

# **Skating on Thin Ice**

An Investigation into Governance at an Arena Board

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## 1.0 Executive Summary

1. Leaside Memorial Community Gardens Arena (Leaside Arena) is one of eight arenas owned by the City of Toronto but operated by arms-length, local boards of management. In 2010, the Leaside Arena Board began to raise funds to build a new ice pad. The City agreed to pay \$8.5 million of the total cost of \$12.5 million, but only if the Board raised \$2.5 million of the project's cost by January 2012. It did, and the new ice pad opened in October of 2013.
2. While the Board was raising funds, a resident complained to the Ombudsman that after 10 years of advertising his business on the arena's ice resurfer (Zamboni), he was asked on December 23, 2011 to match a firm offer that another business had made for that ad space.
3. The Complainant was told the competing offer was \$125,000 for 10 years of advertising, with all the money to be paid up-front. This was seven times his current rate of \$1,800 per year. Even though he was out of the country at the time, the Complainant was told he had one week to make his decision. The Complainant insisted on more time, but the Board continued to ask for an immediate response. He made an offer that was less than \$125,000 and it was rejected. The Board then sent him an email, cancelling his contract.
4. The Complainant later discovered that the competing bid was not a firm offer. In fact, the offer in question had fallen through because of the advertiser's demands for exclusivity. The Complainant was told the Board was again looking for an advertiser for the Zamboni. He complained that it was unethical to be asked to match an offer that was not firm, and not as described to him.
5. The Ombudsman gave notice of her investigation in June 2012.
6. The principal document governing the Board of Management's relationship with the City is the Relationship Framework, adopted by Council in September 2007. The Ombudsman found that the Board had not complied with City Council's direction in the Framework; for instance, the Board failed to create basic policies such as one for human resources.
7. The Relationship Framework also states that the presence of a City Councillor and a member of City staff on the Board will "provide an essential link" between the Board, City Council and the Toronto Public Service. But the Ombudsman found this is easier said than done. Staff said the Board did not consult them, nor did they feel

their presence was useful. The staff also did not have the requisite skills to help with issues of procurement, sponsorship and naming rights.

8. The Ombudsman also found:
  - The Board had been in discussions with the competitor, a grocer, for over three months before informing the Complainant of the potential loss of his advertising contract.
  - The Board misrepresented the offer on the table. It was actually an up-front payment of \$75,000, described as a "donation" to the capital expansion project, and \$50,000 to be paid for the Zamboni advertising over a ten-year period, at \$5,000 per year.
  - The Board had no advertising policy, and in practice, dealt with advertising inconsistently, specifically with regard to requests for exclusivity. Even after the Board voted to prohibit exclusivity in advertising contracts, some contracts, including the one eventually reached for the Zamboni, contained some degree of exclusivity clauses in their agreements.
  - The notice cancelling his advertising contract was improperly sent to the Complainant before the Board had approved it. Some members of the Board were invited to vote by email on the termination of the Complainant's contract, but two Board members, including the Councillor, were left off the invitation.
  - Some Board members met outside Board meetings to discuss business, and only on the insistence of a member of the Board were these discussions subsequently recorded in the minutes.
9. The Ombudsman found there was a lack of fairness and transparency in the awarding of the advertising contract for the Zamboni. She found that communication with the Complainant was unclear. At various times the money for the Zamboni was called a donation, sometimes an advertising contract and other times a naming opportunity or sponsorship.
10. The Ombudsman concluded there was a need to review different governance models to ensure accountability and transparency.

11. The Ombudsman made 18 recommendations which were all accepted. They include:
  - That the Board draft the required policies as directed by City Council.
  - That the City examine a variety of governance models and service delivery mechanisms related to arena boards for Council's consideration.
  - That the Board issue an apology to the Complainant for the manner in which he was treated.

## **2.0 The Complaint**

14. The Complainant has a business in the Leaside community of Toronto. For over 10 years, he has advertised his business on the Zamboni at Leaside Arena, a City of Toronto arena, run by a local board of management. As of 2011, he paid \$1,800 per year for the advertising rights to the Zamboni.<sup>1</sup>
15. The Complainant told my office that in late December 2011, he was approached by the previous Board Chair, who informed him that there was a competing offer to advertise on the Zamboni. He was told the offer was for \$125,000 paid in a lump sum, to advertise for a period of 10 years.
16. The Complainant said that he was given a week to decide if he would match this offer, and noted it was made over the Christmas holidays, while he was out of the country.
17. The Complainant did not match the \$125,000 offer and the Board terminated his contract in mid-February 2012, with 60 days notice, as required by his contract. He later found out that the other advertiser's offer had fallen through. In mid-April, a member of the Board approached the Complainant and asked him if he would be interested in making a new offer to advertise on the Zamboni. The Complainant did so, but his offer was turned down by the Board.
18. The Complainant contacted the Ombudsman's office in April 2012 with concerns that, while he understood the Board had a right to terminate his contract, the process followed by the Board to secure advertising for the Zamboni was unfair and lacked transparency.

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<sup>1</sup> This rate had incrementally increased over the term of his relationship with the arena. For example, in 2003, the contract specified a rent of \$1,500 plus GST per year.

19. In September 2012, the Board signed a contract with the advertiser who had offered \$125,000. The contract required that \$75,000 be paid upon signing and \$50,000 in January 2013.

### **3.0 The Investigation**

20. My investigator interviewed the Board members involved in the Zamboni issue, City of Toronto employees, and general managers from the other seven City arenas operated by boards of management.
21. We also examined documentary evidence, legislation, City policies, procedures, core services review documents, City Council minutes and the arena boards' Relationship Framework.

### **4.0 The Background**

#### **4.1 City of Toronto Local Boards**

22. Many City services are provided through its agencies. Some are large and complex, such as the Toronto Transit Commission, while others are small and function with a local community-based board. The authority delegated by the City to any agency varies according to its mandate as established by City Council.
23. All City of Toronto boards are known as local boards.<sup>2</sup>
24. Under sections 1.41, 1.45 and 1.46 of the *City of Toronto Act, 2006*, c. 11, Sched. A, (COTA), City boards are creatures of statute, given a level of independence once appointed by City Council and are provided with delegated authority to operate programs and services within a specified mandate.
25. Section 212 (2) of COTA requires City boards to have three types of policies, "referred to as the three Ps": property, personnel and procurement.

s. 212(2) A local board (restricted definition) shall adopt and maintain policies with respect to the following matters:

1. Its sale and other disposition of land.

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<sup>2</sup> "Local board" means a City board, transportation commission, public library board, board of health, police services board, planning board, or any other board, commission, committee, body or local authority established or exercising any power under any Act with respect to the affairs or purposes of one or more municipalities, excluding a school board and a conservation authority. (s. 3(1), *City of Toronto Act, 2006*).

