have, probably, well in excess of 40% of our staff that have over 10-15 years of service with the organization. So it is a very long service staff. With that you get staff that are not performing to expectations.
320. When asked whether long service employees were promoted into new positions for the purpose of having them sign a contract binding them to the ESA clause, the Vice President responded by saying “absolutely not.”
321. He added that nothing would preclude TCH from offering a greater amount of severance, for example, during downsizing. He stated that he wanted to protect the corporation in the event of a termination without cause.
322. The inescapable difference between the statute rights and the common law claims is substantial. This difference becomes even greater for more senior employees because the statute has limits.
323. The Vice President of Human Resources commented that “employment law in Ontario – specifically in Ontario – has gone so far left that it is almost impossible to terminate for cause.”
324. He noted that for senior level positions, one month per year used to be the “sliding scale”, but more recently, six to nine months had been cited for an employee with four years of service.
325. The Director explained that in the absence of the ESA clause or some other provision specifying the notice payable when an employee is terminated without cause, there is a presumption of common law notice.
326. My investigator asked the Director to describe the steps – during the offer of a promotion – that are taken when the agreement containing the ESA clause is presented to staff who do not have any limit on their right to common law notice of termination.
327. The Director said in such cases “the associates would give them the contracts [or] the managers may give them the contracts.” She stated that she trains her staff to understand the “parameters of the law around them”, including the need for time to seek legal advice and sign the

agreement before assuming the new duties. The Director noted she trains her associates to communicate this advice to the managers in their client groups.

328. When asked whether the employee is notified of the ESA clause, she indicated she could not speak to this because she does not present the contract. When asked whether she trains employees to draw attention to the clause, the Director responded as follows:

No, I haven't said, you know, 'there's lots of changes and there weren't contracts five years ago so there's a lot more restrictive language in this contract.' The independent legal advice thing I stress to everybody...typically we leave about a week for them to take the contract home, do what they will, look it over, and then bring it back.

329. One employee file we reviewed was of a former staff who worked at TCH for over 20 years. As a result of restructuring in her division, she moved from one manager position to another, with additional responsibilities, and received a salary increase.
330. A competition was not held for the new assignment. The former employee said the increase in pay was initially presented as recognition of her new responsibilities, but also as redress for the fact that a male colleague in a similar managerial position and three supervisors were earning more than she was. The documentation from TCH describing this change called it a "re-classification" as opposed to a promotion.<sup>32</sup>
331. The former employee signed a new employment contract containing the ESA clause. She said her director brought the contract to her desk and directed her to sign it. She did so, and her director gave her a copy. She recalled briefly reading the document while the director sat in front of her.
332. No one told the employee about the new clause. No one recommended she seek legal counsel before she signed. No one called to her attention that in return for the "re-classification", she might be losing some of her common law rights.
333. Three and a half months after signing the agreement, her employment was terminated. Her statutory rights to notice and severance pay amounted to 30.25 weeks.
334. Her common law claim for reasonable notice could have been as high as 86 weeks. Even if she only asked for 12 months of notice, that would

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<sup>32</sup> TCH chart of staff changes provided to the Ombudsman on November 5, 2013.

have been approximately 22 weeks more than her statutory entitlements.

335. In the course of our investigation, we also spoke with a current wage level 7 employee, who was promoted in 2013. A competition was not held. The employee has been employed at TCH for over 20 years. He told my investigators that he had attempted to negotiate the ESA clause out of the contract before accepting the promotion. He said he was told the ESA clause would not change. The employee concluded that only staff paid at level 8 and above were allowed to negotiate the clause out of the agreement.
336. In this instance, the employee knew about the clause. He received legal advice, and understood that his rights would be reduced. It is apparent that he believed he had no choice but to accept the new contract.
337. Should he be terminated, there may be issues surrounding whether he can be bound to a clause he did not want, could not negotiate, and which imposed a significant detriment to his existing common law rights.
338. In another case, a former employee who worked at TCH for over ten years, accepted an acting assignment in 2013. The former employee told my investigators she was unwilling to consider a new permanent position because of the ESA clause:
- I made it very clear I would never take my position permanently because I would never sign an employment contract. I will never waive my common law rights...
- They say that at a senior level it's harder to recruit so at that level it's harder to negotiate. It's okay to rip off the little people.
339. We reviewed a sample of 63 agreements from June 1, 2012 to October 28, 2013, which included full time permanent hires, full time temporary hires and promotions:
- A. Nine agreements contained individually tailored notice period provisions. All of these were for executive positions with the exception of one which was for a director level position and specified a minimum six month notice period.
  - B. Nine agreements contained no clause specifying the notice period. One of these was for a consultant position within HR and another was for an executive assistant position. The remainder were for vice president, director or management level positions.

- C. Forty five agreements included a clause specifying the ESA minimum notice period. This includes both the pre-December 2012 and the post-December 2012 version of the ESA clause.

## **7.5 Terminations**

If you've ever read the book "The Art of War", the commander-in-chief calls up the generals, chops off their heads, takes three or four people, promotes them to generals, and then those generals never question anything because they've seen their predecessor's heads roll.

Heads rolled that day.

(Former senior employee on the day three directors were terminated)

### **7.5.1 Terminations Without Cause**

340. Many former and current employees reported concerns about the terminations that have occurred since June 2012.
341. The information provided by TCH indicates there were 45 terminations<sup>33</sup> from June 2012 to November 2013, including 41 terminations without cause.
342. Of these 41 terminations without cause, 14 involved employees with more than ten years of service (including seven employees with more than 20 years of service). There were 15 terminations without cause of employees in director level positions or above. In each of them, TCH attempted to negotiate a settlement in return for payments to the terminated employees.
343. The Vice President of Human Resources asserted that the costs of terminations were high. He wished to reduce the risk to the employer for severance costs related to long service employees.
344. A former senior executive also commented on the "enormously destabilizing effect" of the termination of a vice president in 2013 who had been there over 30 years, and who was promoted to a VP position four months prior to being terminated after serving in the acting VP role for six months.
345. The senior executive advised that the CEO had told her the VP "didn't get what I am looking for" without providing any further details.

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<sup>33</sup> This does not include terminations upon the expiry of a contract.

346. Another termination of a director in 2013 involved her promotion into the position six months earlier after six years service with TCH. Another senior executive said she was asked by the CEO to terminate her.
347. A former executive said she was concerned at the time that the director was given a particular assignment by the CEO "so that he could prove she was failing." She went on to say that if the director "wasn't succeeding in the role she was in, there was not enough effort to find the right role for her."
348. Immediately following his hire, the CEO, with the assistance of the VP of Human Resources, began terminating staff.
349. From July 2012 to November 2012 the following terminations without cause were carried out:

<b>Position</b>	<b>Length of Service</b>
Director	37 years, 3 months
Senior Executive	1 year, 9 months
Director	9 years, 7 months
Manager	7 years, 8 months
Support Staff	6 years
Manager	12 years, 8 months
Consultant	27 years, 3 months
Coordinator	8 years, 8 months
Support Staff	10 years, 2 months
Director	9 years, 7 months

350. In 2013, nine directors were terminated without cause.

<b>Position</b>	<b>Length of Service</b>
Director	12 years, 11months
Director	2 years, 4 months
Director	7 years, 10 months
Director	12 years
Director	31 years, 2 months
Director	23 years, 4 months
Director	13 years, 8 months
Director	3 years, 3 months
Director	6 years, 6 months

351. In 2013, additional managers and senior executives were dismissed without cause.

<b>Position</b>	<b>Length of Service</b>
Manager	15 years
Manager	3 years, 9 months
Manager	22 years, 3 months
Manager	3 years, 3 months
Manager	1 year, 7 months
Manager	26 years, 8 months
Senior Executive	6 years, 4 months
Senior Executive	31 years, 6 months
Manager	4 years, 5 months

### **7.5.2 Terminations in Human Resources**

352. Information provided by TCH reveals that a total of 18 people exited human resources during the period June 2012 to February 2014.
353. There were 11 resignations. Of those, five had over five years experience (including two with over ten years). Among the four terminated without cause, three had over ten years seniority.
354. One senior staffer recalled an "initial wave of change" in their division within six months of the creation of the permanent vice president of human resources position.
355. This staff member recalled employees leaving and indicated the reasons were unclear because they were needed, but there was no explanation for their departure.
356. The VP of HR said he had consolidated the health and safety unit with the labour relations unit to "operate hand in hand." He went on to say there were "legacy components" within his division that needed to be downsized, but acknowledged he needed to first assess the "size, scope and volume of work" to facilitate further change.
357. One former staff member recalled a meeting in October 2012 during which the Vice President of Human Resources announced a plan to restructure and create a new organization, and recalled that right after the meeting, two senior staff members were given notice they were being terminated. Staff reported that these terminations were unsettling.
358. HR staff indicated they were not aware of any formal restructuring plan.

359. The VP confirmed organizational changes in HR were not being consistently communicated to his staff, saying:
- HR [is] not resident facing. We are not talking about the same volume of staff, the same numbers and at the end of the day, you don't need the same level of buy in.
360. Examples reviewed confirmed two staff were given notice of termination without cause on October 31, 2012. One employee was a manager with 12 years seniority, and the other was a consultant with 27 years of experience.
361. The VP of Human Resources indicated he did not take the decision to terminate these employees "lightly" but decided in one case he "wasn't getting value out of her" and "wasn't getting value out of that position." In the other, he stated the termination was because the program the manager was responsible for was "abysmal". When asked whether he had identified any performance issues, he indicated there was "nothing":
- Their PMPs were done. There was no documentation, nothing that established the shortcomings I saw.
362. When asked about the termination of a payroll assistant, he stated "I was struggling to see the need for a payroll assistant."
363. Current and former staff advised that there was a reorganization of work in the summer of 2012 when the VP of HR assigned one HR consultant primary responsibility for all recruitments, including unionized positions.
364. The recruiting function had previously been shared among five HR consultants that had the responsibility and the developed expertise for particular client groups. The VP of HR told us one person was tasked with being a recruitment specialist, while the other four staff continued with the rest of their portfolios. Current and former staff told us the recruitment workload was too much for one person. Two staff who had worked in this new recruitment function at separate times resigned. Both of them had more than five years experience at TCH.
365. One staff member described the situation surrounding the exits as follows:
- We are talking about people with 10 to 12 years of experience who knew and who had seen everything. They are all gone and we are left with a skeleton crew.

366. Several staff referenced the regime under the Vice President of Human Resources as different than what went on before. One employee said they were being “told to do things as opposed to a consultative approach.” Another employee said:

Previous to the new regime, there was lots more communication from all levels within the division. With the new VP... you would see things happen and you would not be quite sure why.

367. One staff member said his affinity for certain employees affected team dynamics, saying "people work against each other when they see favouritism." She felt excluded and ignored, and was afraid she would be "pushed out" of her job.
368. In terms of the process for terminations, staff indicated that historically, in the absence of a restructuring, performance issues were dealt with through progressive discipline. HR staff stated that in their experience, documenting performance issues and having conversations with employees had been the usual approach.
369. Staff recalled situations where employees were terminated without cause with no documentation or progressive discipline, where there was a restructuring or a problem with “fit”, and where cause could not be established.

### **7.5.3 Terminations of Senior Staff in Asset Management**

370. In May 2013, three long-service directors were terminated. One employee had 23 years of service, another 31, and the third had 12 years of service.
371. The terminations were carried out by the Vice President of Human Resources and the Vice President of Asset Management. It was the VP of Asset Management’s first day on the job.
372. The Vice President of HR informed my investigators that the three directors had reported directly to the CEO just prior to their terminations. When asked if he had any concerns about their terminations, the VP of HR recalled telling the CEO that it would “cripple [the VP, Asset Management] coming into this role.” The VP of HR said the CEO felt “they [were] not working anyway.”
373. The VP of HR indicated that the VP of Asset Management was part of the decision-making and noted that firing the three staff on the first day “would have been a concern for me on a number of levels, but at the

end of the day, it is [his] business to run.” The VP of HR recalled raising his concerns with the VP, Asset Management.