2. Its hiring of employees.
  3. Its procurement of goods and services.
26. In the case of arena boards, they do not need to have a property policy, as their capital assets are owned by the City of Toronto.

#### **4.2 Leaside Memorial Gardens Arena**

27. The City of Toronto, through the Parks, Forestry and Recreation Division (PFR) directly operates 40 arenas, with 48 ice-pads. In addition, the City owns eight arenas, with eleven ice-pads, operated by boards of management, run at arm's length from the City.
28. Leaside Arena has operated since 1951, and, immediately prior to amalgamation, was in the Borough of East York. Of the eight arenas operated by a board of management, Leaside Arena is the only one outside the former City of Toronto boundaries.
29. In general, staff at an arena operated by a board of management are employees of the arena board. At Leaside, however, only the General Manager reports to the Board, and the other staff are classified as City of Toronto employees, represented by two bargaining units.
30. The General Manager has worked at the Leaside Arena for over 25 years. There are four additional full-time staff and 17 part-time employees responsible for duties ranging from bartending in the banquet hall to ice maintenance.
31. The Board is comprised of nine citizen members and the ward City Councillor.
32. The Board is required to include a non-voting member designated by the City Manager as a staff member from PFR.
33. The City of Toronto Public Appointments Policy establishes basic eligibility criteria, namely, that Board members must be 18 years of age or older and reside in Toronto. It also states that:

In addition to general eligibility requirements, Council shall set out the specific skills and experience desired for each board. The objective is that Board members collectively cover the range of required qualifications, with individual members bringing a variety of perspectives, interests, or skills.

Board members are not expected to have the same knowledge as staff of the agency in order to oversee agency business. They are expected to add a perspective beyond the staff view. The following guidelines are considered in establishing the qualifications:

- (a) should relate to the ability to perform the duties of the board, including any necessary competencies;
- (b) should be clear, yet flexible, defining areas of specialization where required, experience, or community service; and
- (c) skills and knowledge requirements for the positions should not be more specialized than necessary.

34. In the case of arena boards, Council requires them to "collectively possess":
- An interest and commitment to volunteering and community development including an understanding of diverse neighbourhoods
  - A range of skills or experience such as fundraising, financial management, sports facility operation, event planning, amateur and children's sports development in the community, managing in the non-profit sector, law, or marketing
  - A majority of members residing in the local area
  - Demonstrated knowledge of the programs and activities of the arena
  - A youthful perspective implemented by having at least one member be a young adult aged 18 to 30 (Relationship Framework s. 4.2.2)

### **4.3 Arena Expansion Project**

35. Discussions about building a second ice pad at Leaside Arena have been ongoing since at least 1999. The City of Toronto purchased the property necessary for the expansion in 2009 and an anonymous donation received in 2010, allowed the Board to hire architects to draft building plans.
36. Fundraising for the second ice-pad began in 2010. Ad hoc expansion and fundraising committees were created. The Chair of the expansion committee and the Chair of the fund-raising committee are former and current Board members, respectively.

37. In addition to the second ice pad, the expansion plans include a new main entrance, lobby, spectator seating, washrooms, dressing rooms, offices, meeting room, space for a pro shop and a future snack bar, mechanical spaces and expanded parking.
38. The former Board Chair, from January 1, 2010 to December 31, 2012, said:

This project is unique. The City has not built a public ice rink in 40 years. So really there [are] no policies, no guidelines. The City hasn't even constructed them – it's all new to them. We were given no guidelines or directives about what we could or could not do.
39. The Chair of the fundraising committee said that it reports to the Board. The committee is composed of a number of community members, some of whom are also Board members.<sup>3</sup> She said that it was "informal", and that the fund-raising committee did not keep minutes, just lists of potential leads on donations.
40. When my investigator asked the General Manager whether minutes were typically kept by sub-committees, he said that historically they had been, and gave the example of the management/labour committee.
41. The former Board Chair explained that fundraising efforts included naming opportunities, for which the Board and fundraising sub-committee, set prices, including getting one's name on a spectator seat at \$100, and the scoreboard at \$50,000.
42. The General Manager stated that he had been involved in second ice pad planning with previous boards, but that the current Board operated more independently; some decisions were made outside Board meetings.
43. The Board partnered with the East York Foundation (EYF), a non-profit organization providing support to community projects. They act as the banker for the fund-raising project, and receive and disburse monies that have been donated to the capital fund-raising project.
44. On January 1, 2013, the new Chair of the Board assumed his duties. He is also the Chair of the EYF.

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<sup>3</sup> The fundraising committee Chair stated that in addition to herself, the committee had 12 other persons.

45. The General Manager explained that the project was an alternative service delivery model that was being closely watched by the City and Council as a potential model for future projects. In order to secure funding from the City of Toronto, the Arena Board agreed to raise \$2.5 million by mid-January 2012.

46. The 2011 annual audit of Leaside Arena<sup>4</sup> reported on the expansion plans:

The arena has received approval from Toronto City Council. The 2012 capital budget for the construction of a second ice pad on adjacent lands acquired by the City of Toronto. The projected total cost of the project is \$12.5 million. Of this up to \$7.5 million will be provided by the City through recoverable debt repayment over 30 years, and Infrastructure Ontario will provide up to \$1.5 million through subordinated non-recourse loan repayable over 20 years. The City of Toronto will provide \$1.0 million from reserve funding. The Board has met its fund-raising goal of \$2.5 million, and construction is expected to begin in July 2012. The funds raised are being held in trust by the East York Foundation and will be released to the City of Toronto as required.

47. The arena expansion funding agreement with the City, was approved by City Council on January 17, 2012 meeting. It required one representative from Infrastructure Ontario on the Board for the duration of the loan from Infrastructure Ontario to the City. As these funds have not yet been required, there is no representative from Infrastructure Ontario.

48. The Board Chair explained that tax receipts would be issued by the EYF only if the monetary contribution met the Canadian Revenue Agency requirements, specifying the donation was voluntary, and that there was “no expectation of benefit from the donor.” He said that the EYF could also receive monies that would not qualify as donations for tax receipt purposes. He explained that in such a case, the EYF would issue an acknowledgment and appreciation letter.

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<sup>4</sup> Annual audit (2011) by chartered accountants Grant Thornton, LLP, May 23, 2012.

## 5.0 Legislative and Policy Framework

### 5.1. The City's Relationship Framework with its Agencies

49. The City of Toronto has been developing relationship frameworks for all of its agencies in order to clarify the obligations and nature of delegated authority from the City to a specific agency. Some relationship frameworks are already drafted, as is the case for the eight arena boards.
50. CMO staff stated that the purpose of the Relationship Framework is to:
- set out some of the further details around the mandate and the relationship that was delegated, what is required for reporting, what's required for approval. The intent is to create a framework for the relationship between the City and the Board of the arena.
51. The City of Toronto website on relationship frameworks similarly states that:
- With this assignment of responsibilities also comes the obligation to conduct business in a manner consistent with City objectives.<sup>5</sup>
52. The relationship between arena boards and the City is three pronged:
- 1) arena boards are "functionally aligned" with PFR in terms of operational issues;
  - 2) the Financial Planning Division provides support with respect to financial management and budget matters; and
  - 3) the CMO is responsible for board of management governance matters.
53. Section 9.1.1 of the Relationship Framework requires that, in accordance with COTA, section 6 (14)(1), "City Council may require the Arena Board to follow rules, procedures and policies established by City Council and as amended from time to time."
54. Section 9.1.4 states that "the Arena Board is responsible for ensuring that arena staff have implemented policies of the City that are deemed applicable." The designated City liaison and other City staff are to help determine which policies apply.

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<sup>5</sup> Available at: <http://www.toronto.ca/abcc/relationship-frameworks.htm>

55. CMO staff clarified that COTA (s. 2.12.2) requires local boards to adopt and maintain particular policies and the CMO expects the boards to have them. He clarified that board policies do not need to be identical to City policies, as their mandate and objectives are different, so the policies must be customized.
56. In addition to this, the CMO received Council approval in April 2011 for its recommendation that by-laws governing internal business affairs of the Board will now require Council approval. City staff clarified that this would provide the CMO with an opportunity to review them at that point.

## **5.2. The City's Mechanisms for Obtaining Compliance with Policy**

57. My investigator asked CMO staff how they enforced compliance with the requirement that arena boards create certain policies for property, personnel and procurement as required by the Relationship Framework. Staff said they did not enforce compliance, and that it was difficult to know the status quo:

One, it's a capacity issue. Two, there might have been initial compliance but things change over time. So the systemic process isn't in place to do that... But we have, including the BIAs, approximately 120 Boards out there...

58. CMO staff reported that they will intervene if necessary, and gave the example of one local board about which they had previously had concerns. This led them to perform an administrative review, following which a new board was put in place.
59. CMO staff said that there was a shared responsibility with boards of management and that returning members should assist new board members in becoming acquainted with relevant documents and policies. Staff also explained that having a Councillor on each board should bring a greater level of awareness about policies and processes.
60. The Councillor on the Board stated that his role was to encourage and support members in their efforts, not to be on top of operational details.

As the City Councillor... I take the role of supporting the goals and aims of the citizen members and of the management....but I'm not involved in the day today analysis of every issue that comes along.

61. The General Manager also noted that the Board seemed to be avoiding certain issues when the Councillor was present.
62. My investigator spoke with the current PFR staff liaison, who has been the representative on the Board since October 2012. He attends meetings regularly.
63. The former PFR staff liaison reported that he was often unable to attend meetings.
64. Both staff told my investigator that they were directed to attend but were not given any further instruction. Both of them noted that they were not sure why they were there or what their role was.
65. The former PFR staff liaison told my investigator that he had spoken to other PFR staff who were designated City representatives for other arena boards, and they had expressed the same feeling that they did not know why they were attending board meetings.
66. The current City staff liaison told my investigator that members did not speak to him and he doubted that any of them knew his name. He said he had the impression that they had already made decisions on items prior to the meeting, due to the lack of discussion on some issues. He thought at times that the Board members felt like they could not say things in his presence.
67. He had once been embarrassed when he walked into a Board meeting and found the members discussing their disappointment at learning the City would be dismantling the Board and taking over the role of member appointments through a new public appointments process. He believed that they saw him as an extension of the City, responsible for this unwanted change, despite the fact he had not heard anything about it until he arrived at the meeting.
68. He told my investigator that his expertise was in facilities management and health and safety. He said that he was rarely asked anything by the Board. He also noted that the General Manager was management, so he would not question him, as he was his superior.
69. Both the former and current City staff liaison told my investigator that they were not sent copies of the minutes, although the former staff liaison believes he was sent copies of the agenda before meetings. Neither took notes and both stated that there was no

formal system of reporting back within the division on what happened at the meetings, although they might in passing, discuss it with their colleagues or supervisor.

70. CMO staff said they welcome questions from agencies in developing policy, but that support is primarily offered upon request.
71. My investigator asked if boards were given training, and staff stated that they usually provided a non-mandatory governance review at the beginning of the public appointment process, but due to problems with that process in 2011, this did not occur. Staff also said that, on request, or when there was a major governance review, they give presentations on specific issues such as conflicts of interest.
72. They explained that even if there was training at the beginning of a term, vacancies arise and new appointments occur.
73. The Treasurer of the Board said the General Manager gives each member a binder when they join, with background information, minutes and policies. He said that the General Manager was "excellent in bringing every document from the City to the Board."
74. The Chair of the fundraising committee noted that the only orientation she received was the binder, which she had read three years ago when she was appointed.