374. When asked if the three directors' past performance reviews were considered in the termination, the VP of HR said he did not look at them, noting that the two individuals they reported to in 2012 were also terminated, “so I wouldn't put a lot of stock” in their performance ratings.
375. A review of the 2012 performance review ratings for the three individuals indicated they each met their performance requirements in the preceding year.
376. The Vice President of Human Resources was asked about what considerations were taken into account when managers terminate staff. He said they were assisted in considering whether there existed an adequate process, information and documentation to establish cause. The VP explained that he would prepare an estimate setting out the likely severance amount in the event of a termination without cause.
377. He stated that he did not provide the usual guidance in the case of the termination of the three directors because the decision had been made by the CEO. He also said the practice had not been followed because he was aware of “some of the issues they had” with these particular employees. Nonetheless, the VP of HR stated he was aware there were “no performance issues documented with any of them.”
378. The VP of HR indicated that normally, if it were a manager terminating an employee and there was a “substantial price tag” associated with severance, he would take it to the divisional executive or to the CEO for review, but in this case, “there is nobody to take it to.” He confirmed he created a severance estimate that he and the CEO signed off on.
379. When asked why these individuals were terminated, the Vice President of Asset Management explained they were not “investing in innovative thinking”; were “determined to be ineffective”; and, given the level of change that was coming, he “didn't think it was suitable to move forward with them.”
380. He stated that the decision was a collaborative one between himself, the CEO and the VP of HR. The VP of Asset Management indicated there was consensus these individuals were not going to “move business forward.”
381. With respect to the approvals required for a termination, the VP of Asset Management said:

[The CEO] owns decisions on any terminations and [VP HR] has approval as well. He makes a recommendation

and does risk analysis. [The CEO] ultimately owns decisions. [He] wanted a say in any termination decisions, period.

382. The VP of Human Resources recalled the CEO had concluded “he didn't feel we were able to move forward with the changes that needed to be made within the organization, with these particular individuals.”
383. He confirmed that the terminations were not part of any restructuring or reorganization plan. He said in the eleven months the CEO had been at TCH, “the level of service had not changed. There [was] no noticeable difference in how we were operating, in how we are servicing clients, in the number of escalations that were getting to his [the CEO's] office.”
384. The CEO confirmed it was ultimately his decision to terminate the three directors. He said he based the decision on his observation that they were not showing the required leadership or ability to implement the changes he felt were necessary. He also confirmed performance management information for these directors was not considered because the staff who made those assessments had been terminated.
385. One of the terminated employees we interviewed advised us that two of the meetings to terminate were set up half an hour apart and took place on the floor where she worked with her staff. She said there was “no warning, no notice, no discipline.”
386. She noted that she had received positive feedback from the CEO in an email he sent three weeks earlier, but that despite this positive feedback “...with the number of firings going on in the organization ... [she] wasn't surprised.”
387. A former vice president stated that the loss of these senior level “leaders” amounted to the loss of “the champions, the thinkers and the doers, the brains behind the whole thing.”
388. She added that in the midst of this, new objectives and projects were being launched, while core objectives were not being addressed. Staff were working late into evenings and on the weekends because “there was no comprehension of the complexity of the work. No one knows how to run the ship or what it would take to run the ship.”
389. She herself was terminated in 2013 without cause.
390. A former senior executive, described the environment as follows:

Absolutely chaotic, a climate of fear, people [were] afraid that they are going to lose their jobs, be found out ... are under qualified, feeling that people are hiding... A climate

of espionage and weirdness. I have never seen anything like it.

## 7.6 Complaint Handling at TCH

391. TCH's human rights, discrimination, harassment and fair access policy states that it is committed to providing an inclusive housing and work environment in which all individuals are equally valued and fairly treated. All employees, tenants, and individuals working with TCH have a duty to promote human rights, remove barriers to equality, and to not harass or discriminate. All employees, including management and exempt staff, are bound by this policy.
392. Under the policy, there is a staff complaint procedure indicating any employee can use it to address issues of discrimination or harassment in the workplace. The policy establishes the tenant complaint procedure relating to human rights, which in turn, states that, "any member of TCHC's community who is covered by [the policy] can file a complaint of systemic discrimination to challenge a TCH policy or practice."<sup>34</sup>
393. When my investigators interviewed the Vice President of Human Resources, he said there was no formal process for addressing complaints. When we specifically asked about the Office of Diversity, Fairness and Human Rights (Office), the Vice President stated this mechanism could be used if an applicant seeking employment felt there was "bias against them because of a prohibited ground."
394. The Office reports currently directly to the CEO<sup>35</sup>. Its services are described as including "conflict de-escalation, mediation, investigation, training and mentoring...program and service reviews where complaints involve systemic practices."
395. The Office tracks matters brought to its attention and prepares an annual report on its activities regarding complaints from residents and staff. Staff advised my investigators that the report is not submitted to the Board nor have they ever appeared before the Board.

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<sup>34</sup> "Discrimination" is defined in the complaint procedure as: "any practice or behaviour, whether intentional or not, that has a negative effect on an individual or group based on a prohibited ground e.g. disability, sex, race, and sexual orientation. A decision to deny a benefit that relies on any of these grounds, unrelated to a person's abilities, is prohibited. Discrimination may arise as a result of differential treatment or it may result from the unequal effect of applying general rules to everyone. In either case, **if the effect of the behaviour or practice on the individual is to deny or limit access to** housing accommodation, goods, services, facilities, **employment**, or contracts available to others, it is discrimination." [emphasis added]

<sup>35</sup> Over the period of our investigation, the Office reported to various senior executives.

396. The VP of HR advised that while there was no formal complaint mechanism, he had at times dealt with complaints about recruitment that were referred to him by the CEO.
397. He recalled that in response to one complaint by an unsuccessful job applicant, he undertook a review of the competition, and gave the applicant interview advice. The VP of HR also remembered a contract employee who complained about having to compete for a permanent position in which she had been in the acting role for six months. In that case, he recalled explaining "that is the process that allows that everybody access the [positions] in the same manner."
398. The CEO recalled receiving complaints about hiring, and acting on them, though he could not remember any specific complaint. He indicated some staff complain about the "system", "favouritism", or that they were the best candidate for a position.
399. When asked to describe how he handled complaints brought to him, the CEO explained his general approach was to meet with the individual, look at the process undertaken, and require the VP of HR to fix any problems found. He confirmed that this type of communication was not in writing.
400. In relation to the Office, the CEO recounted dealing with complaints that it brought to him through both individual and group staff meetings. He reported dealing with an issue raised by the Office about the Vice President of HR's "arrogant" behaviour, and addressing it with him directly.
401. The Office had three complaint files relating to recruitment and compensation which included one that had a number of complaints from several human resources staff. In two of the matters, the Office facilitated a meeting with the CEO. In another case, a staff member met directly with the CEO without the involvement of the Office.
402. According to the documentation, resolution was reached in one complaint through informal discussions and there was partial resolution for particular employees on some of the issues raised in the multi-employee complaint.
403. In two other cases, once the matter was escalated to the CEO, employees were not prepared to request a formal investigation.
404. The complaints involved issues about the VP of HR's interaction with staff; concerns about the failure to post job positions; a failure to run a job competition; hiring without a review of resumés; and an employee being paid more than others for doing the same work.

405. Staff told my investigators that employees are “afraid” to visit the Office because it would appear that they “are undermining the Director of Labour Relations & Legal Counsel or the VP of HR.” They are physically located on the same floor as Human Resources.
406. One former human resources staff member recalled hearing complaints about unfair hiring practices and decisions. She said she would advise staff "the only real options are the hiring manager, CEO or VP of HR." She noted "people often sided on caution" when considering whether to raise an issue with a senior executive.

## **8.0 Ombudsman Findings**

407. This is a shocking story about the abject failure of leadership from the top. The CEO set the tone, describing his every move as "his prerogative." Poor management followed, ignoring rules, flouting process, abrogating fundamental principles.
408. It is an alarming tale of senior executives ignoring policy and running an organization as though it were their own personal fiefdom.
409. Senior positions were not advertised, screening was ignored, interviews did not take place, and reference checks were skipped.
410. Process was often ignored. Unilateral decisions and inequitable treatment became normative and acceptable.
411. The plan to eliminate the common law rights of senior employees by imposing restrictive new employment contracts in consideration for promotional opportunities was egregious in how it was implemented.
412. The goal was to save money by substantially reducing the legal rights of long service employees at termination. Without full consultation or formal notice, this attack upon loyal workers was initiated. It violated the promise of the TCH to operate its business in a fair, equitable and transparent manner. Employees were treated unfairly.
413. Two of the most senior executives, both officers of the corporation, led this charge to dire consequences. Again, the CEO's lead became the lesson to learn and the example to follow.
414. The Board of Directors, in the absence of full disclosure, failed to obtain answers to its questions. As a consequence, they became the senior executives' rubber stamp.

## 8.1 Policies Not Adhered To

415. Policies and procedures provide an important framework within which decisions can be made. For a public corporation with over 1,500 employees, the need for up to date, clearly communicated human resources policies and procedures is even more significant.
416. There was a lack of clarity among staff. Employee turnover during the course of our investigation added to the confusion about which policies and procedures applied. With all the exits, there was a void of trained employees.
417. Although the Vice President of Human Resources said he was responsible for ensuring compliance with recruitment policies, he was unaware of certain procedural requirements and even policies used by staff to guide recruitment decisions.
418. He told my investigators he was not briefed on recruitment processes before assuming the position. This explanation is unacceptable as it appears he never took the initiative to understand which policies and procedures applied to recruitment decisions.
419. Not only was the Vice President of Human Resources unfamiliar with documents such as the draft staffing process and operational procedure manual, he believed he did not have to abide by them since the hiring policy did not contain any specific process requirements.
420. While giving evidence to my investigators, he often explained his non-adherence to recruitment requirements by implying the hiring policy's lack of specific process requirements allowed him to avoid posting positions, interviewing candidates or checking references:

So the policy is the overriding document. The processes change and they can change very frequently. That can change for any number of reasons: we find that is not working, we find that it just adds to the timeline to complete the hire. For any number of reasons it could change. We could change the form, whatever the case may be.

421. He did, however, go on to say that:

[Y]our policy ends up becoming your overarching guideline, your overarching principles, for that specific area (and we are talking about hiring, I guess) then the processes and forms that go along with it, they are attached to the policies. They form not part of the policy, but the process by which the policy is executed.

422. The Vice President of Human Resources told my investigator he was not satisfied with the outdated HR policy framework he inherited. He said it was not practical to enforce outdated policies that do not reflect current practices.
423. Many of the policies might have been out of date but I do not accept this reasoning for arbitrarily straying from the process in recruitment about which employees knew. I stress that, in the absence of new policy updates, the old policies must remain in force, and are therefore, to be followed.
424. Moreover, any fundamental changes require notice to the employees involved. This would include a decision to ignore the hiring policy.
425. The VP was not alone in this.
426. The Chief Executive Officer failed to understand both the operation and application of certain policy and recruitment requirements, as evidenced by his hiring and remuneration of staff. In the absence of articulated exceptions, I do not find the CEO's practices to be supported by any approved policy or process.
427. Unexplained exceptions suggest discrimination and inequitable treatment. Yet, TCH promises to avoid such conduct.