### **5.3 Relationship Framework**

75. The Relationship Framework between the City and boards of management for the eight local arena boards was adopted by Council in September 2007. It was modified in February 2010 for ice allocation practices.
76. Section 1.5.3 of the Relationship Framework states that arena boards are considered "program operating Boards, aligned with the City's Parks, Forestry and Recreation division, engaged in delivering primarily indoor ice recreational activities."
77. Section 1.4 of the Framework states that its purpose is to:
  - 1) Recognize the Arena Board's authority to manage the business and affairs of the facility in accordance with this Relationship Framework and the relevant provisions of the City of Toronto Municipal Code;

- 2) Set out the conditions that promote an effective and collaborative relationship between the City and the arena boards;
- 3) Identify the types and levels of support provided by the City to arena boards and responsibilities and obligations of the arena boards;
- 4) Inform the Arena Board, City staff and the residents of Toronto regarding Council's direction on matters such as governance, applicable City rules and policies, reporting requirements and accountability;
- 5) Articulate City Council's delegation of authority, expectations and requirements for arena boards; and
- 6) Combine and update information from a variety of sources into one document including City policy, the Toronto Municipal Code and applicable provincial legislation.

78. The Relationship Framework states more generally that the mandate is:

to operate the arena in a manner that meets local community needs and desires for indoor ice recreational activities while having regard to the objective of producing enough revenue from these uses to operate at the lowest reasonable cost to the City and its residents.<sup>6</sup>

79. The Relationship Framework states that arenas operated by boards of management have consistently met this goal.

80. The Relationship Framework sets out five operating principles in section 2.2. Among these is section 2.2.1:

The Arena Board will operate in compliance with all applicable laws, including but not limited to the *City of Toronto Act*, *Municipal Act*, *Municipal Conflict of Interest Act*, *Occupational Health and Safety Act*, *Ontario Human Rights Code*, City Council policy, and the Toronto Municipal Code.

81. Section 2.2.3 states:

The Arena Board shall at all times endeavour to manage and control the facility in a reasonable and efficient manner, in accordance with standard good business practice.

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<sup>6</sup> Relationship Framework, p.4.

82. Article 3 sets out the City's delegation of authority to arena boards. Generally, they are to develop their own operating plans, allocate usage of the facility, develop funds and manage arena programs, as well as manage, operate and maintain the arena and set fees for the use of arena space.<sup>7</sup>
83. City Council must approve the appointment of arena board members, annual operating budgets, capital improvements, audited annual financial statements, the creation of new arena boards or the dismantling of previous arena boards, contracting out the operation of the entire arena to a third-party, and matters of records retention.<sup>8</sup> As of February 2010, arena boards are also required to propose ice allocation schedules and have them approved by the General Manager of PFR.<sup>9</sup>
84. Arena boards are required to adopt a procedures by-law governing the rules of arena board meetings. This must be filed with the CMO (Relationship Framework ss.5.1.1 and 5.1.3).
85. In addition, the Board is responsible for having appropriate policies for hiring employees and for procuring goods and services; section 9.1.3 requires this. It also requires that copies of the policies and any revisions to them be filed with the CMO.
86. While the Board is responsible for maintenance and control of the building and its operations, it is not permitted to undertake any capital work over \$50,000, without first obtaining the approval of the General Manager of PFR (s. 6.2.3).
87. CMO staff explained that the role of an arena board is to approve the budget and any kind of programming; deal with personnel and labour relations matters; and in cases of more sophisticated boards, they can negotiate special projects.
88. CMO staff emphasized that the level of sophistication varied widely from one board to another, as did the arenas' service philosophies. For example, some arenas focus on local programming, and others rent ice to groups City-wide.
89. On occasions where a board is providing funds through fundraising activities towards the cost of a project, there must be a written agreement between the Board and the General Manager of PFR (s.6.2.7).

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<sup>7</sup> S.3.2

<sup>8</sup> S.3.1

<sup>9</sup> Item CD30.5 approved by City Council on February 22/23, 2010.

90. The City provides corporate support to the arena boards. Council governs through the appointment of board members and by approving requests about changes to by-laws, policies or governance structures. In addition, one or more members of Council are appointed to each arena board as a full member with voting privileges.
91. The Relationship Framework states that the presence of the Councillor on the Board will “provide an essential link between the Board and Council such that Council positions can be conveyed to the Board and vice versa” (s. 7.2.3).
92. Similarly, the Framework states that the PFR staff member is to provide “an essential link between the board and the Toronto public service so that working and governance relationship issues can be identified and addressed in a timely manner” (s. 7.2.4).
93. City Council can require arena boards to follow particular rules, procedures and policies established by Council, and may make amendments to these (s.9.1.1).
94. Board members’ conduct must meet certain standards. The Relationship Framework notes that each member of an arena board must agree to abide by the *Municipal Conflict of Interest Act*, and the Code of Conduct for members of local boards. They are also subject to the *Municipal Freedom of Information and Protection of Privacy Act* (MFIPPA).
95. The General Manager of PFR is the City liaison responsible for operational issues (s. 10.1.2) although arena boards can request assistance from other divisions as well (s. 10.2.1).
96. Arena boards are required to report annually to the City Audit Committee through audited financial statements (s. 10.3.1).
97. My office was told by a number of witnesses from the Leaside Arena that the Relationship Framework was a moving target, and expressed dissatisfaction with what they understood to be frequent changes by the City.
98. The Relationship Framework has been amended three times on City Council's direction.<sup>10</sup>

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<sup>10</sup> In September 2007 (EX11.11), Council authorized the City Manager to amend the composition, qualifications and nomination process for the Ted Reeve Arena Board. In February 2010 (CD 30.5), City Council made changes to ice allocation practices in City arenas operated by arena boards of management. In April 2011 (Item EX4.7) the City's 2006 Public Appointments Policy was amended to require an open advertising City process for recruiting the at-large public members on all the arena boards.

99. When asked for a specific example, each of the witnesses mentioned the changes related to approval of the ice allocation schedule and the Board member appointment process.

100. Former Board Chair stated:

There is supposed to be a relationship framework that the City agreed to, but they don't seem to follow it... they keep changing rules of how the board is supposed to operate... but I guess bureaucrats can do what they want.  
... Personally, I guess the thing is the City doesn't even adhere to it. But when you challenge them, they change the rules.

101. The Board Treasurer noted:

The City has changed the document three times. It started with ice allocation. Taking away our rights to appoint. It took 8 months for City to do that. We can do that in 6 weeks. We did not have consultation. It is a nice document... the City chooses to change it whenever they see fit...

102. The General Manager stated:

When the City wants something and it's not covered in that doc, the City makes their own policy. We've spent many hours discussing a Relationship Framework which the arena managers were using as a template to help us deal with the City, and every time it gets thrown back at the City and then something new gets drafted at Council.

103. Of the other seven arenas run by arena boards, two general managers mentioned that the Relationship Framework was not always followed by the City or there were different interpretations and a lack of clarity.

#### **5.4 The City of Toronto Act, 2006**

104. City of Toronto arena boards are established through COTA in sections 7, 8 and 141. The law allows Council to appoint a board to manage a facility and operate its administration.

105. It allows the City to pass by-laws on:

- Governance structure of the City and its local boards (restricted definition).

- Accountability and transparency of the City and its operations and of its local boards (restricted definition) and their operations.
  - Financial management of the City and its local boards (restricted definition) (s.8 (2)).
106. COTA also authorizes the City to create boards and to determine certain matters, including:
- The requirement that the board follow rules, procedures and policies established by the City.
  - The relationship between the City and the board, including their financial and reporting relationship (s. 141 (1)(6-7)).

### **5.5 Municipal Conflict of Interest Act**

107. Members of local boards, including members of arena boards, are subject to the *Municipal Conflict of Interest Act*. Complaints about conflict of interest are outside the Ombudsman's jurisdiction. They must be made through the procedure noted within that statute.

### **5.6 Code of Conduct for Members of Local Boards**

108. Both elected officials and individuals appointed to local boards (restricted definition) are subject to a code of conduct. There are two versions of the code. The first is for elected officials, and the second applies to citizen members of local boards.
109. The City of Toronto Integrity Commissioner has jurisdiction over complaints about violations of the Code of Conduct (Code).
110. The preamble of the Code states:
- The public is entitled to expect the highest standards of conduct for members of Council and the citizen members who are appointed to local boards by Council to act on its behalf. In turn, adherence to these standards will protect and maintain the City of Toronto's reputation and integrity.
111. The Code includes the following principles:
- Members of local boards shall serve and be seen to serve the City and community in a conscientious and diligent manner;

- Members of local boards should be committed to performing their functions with integrity and to avoiding the improper use of the influence of their office, and conflicts of interest, both apparent and real;
- Members of local boards are expected to perform their duties in office and arrange their private affairs in a manner that promotes public confidence and will bear close public scrutiny...

112. Section 10 of the Code says:

...members are required to observe the terms of all policies and procedures established by the local board and any Council policies and procedures that apply to the local board or its members.

## 5.7 Sponsorship Policy

113. The sponsorship policy was created to establish a protocol that “aligns with the City's programs and services; provides guidelines, which facilitate and support opportunities for sponsorship, and creates a systematic approach to soliciting, managing and reporting on sponsorships.”

114. The policy applies to the agencies and notes that it does not apply to naming rights or to advertising, which are covered by different City policies (3.1). The policy also does not cover donations, gifts or philanthropic contributions where property is transferred without any expectation of return benefit. Donations to the City are governed by the donation policy.

115. The sponsorship policy carefully defines “advertising” and “sponsorship”:

“Advertising” denotes the sale or lease of advertising or signage space on City-owned property. Unlike sponsorship, it involves the use of public advertising, contracted at a predetermined rate for a set period of time. Advertising does not imply any reciprocal partnership arrangement since the advertiser is not entitled to any additional benefits beyond access to the space.

...

“Sponsorship” is a mutually beneficial business arrangement wherein an external party, whether profit or otherwise, provides cash and/or in-kind services to the City in return for

commercial advantage. This payback may take the form of publicity, promotional consideration, merchandising opportunities, etc. Because of these marketing benefits, a sponsorship does not qualify for a tax receipt...

116. The policy requires that any sponsorship agreements supplement City funding but must not displace the normal funding (s. 5.1.11).
117. A competitive process is not required when soliciting sponsorship opportunities (5.1.13) but the policy suggests that it is expected several prospective sponsors will be approached when possible.
118. It also requires that the sponsorship cannot result in any real or perceived competitive advantage for the sponsor outside the agreement (5.2.8).
119. All solicitation, negotiation and administration of sponsorships is to be conducted by authorized City staff only (s. 6.2). All cash sponsorships with an estimated value of over \$50,000 require a contract and consultation with the City's legal services on appropriate terms and conditions. The policy also includes ten suggested contractual provisions to be used in such a contract (s. 6.9).
120. Money received through sponsorship agreements must be credited to appropriate accounts and reported out through the budget process (6.14). Divisions are responsible for providing details of these agreements to the Toronto Office of Partnerships (TOP) on an annual basis (6.15). That office will provide Council with an annual report summarizing sponsorship activity throughout the City (6.16).
121. On February 1, 2012, the Director of TOP wrote to the Chairs of the eight arena boards. She informed them of three new policies regarding naming rights, sponsorships and street naming. While the arena boards are not required to comply with the City's own policy, she wrote that Council did require:

that you adopt a policy consistent with the City's prior to entering into future sponsorship agreements to ensure that all City divisions and agencies adopt a consistent approach to this matter.
122. The letter stated that arena boards were advised they could approach CMO staff for assistance.

## 5.8 Naming Rights Policy

123. The City has permitted naming of some of its municipal facilities such as the BMO Field, Direct Energy Centre and the Sony Centre for the Performing Arts.
124. In order to deal with such opportunities fairly and consistently, the City created a naming rights policy for both individual and corporate naming rights. It explains that naming rights are one class of sponsorship activity (3.2).
125. The policy refers to the naming of City property in return for financial or in-kind contribution,  
  
including, but not limited to, events, services, programs, activities, real property, facilities, intellectual property, parks, features(e.g. rooms, ice pads, bridges, playgrounds, etc.) and other assets but not including streets and lanes.
126. Many of the provisions are similar to those in the sponsorship policy, such as requiring that the naming right must not result in or be perceived to result in a competitive advantage to the rights holder (5.3.6), and that the negotiation is to be conducted by authorized City staff only (6.1.2). Similarly, TOP maintains a list and reports to Council annually on the proposed naming rights plan for the year, to obtain approval.
127. The letter from the Director of TOP required that boards develop a naming rights policy. Leaside Arena has not yet done so.
128. The former Chair told my investigator that the Leaside Board had not created a policy on naming rights. He said that there had been no follow-up from the City. He said that this was becoming an issue, and that there seemed to be a lot of inconsistencies in multiple requests from different City divisions.
129. The "old" ice pad will be called the Bert F. Grant Rink, recognizing the \$250,000 gift made by the Grant family in honour of their father. At the time of issuing this report, the naming opportunity for the newly constructed rink was still available.