## **8.2 Recruitment Run Amuck**

428. TCH's mission statement says, in part, "We respect people as individuals and create environments where fairness, trust and equitable treatment are the hallmarks of how we work."
429. The hiring policy, when read together with the draft staffing process and operational procedures manual, requires fair and open competitions to be held for internal and external hires that are to last more than three months.
430. For both exempt and management positions, open competitions were not held for a number of internal and external staffing changes. This occurred up to and including the executive levels of the organization.
431. Not only were jobs not posted, but requirements of the recruitment process were not adhered to, including the submission of staffing approvals, business plans, job descriptions, screening candidates, holding panel interviews, recording interview notes, scoring candidates, conducting reference checks.
432. The list goes on.

433. The approach to requiring compliance with the steps in recruitment can only be described as non-existent. The failure to have proper documentation not only violates the policy, but creates serious risks concerning liability.
434. I found that, since June 2012, employees were promoted to positions without having competed for them. There were specific hires that took place that were in violation of the recruitment policies and procedures.
435. The CEO's promotion of the Vice President, Human Resources without due process is particularly troubling, given the significance of the human resources function. The VP had been in the acting assignment for only one month before being offered the promotion. He received a substantial pay increase. He was made an officer of the corporation.
436. While the Board considered and approved the appointment of the VP Human Resources as an officer of the corporation in August 2012, it is unclear why the initial promotion of the incumbent to the permanent VP Human Resources position was not brought to the Board for its approval.
437. I am also unclear as to why the Board Chair, after raising concerns with the Chief Executive Officer about the appointment, accepted his answer that he hired the "best man for the job."
438. It is evident that the staff reporting system to the Board is not effective and that the Board is not obtaining the right answers to the questions it asks.
439. Compared to the Vice President of Facilities Management search in 2013, for which there was an open competition, applicant screenings, panel interviews, reference checks, among other things, the Vice President of Human Resources staffing change lacks any adherence to process.
440. The position of associate director of human resources appears to have been created as a parallel position to fill the maternity leave vacancy of the interim director of human resources. A business plan was not created to support the decision.
441. I find that the Vice President of Human Resources did not intend to keep the associate director position open for a year, as it was stated to be. In fact, he opened up a competition for the permanent director position, and stated there was no longer a need for the associate director. She was terminated seven months into her contract.
442. I also find that the VP's method of hiring his executive assistant was unfair and lacked transparency. For him to, in the absence of an open

competition, scour a social-media networking site and reach out to a candidate is questionable. It gives the perception of bias. I also find that his decision not to hold a competition was unfair.

443. The evidence shows the Vice President of Human Resources reached out to an associate at a law firm, someone he knew, after he reviewed the applications that had come in through the job call. The associate was not screened, and she did not go through a formal panel interview process as the procedure required. The associate did not have the minimum qualifications of ten years human resources experience with five to seven years at a management level. Some of the other 20 candidates did, including two with over 20 years of experience.
444. On top of that, after being hired, the associate's job title changed, and she assumed duties that were not included in the original posting. No new staffing approval form was created, nor was a business case made for this new director of labour relations & legal counsel position. If the Vice President of Human Resources wanted to hire counsel, or to create a dual role, surely a business case would have been necessary?
445. A new posting might have gone out. A new staffing approval should have been sought for the role. There was no reason not to follow policy.
446. We found that TCH had offered employment to certain candidates before the deadline to apply.
447. The evidence revealed that the Chief Financial Officer approached a third-party auditor working under his direction, telling her about a position for which he was not the hiring manager. Following interviews, he then instructed the hiring manager to offer her the job before the deadline closed.
448. Although the VP of HR could not recall this situation, he said he would have been aware if the employee was hired before the closing date. Email records confirm he had been notified by HR staff, and did not reply. He should have stepped in to correct the situation.
449. In the case of the Vice President, Asset Management, without competing or applying for the job, he was appointed four days before the closing date of the third posting. The CEO told my investigators he did not believe any qualified candidates would have applied within those four days. I do not accept this explanation.
450. Public servants must act in a way that withstands the closest ethical scrutiny. The manner in which they conduct themselves throughout hiring must reflect high standards of impartiality and objectivity. The appearance alone of a conflict of interest can result in a loss of public trust.

451. Staff must avoid situations that could result in a conflict of interest, including an apprehension of bias or preferential treatment in hiring.
452. A perceived preference for a candidate already known to someone involved in the hiring, may be a perceived disadvantage to other potential candidates, and creates an impression of unfair process.
453. Having a conflict of interest policy assists employees to avoid conflicts of interest and protects them by providing steps to make a proactive declaration of a potential conflict.
454. Deviation from these guidelines can lead to bias or an apprehension of bias in hiring decisions.
455. The Chief Financial Officer's recusal was not effective until July 1 – days after he had interviewed for the position. The timing of his recusal was problematic.
456. I found almost no regard for promoting diversity in hiring practices. The fact that the VP of HR was unaware of the workplace diversity policy, which requires proactive recruitment of candidates representing the "diversity of our tenants and the City of Toronto" is unacceptable. He is the VP of Human Resources responsible for the policy, strategy, program and deliverables.
457. Three senior positions without job descriptions show that the CEO's decision to appoint them was not based on a matching of their qualifications against the responsibilities of the job. It also shows their salaries were not evaluated against the work they had to do.
458. Even though acting assignments are to be competed for, I did not find evidence that all of them were put to competition. In many cases, acting assignments were extended, but no effort was made to hold a competition to fill the position. This violated policy.
459. In the absence of the hiring manager's declaration of potential conflict of interest, many hires could have been the subject of biased decision-making. The Chief Financial Officer's hiring of individuals with whom he had a previous professional relationship is questionable.
460. Further, there were very few records to support a conclusion that the competitions that were held, were open, fair, and transparent.
461. I find it unacceptable that the Vice President of Human Resources did not declare a potential conflict of interest when hiring the Director of Labour Relations & Legal Counsel, nor did he think to mitigate the perception of bias by requiring an HR consultant to assist in the selection process for the position.

462. With respect to explanations for failing to follow policy, the Vice President of Human Resources said the recruiters and hiring managers for different hires should have kept records and adhered to process. He also said that in some examples, he was given direct orders from the Chief Executive Officer to carry out certain tasks, such as administering the salary and benefits of his EA, or hiring and promoting the Senior Director, Community Safety, Corporate Issues and Council Liaison, and promoting the Vice President, Asset Management.
463. The Chief Executive Officer, on the other hand, says the Vice President of Human Resources should have told him when he was breaking rules, and does not believe he violated policies or procedures, as he was not aware of them.
464. Ignorance is no excuse.
465. Hiring managers, like the Chief Development Officer and the Chief Financial Officer, also seem to suggest that the CEO and Vice President of Human Resources allowed them to carry out hiring in the manner they did.
466. It appears the Chief Executive Officer is not familiar with his obligations. He often explained his decisions to appoint individuals to their jobs without a fair process by saying that the person was the "best person for the job" and that it was his "prerogative" to do so.
467. I am not sure how he could have made this assessment without conducting a fair and open competition.

### **8.3 Suspect Compensation Practices**

468. Employers want to attract and retain high-performing and talented employees. In order to do so, organizations need to ensure they have compensation plans in place that are equitable and understandable.
469. Employees in turn, want fair pay. They want regular raises, based on a clear understanding of expectations, roles and responsibilities.
470. TCH's employees are no different.
471. The hiring policy requires compensation to be based on the "skills, qualifications and other compensable factors required to perform the duties and responsibilities of the position." Furthermore, its procedures require job evaluation for all new positions.
472. It is unacceptable for a public organization to offer salaries that are not based on a thorough evaluation of the responsibilities and qualifications

required for the position. We found that in some cases, wage levels were arbitrarily decided and were not subject to evaluation.

473. For example, we found inconsistencies in salary grades for executive assistants (exempt staff), ranging from level 4 to level 7. It is worth noting that level 7 employees are typically managers and supervisors.
474. The CEO's executive assistant received a pay increase that was not arrived at through job evaluation – in fact a job description did not exist. In her own defence, the EA rationalized to my investigators that her job responsibilities had expanded when she assumed the role of executive assistant to the Board Chair. Interestingly, the Board Chair disagreed and said that the EA was unlikely to spend more than four hours a month working for him.
475. I found no evidence that, in the absence of a job description, the job responsibilities warranted a level 7 rate of pay with the additional benefit of overtime pay at time and a half. It is indeed a surprising, almost shocking, revelation given that even some TCH directors did not make as much in 2013.
476. The failure to adhere to policy and procedure results in imbalance and inequity. That is exactly what happened here.
477. I also find there was a concerted effort on the part of TCH, including the EA herself, to misrepresent her pay and keep it under \$100,000.00.
478. The CEO's role, as defined in his job description, is to be responsible for fostering a culture of accountability and integrity and meeting the highest ethical standards; promoting a culture of ethical business conduct and prudent risk management; providing overall management to ensure the leadership is effective; acting as final decision maker; and, ensuring all operations are conducted in full compliance with laws, regulations and TCH's Code of Conduct.
479. I find the CEO did not meet any of these goals in the administration of his executive assistant's pay and overtime, and further, he exposed TCH to significant risk by allowing the attempts to manipulate her 2013 pay.
480. I also find that in the absence of a job evaluation, the pay increases given to the three senior managers who were promoted to directors in 2012, were unfair and unjustified. While I understand that the Chief Development Officer made a business case to support the pay increase, which was supported by the VP of HR and the CEO, that is not a sufficient justification for the decision. Management should have had the positions evaluated through the formal job evaluation process to arrive at the proper remuneration for the jobs.

481. Similarly, upon promotion, the CEO allowed a 33% salary increase without any job evaluation for the Senior Director of Community Safety, Corporate Issues & Council Liaison.
482. The Vice President of Human Resources seemed to rely on the fact that a pending company-wide job evaluation somehow made up for the fact that employees had been offered compensation that had not been subject to the existing job evaluation system.
483. The simple fact is he did not require the rules of the organization to be followed. Perilously, he allowed others to ignore the policies that he was responsible for enforcing, the very policies he failed to enforce.
484. This uncontrolled approach to wage determination was unacceptable. It was inequitable and unfair.

#### **8.4 Performance Management Program Not Followed**

485. The decision not to provide salary increases to employees who would have otherwise been entitled, who accepted acting assignments or promotions during 2012, was arbitrary and inconsistent with the PMP guide. It was unfair.
486. There was no information to suggest that any explanation was ever provided to staff, rendering the approach at best opaque.
487. The integrity of the PMP program hinges on HR ensuring that the principles of the process are followed.
488. There was evidence of inadequate documentation to support the ratings applied to performance evaluations in 2012. If the credibility of the PMP system is undermined, staff are denied the benefit of knowing whether they are meeting their performance goals. The organization's goal of aligning the objectives of staff to the organization's strategic plan is then negatively impacted and everyone suffers.
489. The PMP is an important part of the system to support employees who care about their performance or who wish to advance. If it is not operating properly with the trust of those within the organization, its legitimacy is undermined. This is unfair to employees and impedes the progress of the organization.