## 5.9 Donations Policy

130. TOP is responsible for the the "Donations to the City for Community Benefits Policy."<sup>11</sup>

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<sup>11</sup> Last revised in October 2012.

131. Communication to donors must include a clause stating that all donations to the City “must be given unconditionally and voluntarily without any expectation of benefit...” (s. 4.4 (c) (iv)).
132. Donations of over \$50,000 must be approved by the City Solicitor (s. 4.4(b)) and divisions are to consult with the Lobbyist Registrar prior to receiving a donation (s. 4.4(d)).
133. Divisions are responsible for determining if the donation qualifies for a tax receipt (s.4.5).
134. The policy explicitly states that sponsorship agreements in which benefits exchanged are excluded: “No advantage is to accrue to the donor or to any person not dealing at arm’s length to the donor as a result of the donation” (s.1.10).
135. Division heads have authority to receive and spend donations of under \$50,000 in certain circumstances (e.g. the donation is not related to a naming opportunity s. 3.9). Larger donations must be part of a Council-approved fundraising campaign and deposited into an approved account (s. 3.8).

#### **5.10 Advertising Policy**

136. Council adopted a corporate advertising policy in July 2001. This advertising policy speaks to how and where the City itself should advertise rather than evaluating potential contracts with advertisers on City property. The stated purpose of the City advertising policy is to:
  - ...ensure that City of Toronto advertising reaches the appropriate audiences in the most effective and efficient manner. The policy will permit the City of Toronto to secure the best available rates and communicate with the widest possible audience.
137. There is no City-wide policy that speaks to handling advertising contracts on City property. Some agencies, however, like the TTC and the Toronto Public Library, have their own advertising policies.
138. The Leaside Arena Board does not have an advertising policy. The General Manager explained that his practice was to allow the market to set the prices for advertising, and that it was his responsibility to obtain the best deal possible from advertisers.

139. Staff from the CMO said:

You really need a separate type of process [from purchasing], ... or create a whole policy framework to run these things and advertising fits; it's a shorter term, you're not selling the asset but you're trying to attract revenue. Sometimes it's unsolicited proposals, but we do have a process for that. All these things are a little different, so the City does have some policy elements in place. What the boards have in place would be another question entirely. But advertising I think is a weak area and there is a separate process for selling assets.

140. At least three current Board members advertise within the arena. They did not see this as a problem.

141. The Complainant has a large advertisement in the entrance of the arena, which faces a competitor's advertisement, who sits on the Board.

#### **5.11 Purchasing Policy**

142. The City procurement process policy<sup>12</sup> sets out the requirement for competitive processes to be used in procurement, such as calls for tenders, quotations, proposals, and for expressions of interest. Unsolicited quotations or proposals are dealt with in a separate policy.

143. The purchasing policy speaks specifically to the acquisition of goods or services by the City.

144. The General Manager stated that it was his practice to obtain three quotes for any purchase, unless there was an emergency. He stated that some of the arena expansion purchases had been conducted without his participation, and that he could not verify whether three bids had been obtained in those instances.

145. He gave the example of the new sign being built outside the arena, and the new arena clock, as part of a sponsorship agreement with a major financial institution. He was not certain about the length of contract or any other details.

146. A senior official in Purchasing and Materials Management, told my investigator that with respect to arena boards, arena boards'

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<sup>12</sup> Policy was first adopted by City Council in July 2004. The current version is dated November 13, 2008.

relationship framework requires that they have a purchasing policy but not necessarily one identical to that of the City. He explained that it would be impossible to have the same policy as the City, as it specifies which staff have authority for purchasing decisions, and a prescribed escalation to specific committees.

147. He explained that larger agencies like the TTC have a sophisticated purchasing policy and rules that share some commonalities with the City, but they would still not be identical.

148. He also noted that all agencies, including arena boards, were supposed to have their purchasing policies filed with the CMO in keeping with the framework. When asked how smaller agencies with less sophistication were to develop purchasing policies, he said:

We are always willing to help our agencies and boards. We will provide guidance, we won't tell them what to do, but we will provide guidance based on what we have in place and our experiences.

149. However, he noted that even with a purchasing policy in place, it may not adequately deal with advertising situations such as the one raised by this complaint. Typically, the purchasing policy will only work for purchases made by the City, where it is spending money on goods or services, and not one where someone is paying the City for goods and services (advertising space):

When we talk about other things where its more about benefits to the City there is no hard and fast rule that they come to us, often they come to us because we know how to run ... fair and transparent competitions, but coming to us comes at a... price because you are entering into a certain style of legal arrangement through us. You could probably run a fair and open competition without some of the legalities that Purchasing can bring to it.

...it really just boils that down to basic contract negotiation... but it's harder in a public entity, we still need to show that we are being fair, we still need to show that we're being transparent and that what we're doing is in the best interest of the tax-payers....

150. Asked whether all arena boards should have the same advertising policy, the senior official thought it would be useful for them to talk among themselves to create consistency, even if they ultimately

decided not to have a single advertising policy that applied to all arenas operated by boards of management. He also said that consultation across agencies would be useful because, "people are doing these types of things everywhere, so no need to reinvent the wheel."

## 6.0 Facts

151. The Complainant has advertised at the Leaside Arena since approximately 2003. He paid \$1,500 plus tax annually in order to advertise on the Zamboni. In his last contract beginning April 2011, he paid \$1,812.29 plus tax (\$2,047.89 total).
152. The form of the contract noted that advertisements for "alcohol, tobacco, political statements and otherwise objectionable material" were prohibited.
153. The contract noted that the arena could terminate the contract at any point with 60 days written notice. It included a first option of renewal.
154. Fundraising for the second ice pad began in 2010.
155. At that time there were a number of entities advertising at the arena:
  - four realtors
  - three user groups
  - one facility supplier
  - one storage facility
  - two multimedia companies
  - two contractors
  - one funeral home
  - one health and wellness company
  - one City Councillor
156. Ad hoc expansion and fundraising committees were created.
157. For assistance with fundraising, the Board retained consulting expertise which concluded at the end of February 2011.
158. The first document my investigator found which referred to discussions about advertising on the Zamboni, was dated August 23, 2011, in the form of an email sent to the former Board Chair, the fundraising committee Chair and the expansion committee Chair.

159. The email was sent by Mr. Q, a member of both the fund-raising committee and the Leaside Hockey Association, with connections in the food industry. The former Board Chair explained that Mr. Q contacted the Board because he knew that a local grocery chain (the grocer) was opening a store in the community and might be interested in contributing to the fundraiser. The former Board Chair said that Mr. Q put together a proposal from the grocer and presented it to the Board.
160. In his August 23, 2011 email, Mr. Q listed a number of “key points” which he said had been discussed with the expansion committee Chair and the former Board Chair earlier that morning. They related to exclusivity and the grocer deal.
161. The email discussed a \$75,000 ten-year agreement to advertise on a new Zamboni to service the new facility. It said that the grocer would work with user groups to sponsor house league teams, events, etc. In return, the grocer wanted food exclusivity, with no competitor’s banner displayed prominently in either the old or new ice-pad.
162. The email noted there was concern about potential contributions from other grocery stores such as Value Mart, a local grocer that might want to increase their donation and involvement with Leaside Arena.
163. The former Board Chair told my investigator that the first offer from the grocer requested exclusivity with respect to the food served in the arena as well. He said there was significant discussion at the Board about the issue and problems were identified.
164. For example, different user groups run tournaments each year at the arena and local merchants provide food. The former Board Chair stated that the arena was a community-based facility and that the Board did not want to have to turn away supporters, particularly local businesses. He said that the Board was “feeling our way through the process.”
165. Mr. Q wrote that there were a few options, including:
  - 1) offering exclusivity in the new ice pad facility with an option to expand pending the first right of refusal on second Zamboni;
  - 2) offering food retail in the new facility only; or
  - 3) offering preferred sponsorship in the entire facility

166. He wrote that they needed to specify conditions, and inform the grocer that there was a local retailer involved already. He thought that the grocer might be able to co-exist with this relatively small local grocer, so long as the other major competitors were not involved. He asked the committee members copied on the email, to direct him on how to proceed.
167. On September 6, 2011, Mr. Q emailed the former Board Chair and the fundraising committee Chair, asking if there was any more information on the grocer's proposal as he needed to get back to the grocer. The former Board Chair asked the Board secretary to add the topics of naming opportunities, rental income for banner advertising and the proposal to the agenda of the next meeting.
168. On September 14, 2011, the Board met for the first time since June, after its scheduled summer break. The minutes note that naming opportunities, and ways to display logos in the arena were discussed. The former Board Chair informed the Board that "a proposal was received from [the grocer] for Zamboni advertising, which included the right to exclusivity."
169. The minutes state there was a discussion "regarding the existing Zamboni advertising contract and [the grocer's] proposal... with exclusivity." They state someone suggested that the grocer purchase and donate a Zamboni rather than a long-term advertising donation.
170. The next Board meeting was on October 26, 2011. At that time, the former Board Chair raised "the issue of the grocer's proposal for Zamboni advertising," noting that there were options to either pay the \$75,000 in an agreement for 10 years of advertising at \$7,500 per year, or have the Zamboni purchased by the grocer.
171. The General Manager advised the Board that it would be contrary to policy to have a contract exceed four years.
172. The Board Secretary told my investigator this was the General Manager's practice and that he liked to keep contracts to the same term as City Council, but that there was no requirement to do so.
173. The General Manager said that the only contracts which exceed one year were for soda pouring rights, which were usually three to five years.

174. The Treasurer also stated that the ten-year time frame for the contract coincided with the life span of the Zamboni. Seventy-five thousand dollars would be the cost of the Zamboni.
175. The former Board Chair told my investigator that the unusual length of the contract was a result of the City putting pressure on the Board to come up with \$2.5 million up-front in order to access City funding. The ten-year deal was to get an advertiser to pay up-front.
176. The Board minutes state that the General Manager offered to address the issue with the Complainant, to see if he would be interested in purchasing the Zamboni advertising over a ten-year contract. The former Board Chair clarified that the \$75,000 offered by the grocer was to raise capital for the expansion project.
177. On December 13, 2011, Mr. Q sent an email to the former Board Chair, the expansion committee Chair, the fundraising committee Chair and two members of the fund-raising committee. He said that the grocer had got back to him that day and he was able to give them an update on the project.
178. He wrote that the grocer was still committed to the project if they could satisfy the exclusivity agreement discussed and if they could commit to not prominently displaying any other grocer's banner in the facility. He wrote that exclusivity was a "deal-breaker." Mr. Q asked if it was possible to open the current Zamboni contract to tender in advance of the April 2012 expiration.
179. The former Board Chair wrote back the same day, stating that he would be willing to raise the issue of the Zamboni advertising early, if this would mean a commitment from the grocer. He wanted to ensure that if another grocery store was acknowledged on the arena wall with the nameplates of donors, this would not be an issue for the grocer and suggested meeting. He also said that they were still waiting for a donation from another grocer and did not yet know the level of contribution they might make.
180. On December 14, 2011, Mr. Q responded to the expansion committee Chair, copying the former Board Chair. He said that he was not "comfortable with our positioning and approach with [the grocer]" and thought they needed to put forward a "simple proposal" to the grocer. He asked that the former Board Chair call him and that if "we are not comfortable with the exclusivity request, then we should be up front with them again and be prepared to walk."

181. That evening the Board met. There is no record in the minutes of the grocer's deal being discussed. The minutes note that the arena had raised \$2.2 million and that "there were further discussions regarding fundraising efforts."
182. Witnesses reported that the Board only goes in-camera for confidential issues such as employee matters, and that Board minutes should reflect the entirety of the meeting.
183. Three witnesses stated that some Board decisions were made without much discussion, and believed conversations must have taken place outside the Board meeting.
184. On December 15, 2011, the expansion committee Chair responded to Mr. Q's email of the day before, copying the former Board Chair. He set out the details of the proposed contract and stated that the Board would be discussing options with the current sponsor, who had the first right of refusal. He wrote that "even though a decision may not be required until April 2012, he will be requested to decide now."
185. The email noted that the contract proposal was \$125,000 for ten years of Zamboni advertising. If the current sponsor did not accept this, the grocer would have the opportunity to match the offer. He noted that it would be acceptable if the grocer were to pay \$75,000 in 2011 (i.e. in the ensuing two weeks) and \$50,000 at some agreed-upon time in 2012. He wrote that there would be a donor wall and recognition outside the arena, close to the entrance for donors who contributed over \$35,000. He noted that the Board was "agreeable that no other food retailer banner would be displayed in the arena."
186. On December 22, 2012, the former Board Chair wrote to seven members of the Board, omitting the Councillor and one other member. The email stated:

... I was speaking with [the Complainant] last night and mentioned that we have a proposal from [the grocer] (I didn't reveal the name to him) who are willing to give us \$125K for a 10 year arrangement for the Zamboni however they need to know if they can have the rights to advertise on the Zamboni. [The Complainant] asked that I take this matter back to the Board as he felt that we were squeezing out the small business person to raise funds for the arena project and he was not happy with this large increase.