## **8.5 Changes to Contracts Not Communicated**

490. Before the changes to the employment agreements, both for those covered by only a hiring letter and those on “old” contracts, there was an expectation that the policies were to be applied and followed.
491. It would be reasonable for every employee to expect that the employer would support and maintain the same policies that they were bound to understand and follow. An equally reasonable conclusion by any employee would be that if the employer decided to change any of the policies that applied to them, notice of the change would be provided so the employees would become aware of any new responsibilities or entitlements.
492. In some instances, insubstantial changes to policies applying to employees may not require full-blown announcements with long formal notice. However, changes to the employment relationship that alter fundamental terms of the employment relationship involve a more complex legal analysis and the possibility of much longer notice to senior employees.
493. For an employer like TCH that promises its employees fairness, equitable treatment and transparency, one might expect open communication about significant changes, both in terms of policy consideration and implementation.
494. There was no indication that any concerted effort was made to alert employees who had common law rights that these rights might be substantially altered if they signed a new employment agreement (with the ESA clause).
495. There appears to have been no effort to be transparent about the change or the potential impact it could have. If the employer promised as a matter of principle to be fair, this approach was not. Moreover, the employer stood to gain much by reducing its potential obligation for terminating long service employees, and the employee stood to lose his or her earned common law rights.
496. To impose a restrictive termination notice clause on new hires who have an opportunity to consider their options, take legal advice and negotiate or reject the offer is reasonable, assuming the organization is prepared to operate with various employees having fundamentally different employment rights. That is a policy question.
497. However, to decide to reduce the cost risk for terminations without cause by reducing the rights of existing long service employees is a much more complex issue.

498. To attempt to implement such changes through the promotion system is fundamentally wrong. It discriminates against senior staff who, if properly advised, will in many cases (like the former HR employee) refuse promotions because the potential lost notice would be much higher than the value of the promotion.
499. Such a system would either reduce the employment rights of the senior persons, making it cheaper to fire them in the future, or inhibit their upward mobility because they would choose not to be promoted.
500. Furthermore, in such a system, the junior, younger employees would become the beneficiaries of the opportunities that the senior employees were forced to reject.
501. Such a consequence begs for serious consideration in advance at the highest levels since the rights of a senior work force were to be at risk. The approach to senior employees has been fundamentally flawed.
502. The flaws extend to the failure to provide senior people with proper notice, a full explanation of the implications of the change.
503. What has occurred was not fair to the employees involved.
504. It was unfair and unreasonable to begin using an employment agreement for promoted employees that required them to accept the ESA notice period. The decision by the Vice President of Human Resources that the ESA clause was negotiable for those in wage level 8 and above was arbitrary, and added to the unfairness for those in wage level 7 and below.
505. The introduction of the clause amounted to a substantial change to the terms of the employment agreement for long service employees.
506. Employees who had worked at TCH for a long time with no clause on termination in their original employment agreement, particularly older employees, were adversely impacted. These individuals would be required to give up significant common law rights to notice upon termination, in order to accept a promotion.
507. Such a barrier to advancement for senior workers is in direct contravention of the workplace diversity policy. The overall impact was to limit the opportunities for senior workers with significant years of experience at TCH, particularly those in positions below the managerial level.
508. Long-term service employees in the management levels and above were also treated unfairly and placed at a disadvantage because they did not know the clause was negotiable.

509. That this change was carried out without any policy analysis or approval under the governance framework was indefensible in an organization whose mission statement indicates “fairness, trust and equitable treatment are the hallmarks of how we work.”
510. Had such an approval process been undertaken, at the very least, notice to staff and a written policy giving clear direction to human resources staff on its implementation, might have been provided. It did not appear any analysis was undertaken beyond determining that the impact would reduce the liability for severance.
511. There was no documentation to support the practice and it appeared to have been something the Vice President of Human Resources developed and then later the Director of Labour Relations & Legal Counsel advanced.
512. They did not consider the public sector employment context. It appears neither of the two had that type of experience prior to joining TCH.
513. There was a lack of adequate transparency and a failure to recognize that it was actually a policy change requiring full consideration through the governance structure and proper implementation planning.
514. To implement such a change to the employment agreement, particularly for promotions, without at least ensuring the executive leadership team had thoroughly considered the policy implications and the risk, exposed the organization to potential liabilities far beyond the possible financial savings.
515. It was not only an important policy shift within TCH, it was a significant departure from the City of Toronto human resources policies which are recognized as industry best practice by TCH's own consultant PwC. For this reason alone, Board notice and approval should have been sought in advance.
516. In addition, at the very least, notice to all employees of this significant change, setting out clear rules for its application, should have been undertaken. A policy indicating any restrictions on the ability to negotiate the clause was required to create a level playing field for staff.
517. Implementing such a change would also require training for human resources staff and managers who would be responsible for presenting these contracts.
518. The unilateral implementation of this policy change was alarming. The statements of the Vice President of Human Resources, when explaining the need for the clause, demonstrated contempt for the workforce. This

attitude was unjust, particularly for those that had been working at TCH for a long time.

519. The Director of Labour Relations & Legal Counsel and the Vice President of Human Resources also showed, through their responses, a lack of understanding of the power dynamics at play in cases where staff offered a promotion are presented with such a contract. In particular, they did not seem to grasp the importance of implementing procedural protections to ensure the employees presented with the contract were directed to this significant change to the terms of their employment.
520. The Director of Labour Relations & Legal Counsel indicated she was not aware if the clause was pointed out to the staff and noted she was not the one to present the contract. The presentation of this contract should not have been left to staff without providing procedures describing the steps to be taken to ensure the new clause was pointed out, its implications explained, and adequate time given to seek advice.

## **8.6 Terminations**

521. There is no question that not for cause terminations are necessary in any organization from time to time. However, the business interest is in having well-trained capable employees to support the goals of the organization and deliver its services.
522. Long service brings understanding and historical perspective, which can be invaluable. In this manner, performance issues with employees are to be addressed through performance management programs and, if necessary, progressive discipline. Both approaches are designed to correct misconduct and to improve the performance of the employee so he or she can remain a productive contributor to the organization.
523. TCH has such policies. It tells employees their performance will be addressed through performance management. Employees reasonably expected performance issues could be addressed in accordance with policy, allowing time to understand new requirements, additional training and the opportunity to improve.
524. No one expected such wholesale terminations.
525. The CEO and Vice President of Human Resources made the business decision to ignore the performance management policies of the TCH and the good records of these employees. Years of experience and knowledge of corporate practices were cast out. A business decision was made to throw over any reasonable expectation these long serving employees had about their job security in order to make change.

526. Forty-one terminations without cause is concerning on its face. It is even more concerning taking into account the huge amount of experience that was cast aside.
527. The evidence indicated the change contributed to anxiety and an environment of distrust.
528. As noted in the strategic plan, “communication and a focus on managing the change will be necessary for success”. The executive leadership team seemed to lose sight of the importance of communication and the core value of “transparency” in implementing organizational change.
529. The principled approach to progressive discipline and the performance management program set out in policy seemed to be ignored over this period as evidenced by the particular firings we reviewed in detail. The employees who remained did not know where they stood. They could no longer rely upon the policies and procedures in place.
530. After taking such care to introduce organizational realignment, including staff input and “buy-in”, the decision to carry out three terminations of senior level staff in one day in one division was particularly troubling, especially when the person making the terminations had only started employment that very day. Without impugning motive, these actions appeared as if they were designed to create fear without regard to how upsetting this would be for staff. This type of message violated the fundamental principles of the organization.
531. The Vice President of Human Resources indicated he appreciated the risk to the organization, but was not able to convince the new VP of Asset Management or the CEO to act on this concern. It was troubling that the Vice President of Human Resources – a member of the executive leadership – was unable to influence the decision about how these terminations occurred.
532. This failure demonstrates dysfunctional leadership.
533. Whether or not all these terminations were within the management prerogative, whether or not proper notice or pay in lieu of notice was given, such large numbers of terminations without cause sent a powerful message.
534. Reasonable persons might conclude: everyone should feel insecure; no one is safe from a decision by the new team to discard even the most senior employees. It would have been reasonable for every remaining employee to worry about his or her job security because the policies and procedures – which had guided the way employees were to be treated – were no longer being followed.

- 535. It seems obvious that employees might conclude that performance or complaints or actions that did not please the new leaders could jeopardize their employment. Prudent persons would begin to govern themselves accordingly.
- 536. Such a poisoned environment does not meet the standards of fairness, equity and transparency – which TCH holds out as its core values.

## **8.7 Lack of Credible Complaint System**

- 537. There was documentation to indicate the CEO was made aware in December 2012 that a group of human resources staff, including employees in the Office of Diversity, Fairness and Human Rights, were raising concerns about hiring and recruitment practices, including complaints about unfair competitions.
- 538. There is evidence to indicate the CEO took action to deal with complaints about the Vice President of HR's manner of interacting with staff, which was also an issue staff had raised. Specific complaints were dealt with individually, but there was no systemic review undertaken to confirm if the hiring and recruitment practices were being applied properly.
- 539. There is no documentation or tracking of the complaints that were raised with the CEO or VP of Human Resources.
- 540. It is apparent from this investigation that in the future, there should be a confidential mechanism that allows staff to raise issues about human resources decisions and recruitment practices, one that ensures tracking and reporting to the executive leadership team.
- 541. This information can then be made available for the Board through its Governance, Risk and Human Resources Committee. There must be a viable alternative when complaints involve the actions of the CEO or the Vice President of Human Resources.
- 542. All complaints and inquiries should be directed centrally so that they can be tracked and systemic issues identified for further inquiry.
- 543. It was a significant failing that there was no process to identify that human resources policies were not being adhered to, and that recruitment was taking place without the required posting, competition or assessment of candidates against the criteria for the job, or even a definition of the job in some cases.
- 544. Staff were clearly raising "red flags" but there was no process to identify the scope of the problem and ensure it was acted upon in a timely way.

545. In an organization like TCH, there must be a check and balance to protect employees and the corporation from rogue managers who decide to act outside the policies and procedures of the company.
546. If there is no credible way for employees to voice concerns without fear of reprisal, the good policies and high-minded principles mean little.

## **8.8 General Findings**

547. The CEO was hired in June 2012. He was given a mandate for change. Some employees understood he was selected to be a turnaround specialist. To assist him in his duties, he selected, without any search, then Director of Labour Relations to become interim Vice President, Human Resources. This appointment occurred right away, one day after the Chief Executive Officer started. He claimed he had to act quickly to develop a team. He said he needed the interim VP of HR to protect human resources. The Chief Executive Officer later made the interim Vice President, Human Resources permanent, without any job posting or further search.
548. Similarly, over the period of time we investigated, a number of persons received appointments without the normal posting and promotional procedures being followed.
549. The Chief Executive Officer's senior team came to include some persons who owed their appointments to him, since they did not meet the requirements of any formal process.
550. It raises suspicion about whether some of the direct appointments who benefited from a deficient process had the requisite qualifications to have made it through the screening round, for example, the senior director, community safety, corporate issues and council liaison; and the director of labour relations & legal counsel. What does this say about a company when its directors and VPs do not meet the stated qualifications for their jobs?
551. After interviewing over 60 witnesses, both current and former employees at various levels, it was obvious staff believe TCH suffers from low morale.
552. Many witnesses across various divisions were aware of the hiring circumstances of many job opportunities. The lack of process and apparent favouritism was well known.
553. It was hardly surprising that this resulted in low morale, given the competitions appear to be tainted by bias. The number of persons who

disappeared through terminations without cause would have exacerbated the low morale.

554. It was with these individuals that the Chief Executive Officer set about to change the organization. It was these persons, unfamiliar with the policies and procedures of TCH and unknown to its employees, who began to identify staff for promotion and termination.
555. In making many of these decisions, they did not follow the normal policies and procedures of the TCH. In fact, it is clear that if the Chief Executive Officer was counting on the Vice President of Human Resources to protect human resources by ensuring the employment related actions of the employer were consistent with policy, he chose the wrong person.
556. The Vice President, Human Resources admitted that he was not briefed on the TCH recruitment process. Apparently, he made little effort to understand, let alone enforce, the procedures surrounding recruitment.
557. On numerous occasions, the files supervised by his department were missing major components. Often, there were no job descriptions, which meant there were no proper evaluations of the value of the job and the range of salary that would be appropriate. Rather than insist that jobs be properly evaluated, the Vice President discouraged job evaluation from being done until he received a report from an outside consultant retained to evaluate all jobs.
558. During the entire period we examined, no rigour or definition was applied to new jobs or redesigned ones. The three managers who saw their salaries jump from \$100,000 to over \$120,000 based on an unscientific assertion of market adjustment is one example of uncontrolled activity.
559. The meteoric rise in salary and status of the Executive Assistant to the CEO is another example. None of the rules surrounding compensation, evaluation and promotion were applied. Her treatment was anomalous.
560. At or about the same time that these unusual appointments were occurring, numerous senior employees, who knew the company history and how things normally worked, were terminated without cause.
561. As a result, years and years of corporate knowledge were lost. In Human Resources alone, 16 employees left in the first 18 months of the Vice President of Human Resources' tenure. Perhaps it is no surprise, he was not briefed on the recruitment procedures, or the fact that there was a diversity policy. No one could tell him.

562. In view of all the terminations which he carried out, it is likely those remaining would have been reluctant to tell him things that might challenge his actions or compromise his approach.
563. It is reasonable to conclude that because the Vice President of Human Resources did not subscribe to many of the existing policies, his department lost its integrity. It stopped ensuring that the conduct of the TCH complied with its promises to the employees to adhere to the policies developed over the years.
564. With respect to human resources activities, Board members told us they assumed that the Chief Executive Officer was acting in accordance with the policies and procedures.
565. The Chief Executive Officer said that he had the right to make whatever decision he felt was in the best interests of the TCH. Since he was not trained on the policies and procedures, he said he relied on his Vice President of Human Resources to ensure that they were followed.
566. By contrast, the Vice President, Human Resources said that he did not know all the policies and procedures but that it did not matter in instances where the decision was by the CEO, because he could act as he wished.
567. Consequently, the Vice President of Human Resources did not protect human resources or the organization from failures to follow protocol. As he saw it, he carried out the wishes of his boss because – he was the boss.
568. It also appears there is a lack of trust of the employer amongst the employees because of the failure to adhere to process. Many witnesses expressed feelings the Vice President of Human Resources would do favours for people who were his friends.
569. The VP of Human Resources told my investigators he did not want to hire internally because he wanted an employee who did not already have “allegiances” to someone in the company.
570. This is consistent with a former senior executive's description of a “climate of fear” that she believed “inform[ed] the culture of the organization”. She described employees being afraid they were “going to lose their jobs, [be] found out [to be] under-qualified”. She also felt that people were “hiding”. She based her observations on her own experience as well as the people working directly for her.
571. In such an environment, the employees, not terminated, sensed chaos. The changes appeared to destabilize the employment environment. The failure to maintain and apply the policies and procedures to hiring,

promotion and termination decisions created an environment in which it appears there were no rules.

- 572. What began in 2012 as a culture of indifference became one of blame.
- 573. The simplest rule, the key promise to employees, has always been to be fair, equitable and transparent. In the midst of trying to change the TCH, this rule has been grievously violated.
- 574. This conclusion should not be read to criticize change or diminish the capacity of managers to decide to change. However, the manner in which change is effected is important. A responsible public sector employer has obligations beyond making the best decision for management. It must consider the interests of the employees, the clients and, in this case, the sole shareholder.

## 9.0 Board Governance

- 575. While the Governance, Risk and Human Resources Committee (Committee) is accountable for overseeing the development and implementation of TCH's human resource policies by management, it is management (the appointed corporate officers) that is obligated to regularly review and monitor compliance with the existing human resource policies, and to develop new policies and policy guidelines in order to maintain their currency, accuracy and relevance. Training and educating staff on the application of its human resource policies is also within management's purview.<sup>36</sup>
- 576. These functions come within the daily running of the corporate machinery and are, quite appropriately, delegated to the officers of TCH. They are, in turn, obliged to discharge their duties in the best interests of the corporation, with some degree of skill, care and diligence. Moreover, corporate law has come to recognize that in addition to directors, officers too, owe fiduciary obligations to the corporation.
- 577. It can be said that the Board directors, who but otherwise assemble rather infrequently as a Board at bi-monthly meetings, cannot be expected to address everyday matters and make everyday decisions to solve everyday problems.
- 578. Nevertheless, as part of their statutory function to supervise the management of TCH's business and affairs, it is incumbent on them to dutifully observe and oversee management's workings. The law must

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<sup>36</sup> *Toronto Community Housing Policy Management Framework*, adopted November 28, 2011; see also, *Toronto Community Housing Revised Policy Management Framework*, adopted March 27, 2013.

be kept in mind: the Board of Directors can be held responsible for the action – and inaction – of its corporate officers. And it usually is.

579. The Committee reviews and, if appropriate, recommends to the Board the approval of senior executive appointments brought forward by management. Details of a hiring or a re-assignment are provided to the Committee through management reports, and where the Committee (or the Board at the time of considering the Committee's recommendation for approval) is of the view that more information is required, management can be directed to obtain and return with further particulars prior to any approval or recommendation being made.
580. When we asked what factors the Board or the Committee take into account when considering whether to approve or recommend for approval a given appointment, we were routinely told by Board members the following: the recruitment process undertaken; candidate's skill set; fit with the job description; the terms and conditions of employment; salary and compensation, and how each was determined; whether compensation in alignment with compensation goals; and, whether an overall good fit with the team.
581. Most importantly, we were told that inquiry would be made as to whether human resources policies, practices and procedures were adhered to during the recruitment process.
582. When we asked about specific questionable senior executive appointments that in June 2013, the Committee had recommended the Board approve – and that the Board ultimately did approve – directors could not recall any member having asked those probing questions, but not obtaining full responses. In relation to what inquiry, if any, was made regarding the process used by management to recruit for the Senior Director, Community Safety, Corporate Issues and Council Liaison position, one director responded, “[I] defer... to what the management report said... certainly nothing offline of that report.” Even the Chair of the Board remarked generally, “... they do take a lot of comfort in recommendations from management and the committee.”
583. This is troubling especially given a Board member (in addition to others) expressed how deficient management reports from the Human Resources Division are:

[W]e really struggle, have struggled and continue to struggle, on the management reports that come to the board ... you know, you rely a lot on the paper that you read in advance. ... [w]e've suggested that ... instead of us having to ask, 'Did this follow ... policy?', insert that language right into the report. ... [O]n the HR side ...

absolutely the reports haven't gotten there yet. ... [t]his is management not doing a good enough job of doing thorough reports. ... [W]e don't necessarily get the information we'd like to have ...

584. And so what is a Board to do when it is left to contemplate the approval of a senior executive's appointment with a management report devoid of particulars and necessary guidance?
585. The answer from one Board member: "If you don't get a good report what you have to do as a good director [is] to ask the right questions, and satisfy yourself."
586. The approvals given by the Board for the senior executive positions that came before it in June 2013 were further complicated by the fact that employment contracts were signed and completed by the parties prior to the requisite Board approvals for their appointments having even been sought.
587. A member of the Board explained that this is part of the corporate machine's "immaturity": "... [t]hat goes back to the confusion that management has. How do I make a conditional offer? How do I not? Well, they won't take a conditional offer. So, there's always an excuse as to not running the processes ..."
588. Numerous witnesses interviewed by our investigators, including Board members, expressed the view that among the senior executives and even the corporate officers, some were "in over their heads" and lacked the skills, knowledge or experience to perform effectively in their positions. One member of the Board suggested:

I believe [the] CEO's position was ... 'Look, I've worked very closely with these people; I think they can do the job and I'm willing to give them the chance.' Now that is [CEO]. That is who he is...

I'll give them the opportunity and it's their responsibility to achieve it. If they don't achieve it, as quickly as I lift them up ... I'll sever the relationship if it is not working. That's what I understand [the CEO's] perspective to be ...[a]nd so at the end of the day, ... if [the CEO's] comfortable, then as a Board it's kind of difficult to say, 'well, we don't agree with your comfort.'

589. When we asked specifically for the Board’s rationale in approving the Senior Director, Community Safety, Corporate Issues and Council Liaison’s appointment, a member of the Board indicated:

I think we certainly saw what seemed like a piece of [the] new portfolio that didn’t necessarily align with what [the incumbent] was currently doing. Questioned it and management’s response would have been, ‘[the incumbent] has requisite skills and done the requisite testing, and we have a vacancy here and we think [the incumbent is] the person to do it.

590. In response to the Board’s approval of the Vice-President, Asset Management’s appointment, the same Board member rationalized:

... I don’t recall what management’s answer ... was, but it would have been at least intelligent enough that we would have said, ‘okay, fair enough’ and we already have some visibility to [the candidate] and we knew that [the candidate] was sort of a bright, young [individual].

591. The Board resigned itself to accept the rationalizations proffered by management – including the CEO – without ensuring that it had full and accurate information to determine whether appropriate recruitment procedures were followed during the selection process.

592. And so, while some members of the Board complained about a skills shortage and inexperience at both the senior executive and corporate officer levels, the Board’s “rubber stamping” of management’s various selections without adequate and correct information may be what is leading to these positions being filled by potentially unqualified candidates in the first place.

593. Indeed, a vicious cycle – one that hardly serves the best interests of the corporation or the clients it is there to serve.

## **10.0 Engaging Price Waterhouse Cooper**

594. On February 14, 2014, Price Waterhouse Cooper (PwC) issued a confidential report to TCH about employment practices. The mandate was to review the policies of the organization against its practices during the period January 2011 to September 2013. The areas for review included recruitment, acting assignments, promotions and salary determinations. The report explains the assignment was “to determine whether TCH is operating in compliance with their recruitment policies and procedures.”

595. The timing of this activity was of great concern to me.
596. On August 27, 2013, I advised the CEO that my office would be conducting an investigation into the company's policies and practices for the hiring and promotion of staff. I received the terms of reference for PwC's review on September 5. I wrote to the CEO to object to another entity going into the organization at the same time as my office to examine substantially the same areas.
597. Under our legislative mandate, information that we receive cannot be compelled. We have special capacity to meet with people and protect the information they supply, along with their identities to the extent possible and reasonable in the circumstances. The legislation was designed to make people comfortable with the investigative process. It is always difficult for employees to say things that may be critical of the employer.
598. I told the CEO that I was concerned there would be overlap, that witnesses might be cross-interviewed, and that document files we were interested in might be handled by an external organization before we were able to see them. I was worried about the integrity of our investigative process.
599. The CEO wrote to me on September 23 to assure me that the scope of "our external review differs from what we believe is the scope of your investigation." He said that the purpose of the PwC review was to benchmark the present policies against industry best practices<sup>37</sup> in order to make recommendations for improvement.
600. He wrote to me again on October 2 to say that the PwC review and my investigation would cover separate issues. He said that PwC was to build on work already underway within the company to modernize and improve its human resources function.
601. We found no evidence of that activity during our investigation.
602. In the same letter, the CEO described his understanding of the Ombudsman's investigation as focusing "on complaints brought to your office about hiring and promotion practices within TCH, to determine whether management is adhering to existing policies and procedures." This description is consistent with one of the assignments that the PwC report identifies, as I quoted above.
603. After the exchange of correspondence, PwC consultants attended TCH and reviewed many of the files we examined. I note that five of the

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<sup>37</sup> PwC for instance notes the City of Toronto's HR policies as a best practice employer.

fifteen competition files they selected were also reviewed by us for the purposes of this investigation.

604. PwC picked ten people to interview, of whom eight were witnesses in my investigation. The period of review overlapped with my investigation, and was conducted concurrently.
605. Other than the final report, we have no information about what the consultants actually did. When my investigators sought access to the draft documents and internal working documents of PwC, they refused on the basis that their contract with TCH made all the working papers the property of PwC.
606. For the purposes of concluding my findings, it was unnecessary to determine if the conduct described above interfered with the subject matter of our inquiry.
607. However, such a similar and parallel process was most unfortunate and serves to potentially undermine the ombudsman process.
608. I note the consulting fee was \$47,500.00.
609. In my view, a more prudent course of action would have been to delay the external consultation until after my investigation was concluded.
610. Then, there would have been no overlap, our work could have contributed to a more complete review, and, I would not have the concerns I have expressed.
611. In view of the other findings I have made, I am suspicious about the purpose of the PwC confidential report.

## **11.0 Ombudsman Conclusions**

612. Toronto Municipal Code Chapter 3, 3-36 provides that the Ombudsman, in undertaking an investigation, shall have regard to whether the decision, recommendation, act or omission in question may have been:
  - A. Contrary to law;
  - B. Unreasonable, unjust, oppressive or improperly discriminatory;
  - C. Based wholly or partly on a mistake of law or fact;
  - D. Based on the improper exercise of a discretionary power; or
  - E. Wrong.
613. I have considered those definitions in reaching my conclusions.

614. The Toronto Community Housing Corporation has failed to adhere to its human resource policies and procedures. In accordance with subsections 360(B) and (E) of the Toronto Municipal Code, Chapter 3, 3-36, I find that its conduct is unreasonable and wrong.
615. It is also my opinion that the Board of Directors of the Toronto Community Housing Corporation has failed to take adequate steps to ensure TCH adhered to its human resource policies and procedures. In accordance with subsections 360(B) and (E) of the Toronto Municipal Code, Chapter 3, 3-36, I find that its conduct is unreasonable and wrong.
616. The human resources actions taken by the CEO and some of the senior leadership were irresponsible.
617. The failure of HR to retain records and document competitions and other decisions not only violates policy, it creates liability.
618. The records retention failure is not only a violation of TCH's policy, it is contrary to standard business practice, particularly in the public sector.
619. The practice of hiring and promoting candidates to positions for which they did not compete is unreasonable and contrary to policy.
620. TCH made offers of employment to some candidates, while the job competition was ongoing. This was unfair to candidates who may have applied in the remaining days of the posting, as well as the candidates who had already applied. Their applications were never considered.
621. One of the results of the failure to adhere to policy and process, was the proliferation of recruitment decisions following a process with potential, real or perceived conflicts of interest. I find this unjust, and a violation of administrative fairness.
622. TCH holds itself out to be an employer who promotes diversity in hiring. I find that in the period investigated, there were no efforts to follow the diversity policy. This is unreasonable. It violates the principles of equity espoused by the corporation.
623. While on its face, merely baffling, the lack of job descriptions for a number of senior and well paid job openings is wrong, unfair and improper. How could candidates be fairly evaluated for their ability to fulfill the responsibilities of a job, if there are no stated responsibilities?
624. The arbitrary nature by which wage levels were decided, and the consequent inconsistencies, was inequitable, unfair and improperly discriminatory. Similarly situated persons were not treated equally. There was no justifiable reason for the different treatment.

625. Current staff were treated unfairly by the failure of the organization to comply with its performance management program. Again, inconsistency resulted, with TCH sometimes awarding increases "across the board" rather than using their documented merit-based program.
626. The introduction of a new ESA minimum standards termination clause for employees seeking a promotion or hire, was conducted unfairly. This was a policy change. It was not approved or announced. Staff were not given adequate notice of the change, to be able to meaningfully consider it.
627. The decision resulted in an inequity based on age and experience. Long service employees had more to lose than new or recent hires.
628. This made applying for promotions less favourable for senior staff and created an adverse impact for them.
629. Terminations often seemed poorly planned, even impulsive, and conducted without regard for the knowledge gaps they created.
630. The fact that there is no formal complaints mechanism that is documented and reported to the Board is problematic and unreasonable in the circumstances.
631. The Board as a whole was unable to obtain the necessary information about hiring decisions and human resources practices. It received assurances from management and relied on them to the corporation's detriment. It should have asked more probing questions.
632. The Board approved senior executive hires that were presented to it after the incumbents had already signed their employment contracts. Some of the Board members acknowledged disliking the practice of "rubber stamping" but failed to halt the process, and did administer their stamp of approval.

## **12.0 Ombudsman Recommendations**

633. Taking into account all of the evidence gathered through this investigation I am making the following recommendations. These recommendations are due by March 31, 2015, unless otherwise specified:
  - 1) That TCH comply with its own policies, procedures, processes and protocols and that any changes made by the corporation to these matters be properly communicated to staff with the appropriate notice.

- 2) That TCH consult with the Human Resources Division of the City of Toronto with respect to human resources policies and practices with a view to considering the best practices already developed by the City, and to identify opportunities to improve TCH's policies in a cost-effective and efficient manner.
- 3) That TCH ensure its policies on record creation and record keeping with respect to human resources activities including those related to hiring, promotions and terminations accord with best practices, legal and policy provisions for public sector employers and that these policies are communicated to employees and followed.
- 4) That the Conflict of Interest Policy be expanded to capture past business relationships and other personal associations, and to require the declaration of such relationships, and to implement guidance on managing such conflicts.
- 5) That by March 31, 2015, TCH develop briefing materials and training programs for its senior executives respecting the Human Resources policies of the organization on recruitment, terminations and the expanded Conflict of Interest policy, and ensure that all new senior executives receive such training promptly.
- 6) That TCH train all decision makers involved in hiring and promotions regarding the policies of the organization.
- 7) That following the external job evaluation review, the Job Evaluation Committee be resurrected and returned to its role of reviewing job evaluations and providing guidance on job evaluation decisions in a timely fashion to protect the integrity and equity of the TCH compensation system.
- 8) That TCH immediately suspend its use of its ESA clause until it has been fully considered by both the executive leadership team and the Board of Directors and, if TCH decides to implement an ESA clause that impacts employees, such changes be properly approved and appropriate notice be provided to all employees including transparency about the implications of the clause for both the employees and TCH.
- 9) That the Board of Directors clarify, document and train every member of the Board about their obligations with respect to human resources matters.

- 10) That the CEO ensure standardized information regarding recruitment is provided to the Governance and Human Resources Committee and the Board, so that both the Committee and the Board can be able to verify the suitability of the candidate and the integrity of the process.
- 11) That by December 31, 2014, a confidential procedure be implemented to permit people who wish to complain about recruitment practices may do so in a timely manner without fear of reprisal and that central tracking of the issues raised and their outcomes be documented. Such information should be reported to the executive leadership team and the Board so that any systemic issues can be addressed. Further, the draft complaints procedure is to be provided no later than November 14, 2014 to my office for review.
- 12) That by October 31, 2014, a status update be provided to my office on the implementation of these recommendations.

### **13.0 Summary of TCH's Response**

634. I provided a draft of my investigation report to the Toronto Community Housing Corporation for its review and response to my tentative findings and recommendations.
635. Meetings were held with representatives of the TCH Board of Directors, including the Board Chair and the Corporate Secretary, on April 14, 2014. On April 15, 2014, we met with the CEO, the Vice President of Human Resources, and General Counsel. A representative of the Board also attended.
636. The purpose of the meetings was to obtain feedback to my report and points of clarification.
637. The meetings were productive and gave TCH an opportunity to explain and provide further context to my report. I note, however, that it was only at this juncture that my office was met with additional and new evidence pertinent to my findings – despite the many opportunities afforded to witnesses throughout the investigation.
638. It was also at these meetings that I observed the incredible effort and diligence undertaken by TCH and Board representatives to provide meaningful and responsive input to my office. All representatives, including the Vice President of Human Resources, responded wholly and professionally.

639. With one notable exception.
640. The CEO attended the April 15 meeting without completing a review of my draft report, stating he had not "looked at it thoroughly." Instead, he delegated his responsibility to review and respond to the Vice President of Human Resources. The CEO's participation was minimal.
641. I am perplexed by his reaction and demeanour.
642. Following these meetings, the Chair of TCH and the CEO wrote to me on April 17, 2014, accepting my findings and assuring me that my recommendations will be implemented (Appendix B).
643. They wrote: "We accept your findings and will act swiftly to address deficiencies that you have identified."

(Original signed)

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Fiona Crean  
Ombudsman  
April 22, 2014

# Appendix A: Policy Framework

## Hiring Policy

The TCH hiring policy is a three-page document setting out the general principles by which the corporation is to conduct hiring. The current version was last updated August 6, 2004.

It applies to all hiring, regardless of whether a position is full or part-time, temporary or permanent, whether bargaining unit and exempt positions.

It states that the purpose of the policy is to retain and recruit “qualified and high performing individuals” and to have hiring policies and practices that support the development of a diverse workforce.

The policy outlines general principles including compliance with law, “staffing that is linked to business plans” and staffing that “ensures” the skills of a candidate match the requirements of their position.

The policy requires the selection and recruitment of management and exempt staff to include:

- Candidate selection based on a thorough assessment of candidates’ ability to meet the required qualifications for the position
  - that a documented description of duties, responsibilities and qualifications required for the job exists to make this assessment
- Any external postings be shared with, in order to achieve TCH’s diversity goals
- Selection criteria which are linked to the corporation’s performance management system.

It also contains an anti-nepotism section titled “hiring relatives.”

The hiring policy speaks briefly to performance management’s relation to hiring. It requires that selection criteria used in hiring must be related to TCH’s performance management system.

The policy states that salary and wage rates for management and exempt staff must be determined based on an analysis of the “skills, qualifications and other compensable factors required to perform the duties and responsibilities of the position.”

Benefits are determined by which category an employee falls into (management, exempt, bargaining unit). The hiring policy also states there is to be a waiting period for new hires before their benefits are activated, set out in the benefit waiting period policy.

The policy says employee selection is to be based on "documented descriptions of duties, responsibilities and qualifications required of the work to be performed and a thorough assessment of a candidate's ability to demonstrate the qualifications required for effective performance."

It goes on to say that "all TCHC positions posted externally are to be made available to a wide variety of agencies serving diverse client groups to attract qualified candidates from groups reflecting the diversity of TCHC Communities."

## **Hiring guidelines**

The hiring guidelines for hiring managers and human resources, were drafted by HR in September 2013. They have not been approved by the Executive Leadership Team. In March 2014, the VP of HR confirmed that while the guidelines had not been formally approved, they were being used to guide recruitment practices.

Some of the guiding principles listed are:

- Filling job vacancies in a "fair, equitable, open and transparent" process.
- Carrying out hiring and promotions in accordance with law, collective agreements, policies, procedures and guidelines
- Hiring and promoting based on skills, qualifications and seniority as applicable
- That recruitment practices will reflect TCH is best served by a workforce that reflects its tenants in diversity.

In addition to general hiring guidelines, it provides guidance on checking references, conducting interviews, providing feedback to candidates, and the recruitment process. The guidelines state that reference checks are an "important and integral" part of the recruitment process and that it is TCH's "policy to ensure that procedure for the collection and disclosure of reference information are practiced consistently..."

It states that at least three references must be checked for external hires, and at least two are required for current employees. The guidelines state that reference checks are required for all hiring, whether internal (promotion) or external. If the applicant has previously reported to the hiring manager, their reference is not required, but there must be sufficient documentation of the applicant's performance on file.

The hiring guidelines provide guidance on acting assignments: "HR ensures that the staffing approval [form] is fully completed and all appropriate approvals are included, prior to proceeding with the hiring process."

The guidelines specify that it is the responsibility of each member on the panel, along with the hiring manager, to disclose any potential conflict of interest with candidates the panel will interview. It states that if a potential conflict is identified, the manager or panel member must contact HR for assistance.

The hiring guidelines state that late resume submissions and unsolicited applications are not to be accepted in a hiring competition.

## Staffing process and operational procedures manual

The 2011 version of the staffing process and operational procedures manual (staffing process) was provided to the Ombudsman's office after investigators reviewed the 2006/7 version and found it was incomplete. While it appears neither version was approved by the executive leadership team, witnesses within the HR Division reported that the 2011 version was used throughout the period of time covered by this investigation. Neither version states that it is a draft procedure.

The staffing process and operational procedures manual applies to internal and external hires. It states staffing processes should be fair, equitable and consistently applied. The process outlines a detailed process for staffing decisions. The detailed procedures required for the recruitment process are outlined in the chart below.

<b>STAFFING PROCESS</b>	
<b>Stages</b>	<b>Steps</b>
<i>Obtaining Staffing Approval</i>	Hiring manager submits Staffing Approval Form to HR division. It includes: <ul style="list-style-type: none"> <li>- Title and description of job</li> <li>- Proposed wage level</li> <li>- Business case</li> <li>- Job evaluation</li> <li>- Hiring contact</li> <li>- Position's reporting manager, unit</li> </ul>
	After approval, hiring manager meets with HR to develop and/or identify: <ul style="list-style-type: none"> <li>• Job qualifications</li> <li>• Whether to post job internally or externally</li> <li>• Screening criteria</li> <li>• Interview questions</li> <li>• Who sits on the interview panel</li> <li>• Outreach / job advertisement methods</li> </ul>
<i>Posting</i>	TCH gives its unions 30 calendar days notice before posting
	Internal postings emailed to staff, posted on intranet / notice boards
	External postings are posted on TCH's external website, and other recruitment websites. Outreach to target groups is conducted

<b>STAFFING PROCESS</b>	
<b>Stages</b>	<b>Steps</b>
<i>Screening</i>	Once applications received, HR consultant completes screening and establishes list of applicants to review with hiring manager
	HR consultant and hiring manager select candidates to interview
	HR consultant and hiring manager draft interview questions, scoring guide
<i>Before Interview</i>	Screened out applicants are notified in writing
	Candidates are contacted for interviews, and asked to bring three references to the interview
	Panel members meet to review and discuss questions
<i>During Interview</i>	Candidates complete reference consent form. HR consultant ensures it is complete and consistent with candidate's employment history
	Panel members take notes
	Diversity tracking sheet is completed
<i>After Interview</i>	Panel members score the interviews
	Panel member checks references for candidates who pass the selection process
<i>Offer Made</i>	HR consultant or hiring manager makes offer to successful candidate
	Hr consultant confirms offer in writing, including salary, start date, classification, employment status, direct report, work location, benefit coverage. Copy of letter is sent to Payroll, Pension & Benefits unit
<i>After Offer is Accepted</i>	Standard letter sent to unsuccessful candidates
	HR consultant completes and distributes payroll authorization form for payroll, pension & benefits unit

When TCH delivered this manual, a 2007 version with sections missing was provided. The complete manual was requested, and TCH sent back a version dated 2011. They stated "the original document submitted was still in draft form and was never approved; it was a working document, used as an informal guide." Former HR staff involved in recruitment confirmed that the manual was used internally by HR.

The procedures include sample or template documents for:

- Tracking sheets (diversity and competition)
- Correspondence, including letters sent after screening candidates
- Grading interviews, including a score sheet
- Candidate and eligibility lists
- List of qualified candidates
- Reference consent forms and reference question forms

- Checklist for job evaluation
- Job descriptions
- Process for conducting job calls

It also sets out completion file standards, noting that a competition file should be created for each posted position, with internal and external competitions to be separately.

The manual includes three requirements for documentation in job competition files:

- All actions, decisions, instructions and meetings should be documented in the competition file, including copies of all correspondence, applications, assessments, answer keys, etc.
- Candidates' responses to be accurately documented, and the main points carefully noted to ensure enough to detail to allow effective evaluation.
- The competition file checklist states the file must include:
  - Job posting
  - Applications, CVs / resumes
  - Letters to applicants
  - Activities of job calls
  - Blank assessment and answer keys
  - Scoring summary sheets
  - Offer letters
  - Diversity tracking sheet, with information on the outreach strategy used in this competition
  - Any other document relevant to the job call

It states that documentation "substantiates the accuracy of your evaluation, helps to validate your decision, serves as a formal record of the interview process and demonstrates fairness, should any grievance or MFIPPA request arise." HR is to retain the file during active competition and for one year after. Following that, the records are to be sent off-site to inactive storage.

If the position is new, the staffing approval form states that it must be completed, along with a business case, job evaluation and a job description.

This document echoes the acting assignment policy and procedure, requiring that all positions expected to last more than three months are to be posted.

For newly created positions, the procedures require a review of similar jobs within TCH as the first step of a required job evaluation process. The hiring manager is responsible for drafting a job description and completing a job evaluation questionnaire.

Job evaluations are based on a ranking of duties and responsibilities. The job evaluation questionnaire includes questions about the skills, responsibility, effort and working conditions required of the job.

This is sent to human resources, who will make the comparison with existing jobs at TCH to find good comparators. After this exercise is complete, HR will submit this to a compensation analyst and the job evaluation committee for review, approval and rating. The evaluation results in an assigned wage level for the job. Existing jobs may also be re-evaluated.

The staffing process indicates that late applications are not to be considered. The document contains a form letter to be sent to applicants who apply after the job call closing date, which reads, in part: *"The process of evaluating candidates has already commenced, and [TCH is] therefore, unable to consider your application."*

The staffing procedures require two to three reference checks to be conducted per successful external candidate. This is in line with the hiring guideline, which specifies three reference checks are required for external hires, and two for internal hires.

### **Workplace diversity policy**

This policy's stated purpose, is to provide "the basis for creating changes so that the TCHC workforce at all levels reflects the demographics of tenant communities and the City of Toronto."

The policy is also to eliminate "all barriers to recruitment, hiring, promotion and retention." It includes a commitment to ensure that all "employment systems" are bias-free and only consider issues relevant to job performance.

It states that TCH is to implement a diversity plan that includes tools to track diversity results and evaluate progress and a "review of policies and practices to identify and eliminate barriers."

### **Guide to performance management process**

In 2003, TCH introduced a performance management plan (PMP) for all management and exempt employees. The guide to performance management process (2012) establishes that the employee's performance plan "is an accountability tool which clarifies your roles and responsibilities for the year." It states that an individual's performance is linked to salary increase.

The plan sets out annual milestones for the PMP process:

- Performance planning in December of the previous year through to February of the plan year;
- Discussions and feedback with an employee and their manager, throughout the plan year;
- Check-in between manager and employee in June or July;
- Performance review meeting in December;

- Calibration sessions between manager and director, reviewing the manager's direct reports in January following the plan year.

The calibration sessions are meant to help managers consistently apply uniform rating standards in employee evaluation. They replace an earlier system used for the same purpose, "leveling tables." The executive team is to review and approve recommendations, as an added consistency safeguard.

Detailed instructions are provided for creating a performance plan, development plan and for setting measurable outcomes, and documentation standards. The guide defines competencies as the behaviors that will support an employee in achieving the desired outcome.

Outcomes and competencies are to fall into one of three rating categories: exceeds expectations, meets expectations or below expectations. These are taken and combined to obtain an overall rating.

There is an appeal process for employees who disagree with their rating or feel there has been some bias. The appellant must first raise the complaint with their manager and escalate the complaint it through the chain of command, if unsatisfied.

## **Performance management program guide**

The revised guide, with a new title was created in March 2013. Now called the performance management program (PMP) guide, the newer version states that the PMP process will serve as a best practice and ensure the three year strategic plan and divisional priorities are implemented effectively.

The PMP is to be:

- A tool to "drive individual and organizational excellence"
- A process to help employees understand expectations
- A means to ensure they receive quality feedback on performance improvement,
- A form of support for their development
- A way to recognize for their work accomplishments

The revised guide notes that some changes have been made to the 2012 performance management program. New employees are required to have a PMP plan in place within 30 days of starting their job. Executive leadership team members will participate in the PMP online system. There is a philosophical shift noted, moving from an appraisal system into a continuous performance management process. It promises improved identification of talent and development opportunities for employees.

A significant portion of the guide provides instructions on completing the PMP online application. A new four point rating scale is introduced to evaluate business outcomes with the categories: does not meet expectations, meets

expectations, above expectations and consistently exceeds expectations. A similar four-point scale is used to rate competencies.

Performance review meetings are to be held in person with an employee and their supervisory manager. The guidelines state that note-taking at these PMP meetings is a best practice that [TCH] encourage[s].”

In addition to the requirement for ongoing feedback provided to an employee, the new guide provides a PMP closeout process. This involves the human resources department creating a summary PMP report for review by the executive leadership team, applying any pay increases resulting from the PMP process and conducting a program evaluation.

The executive leadership team with the approval of the Board are responsible for deciding the standard for allocation of any pay increases based on performance, across the organization. Once the executive leadership team has completed this, the HR department will communicate to managers the final decision for that year about pay increases based upon performance.

New employees at TCH must also have a probationary plan. The probationary evaluation is to occur at the three month and six month point. Evaluation during the probationary period is explicit in the PMP guide. It indicates the purpose of this review is to assess employee performance and to determine whether to continue employment.

The Guide addresses staff in positions other than their base position as follows:

If an existing employee moves into a temporary position for 6 months or they move into a new position in late November or December, their PMP for that year would consider their performance based on the outcomes of their base position and a PMP for existing employees in temporary position/new positions would be created in the new year.

### **Acting assignment policy**

The acting assignment policy was effective September 1, 2003 and revised in July 2005. It does not apply to employees in their probationary period.

The policy states that its purpose is to "establish fair and consistent practices for selecting, appointing, and compensating employees assigned temporary job opportunities." It notes that acting assignments serve two purposes: meeting the corporation's need for short-term staffing resources and providing a development opportunity for employees.

Acting and developmental assignments are treated differently. The policy states that acting assignments are appropriate for an employee already has the necessary skills and has been assigned to perform the full range of duties for a position on a full-time basis, usually for a duration of six months or more. Short-term coverage for another employee, such as when a colleague is away on vacation, is not an acting assignment.

Developmental assignments are defined as lasting for a period of time not longer than three continuous months. The employees in a developmental position are there to acquire skills and experience. They are not expected to perform the full range of duties.

There are also “special assignments,” which are defined as a temporary reassignment to work on a specific project. This is not addressed in detail in the policy.

Compensation while on an acting assignment will be changed from the employee’s usual rate only if the assignment is for longer than two weeks and the employee is performing all of the duties of the position. The change is effective the day the acting position starts, and ends the day the employee returns to her usual position.

If an acting assignment is at a higher wage grade, a minimum 5% increase in pay is applied. Further information is set out in the procedure document (see below). If the assignment is at a lower wage grade, the employees will retain their usual higher salary rate, unless they have been assigned to this position as a result of performance problems or voluntarily accept the lower paying position. Benefits remain unchanged.

The acting assignment policy requires an open process for assignments that will last for more than three months. However, it specifies that managers have the discretion to directly place an individual in an acting assignment in the following scenarios:

- There is a qualified candidate and the assignment is less than three months
- There is a qualified candidate whose position has been deleted
- Assigning the individual promotes human rights and equity practices
- Immediate placement is required to meet operational requirements

### **Acting assignment procedure**

The 2014 acting assignment procedure sets out the process and requirements for acting assignments in greater detail than the policy.

Managers are given discretion to determine how to fill acting assignments with durations of less than three months. However, for assignments of three months or longer, the procedure states that managers must hold an open competition. The procedure sets out a requirement that managers post the acting opportunity in cases where the assignment is expected to be for three months or longer or where there are multiple employees in the corporation with the required skill base and interest.

A temporary vacancy that becomes permanent must be posted, even if an employee has been acting in the vacant position, "for a considerable length of time."

The procedure sets out requirements for documenting the acting assignment. It requires an offer letter to the employee setting out the details of the acting position. If an acting position is to be extended in length or ended earlier than the expected duration, the manager must notify the employee and their home position manager. The acting assignment manager will also notify HR and pay and benefits.

Acting assignments can be canceled at the manager's discretion with two weeks' notice recommended. At the end of an acting assignment, the employee returns to their home position and salary.

All acting in temporary assignments require a minimum of a "sufficient description of duties and responsibilities" to establish the appropriate wage grade for the position.

Rules for compensation are clarified in the procedure. An employee in an acting role paid at a higher rate, receives a 5% increase above their usual pay or the minimum of the acting assignment position, whichever is greater.

Assignments to lower wage grades are paid at the incumbent's usual rate, unless the employee has voluntarily taken this position or is there due to performance problems.

Performance management programs must occur while an employee is in an acting assignment, at the end of the PMP cycle. The manager of the acting position will conduct the performance reviews and should obtain feedback from the employee's home position manager for the period of time in which the employee was working at their usual position.

Exceptions to acting assignment policy or procedure around compensation or benefits require the approval of the division vice president in consultation with the VP of HR.

When an acting assignment is ending, the manager will notify the employee, their base position manager, HR and payroll of any extension or expiry.

## Wage range chart

This 2013 chart sets out 13 different salary bands.

<b>Management/Exempt Wage Levels (2013)</b>		
Level	Grade Minimum	Grade Maximum
1	\$35,782.91	\$43,583.34
2	\$23,278.08	\$42,676.48
3	\$45,688.22	\$55,717.34
4	\$52,002.56	\$63,393.95
5	\$58,936.56	\$71,937.28
6	\$66,489.36	\$81,099.69
7	\$75,280.32	\$91,747.88
8	\$86,299.97	\$105,243.87

<b>Management/Exempt Wage Levels (2013)</b>		
Level	Grade Minimum	Grade Maximum
9	\$96,452.91	\$117,625.50
10	\$107,596.37	\$131,245.30
11	\$121,835.25	\$148,579.58
12	\$142,141.12	\$173,342.84
13	\$162,447.00	\$198,106.10

An earlier version of the chart with which our office was provided (titled “2011, 2012 & 2013 management/exempt wage ranges”) noted that management and director grade levels were from levels 5 to 10, vice president positions were at levels 11 or 12 and officer positions such as the CDO, CFO and General Counsel were at level 13. Exempt/confidential clerical grade levels were noted as levels one through four.

### **Probationary period policy**

This policy, last revised January 20, 2004, applies to new management / exempt employees and is meant to provide an opportunity for new hires to become proficient in their new position, and for their managers to evaluate the new hires’ performance.

The probationary period policy states:

All management and exempt employees must serve a probationary period of six months actually worked. The probationary period must be stated in all offers of employment and is considered part of the initial employment contract.

Further, TCH’s hiring policy provides that a probationary period is required for all new, full time permanent positions:

All selected candidates new to TCHC for full time permanent positions must serve a probationary period of six months for management and exempt position[s] or as otherwise stated in the applicable collective agreement.

According to the policy, managers are responsible for conducting a performance review at least two months before the end of the probationary period. They must advise the employee and Human Resources in writing if the employee has completed their probationary period successfully. If there are issues with job performance, the manager is to raise this as early as possible with the employee, rather than at the end of the probation period. Managers can extend the probation period if necessary.

## **Benefit waiting period policy**

This policy, last revised in 2004 applies to all new management / exempt hires, whether permanent or temporary. It sets out a six month waiting period (the probationary period, as noted above), for benefits to begin for new staff.

## **Overtime and lieu time policy**

The overtime and lieu policy was approved November 2011 and last reviewed in June 2011. With pre-approval of the supervising manager, it permits management and exempt employees to work additional hours which are recorded as accumulated lieu time. They can bank these hours and later take off time with pay to compensate for the hours worked.

Exempt employees are compensated for overtime at a rate of time and a half. This can be collected either through additional pay, or they may accumulate up to three weeks of lieu time in a calendar year, and take that as leave with pay. If they do not use up their lieu time as leave with pay by the deadline, any remaining time is automatically paid out.

Where exempt employees are required to work on a designated holiday, they receive time and a half pay, but also can take a later day off, or receive a full day's pay.

Management staff accumulate overtime on a straight time basis, up to three weeks. They cannot be compensated with pay for this time; they must take this as leave with pay. Any unused lieu time not claimed by the deadline is forfeited.

In order to work overtime and receive lieu time, all staff must complete an authorization form and obtain approval from their supervising manager for each pay period.

The policy states that TCH will audit lieu claims to assure compliance with the policy. Supervising managers are responsible for lieu time being granted appropriately.

## **Conflict of interest policy**

TCH's conflict of interest policy was effective April 1, 2003 and revised on July 22, 2004. It defines a conflict of interest as a situation where employees "get, or hope to get, some personal gain by using: your position or influence, company information, corporate time, or TCHC material or facilities."

The policy clarifies the personal gain is not restricted to gaining something for oneself. It includes providing a benefit to friends, family or business colleagues.

The policy sets out standards for a number of conflict situations, including appointments to boards and agencies, using TCH property and declaring a financial interest. The policy is to assist employees who suspect they may be in a conflict.

All new TCH employees are to receive a copy of the conflict of interest policy during orientation and must sign an acknowledgment. Employees are

responsible for raising any potential conflicts of interest with their manager immediately. They are also expected to raise any potential conflicts of interest involving others.

The policy applies to all employees and notes that "it is especially important for employees that make or influence decisions, and those who have access to the corporation's information and resources." It supplements TCH's Code of Conduct to address situations involving perceived, potential or actual conflicts of interest.

### **Conflict of interest form for selection process**

Each member sitting on a selection panel for hiring is required to confirm that they have no potential conflict of interest, in keeping with the hiring and conflict of interest policies. The form is to be forwarded to HR.

The panel member either declares they have no conflicts associated with any of the candidates on the candidate list, or they declare the potential conflict of interest and provide details. The form must be signed by the panel member and given to the HR recruitment specialist.

### **Code of Conduct policy**

The code of conduct, effective September 2003, applies to every employee. It notes that employees must act in a way that is "honest, fair, courteous and respectful." It notes serious consequences for breaking TCH's standards of conduct, including criminal charges, dismissal, and disciplinary action. The code of conduct is to be reviewed with all new employees when they begin employment.

The code includes a section on conflict of interest that reiterates the content of the policy. Particularly, it notes the conflict is not restricted to personal gain, but could be something providing a benefit to others with whom the employee has an emotional involvement or business interests that matter to the employee.

### **TCH human rights, harassment and fair access policy: staff complaint procedure**

This undated document notes that it was approved by the executive committee. It states that all employees, contractors, agents, tenants, Board Directors, volunteers and appointees on TCH committees are bound by this policy. It states that each have a duty to promote and support human rights and to work to remove barriers to equality and to refrain from harassment and discrimination.

The policy recommends employees initially address a situation by attempting to resolve their complaint informally, and that if this is not possible they can escalate it to their manager and ultimately to the human rights office through formal written complaints.

The complaint must identify the complainant and describe in adequate detail the alleged misconduct. It is submitted to the manager of the unit unless that

manager is involved. In that case, the policy states that it should be submitted to the office of the CEO.

The respondent is given a copy of the complaint and a chance to reply to the allegations. The complaint can proceed to mediation if all parties agree. If not, or if the matter involves very serious allegations or suggests a review of corporate policy may be required an investigation may take place, through the human rights office.

In the case of an investigation, the investigator will meet with witnesses, gather documentary information and provide an opportunity for rebuttal of allegations from either side. A report will be presented to the CEO or delegate, and the complainant and respondent will receive a summary of the recommendations.

If the complaint is supported, the managers involved will determine which remedies or “restorative actions” are required. TCH’s decision is final. There is no appeal mechanism.

# Appendix B: TCH Response

Toronto Community Housing  
931 Yonge Street  
Toronto, ON M4W 2H2



April 17, 2014

Fiona Crean  
Office of the Ombudsman, City of Toronto  
#203-375 University Ave.  
Toronto, ON M5G 2J5

Dear Ms. Crean:

On behalf of the Board of Directors and Management, we thank you for your thorough and useful report on Toronto Community Housing's human resources practices.

The Board and Management take the matters you have raised very seriously. Toronto Community Housing is committed to accountability, transparency, integrity, fairness, and respect. As a social housing provider, we have a responsibility to our residents and to the employees who serve those residents, to live up to those values in everything we do.

We value and respect our employees. Our employees do great work every day, often under difficult conditions, to serve residents and to deliver value to our shareholder. Our goal is to build a strong, skilled and engaged team of employees who are committed to Toronto Community Housing's mission and proud of where they work.

Since June 2012, the Board and Management have driven change and improvement to strengthen all areas of Toronto Community Housing's performance. This includes a number of changes to improve and modernize our human resources function to deliver service excellence.

- We have initiated a comprehensive review of our human resources policies and procedures to identify and address gaps and apply best practices, and initiated the development of a draft recruitment guide that will be a helpful resource for human resources staff and hiring managers.
- We have reached two collective agreements with the unions representing our inside workers and safety officers, within mandates approved by the Board.
- We are reviewing our compensation program for management and exempt positions. Through the review, the first of its kind since 2002, we will improve our job evaluation system and re-establish the Job Evaluation Committee.
- We are developing a talent management framework to strengthen performance management, succession planning, and pay for performance, and a leadership training program focused on core competencies and management systems skills.

- To provide better supports for employees and value for our shareholder, we have secured a new group benefits provider, updated our short-term disability policy, established an absence and disability management program, and secured a leading third-party provider to deliver disability management services.

However, as your investigation found, during a sustained period of organizational change there have been several instances when Management inconsistently applied or ignored the Company's policies and procedures for hiring, promotions and terminations. Management acknowledges that its actions fell short of the high standard of transparency, equity, fairness and respect that Toronto Community Housing, as a public sector employer, must meet.

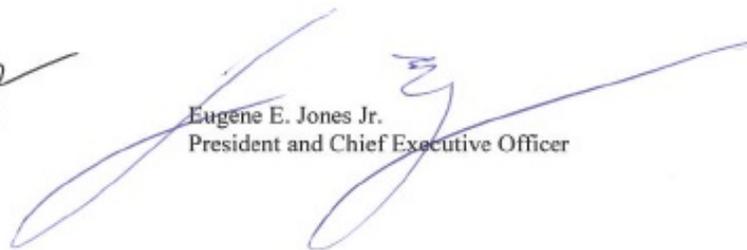
Your investigation also found instances where the Board relied on Management's assurances that policies and procedures were being followed when, in fact, this was not the case. Since it was formed in June 2011, this Board has taken many steps to strengthen the company's governance framework and put in place the tools of governance excellence. Going forward, the Board will be more rigorous in carrying out its responsibilities for oversight and will continue its efforts to strengthen accountability and transparency at the Corporation.

We accept your findings and will act swiftly to address deficiencies that you have identified. Guided by your recommendations, we will move forward to complete the task of modernizing our human resources function along the timelines set out in your report. We thank you again for your insights and look forward to working with your Office to report our progress in implementing your recommendations for improvement.

Sincerely,



Norman W. (Bud) Purves  
Chair, Board of Directors



Eugene E. Jones Jr.  
President and Chief Executive Officer