Without stating my opinion, I would appreciate your individual thoughts on this matter along with a vote for or against this new arrangement since [the grocer] needs our decision the first week on January.

187. The Complainant told my investigator that he received a call from the former Board Chair on December 23, 2011, advising him that the Board had a donor willing to pay for Zamboni advertising, but that the Complainant had first right of refusal. He would not disclose who the donor was, but stated that they were prepared to pay \$125,000 and that they wanted the Complainant to pay up-front, if he were to match the offer.

I told him I was offended. I said ... this isn't the right thing to do. You're not giving me much information and you're putting the small business guy in a bad position.

188. The former Board Chair emailed the Complainant on January 1, 2012. He wrote that after speaking to the Complainant prior to Christmas, he took "his issue" to the Board. He wrote that all members but one were in favour of pursuing the proposal before them. He noted one member had stated that while small businesses like the Complainant's have been the backbone of the arena, the capital campaign was beyond what most small businesses could afford. This member noted that there was still a role for small business to play, but it would exist with other opportunities.

189. In this email, the former Board Chair asked the Complainant to let him know if he would match "this \$125,000 donation for the Zamboni advertising" by the end of that week. He reminded the Complainant that he had the first right of refusal.

190. On January 2, 2012, the Complainant responded to the former Board Chair's email stating:

I am not pleased with this ... You are squeezing the local business person. I am out of the country returning the 10th and will be in touch after that.

191. On January 10, 2012, five days before the City's deadline for Leaside Arena to raise \$2.5 million, the former Board Chair wrote to the Complainant stating: "Hope we can deal with Zamboni issue in next few days" and noted that they needed to provide the City with information on where the arena stood in terms of the fundraising goal. He explained that the budget was being debated by Council

the following week and that the Board needed to let them know prior to Tuesday. He asked to speak to the Complainant in the next few days.

192. The Complainant responded that day, stating that he would get back to the former Board Chair soon but that he would be swamped upon his return from holiday. That evening, he wrote to the former Board Chair to ask about the projected and current "traffic" (visitors) to the arena, and if the price included a full wrap of the Zamboni or just one sign hung on either side of the Zamboni. He asked who the other bid was from.
193. The former Board Chair responded the same day, explaining the type of signage had not been determined yet and that he could not disclose the name of the other advertiser. He stated that the current traffic was 5,000 people weekly and that they hoped to increase that to 11,000 with the construction of the new ice pad.
194. The Complainant told my investigator that the former Board Chair called him the following day, on January 11, 2012, and stated that he had to give the Board his decision by January 15.
195. The Complainant informed my investigator that the former Board Chair had told him that they had a "firm commitment" from the other donor.
196. Ultimately, the expansion project raised the required funds to secure City financing by the January deadline, without any advertiser paying for the Zamboni contract.
197. On January 17, 2012, Council approved the expansion project as part of the City's 2012 budget. The project cost was estimated at \$12.5 million, including a City loan of \$7.5 million and \$1 million in accelerated capital improvements. One and a half million dollars would come as a loan from Infrastructure Ontario and \$2.5 million had been raised through fundraising efforts.
198. On February 15, 2012, the Treasurer of the Board emailed the Complainant with a letter attached, cancelling his advertising contract at the arena. It stated that they had made the decision not to renew his contract for 2012/13, and that this letter would serve as his 60 day written notice required by the contract. The letter thanked him for his support. He also wrote that "the offer that was presented to us for Zamboni advertising is significant and will go a long way to offsetting costs... we respect your decision not to

match the offer” and mentioned that the Complainant would have the first opportunity to rent a dasher Board in the new ice pad.

199. On February 16, 2012, the Complainant responded:

... I'm obviously a bit confused... based on our conversation last week you were unsure /not clear of the actual commitment/amount the Board had for the Zamboni and at that time we agreed you would get back to me with clarification on whether there was or was not an actual commitment in place and what it actually was. So we could talk and I can then exercise my right of renewal... We also discussed the possibility of me staying on the Zamboni until the second pad was open in 2013.
200. He said he was unsure of the real cost of advertising on the Zamboni, as he had heard numbers ranging from \$50,000 to \$225,000. He also said the former Board Chair had told him in December 2011, there was a commitment for \$125,000 but then the expansion committee Chair advised him in January that they were only in discussions with the other group and that the Treasurer had been unsure of where it stood.
201. In his e-mail to the Treasurer, the Complainant stated that although the former had disclosed to him that the other advertiser was the grocer, the Complainant had already known that. He also knew that the grocer was asking for exclusivity and that request had been turned down by the Board.
202. He asked the Treasurer to give him clear terms of what the Board was asking for so that he could effectively exercise his right of renewal. He said that he felt the Board was "not dealing in good faith and again, contrary to the terms of the contract." He also said that he would be prepared to negotiate his present deal based on the going rate.
203. On February 16, 2012, the Treasurer responded to the Complainant stating that he was surprised by his email: “we have a commitment of \$125,000 in one up-front payment to cover the Zamboni advertising for ten years.” He said that the Complainant had told him he was not prepared to pay that so the Board had terminated his contract.
204. The Complainant responded in an email the same day. He wrote that the Treasurer had told him he was going to clarify the status of his contract for 2012/13, but instead he had sent him a termination

of his contract. The Complainant wrote that he was not giving up his right of renewal and that \$125,000 was out of line and was even more than the costs for similar ads at other arenas. The Complainant wrote that he was willing to make an offer of \$4,500 a year, and noted that it was triple what he was currently paying. He said that if they decided against his offer, he would be interested in the dasher-board opportunity.

205. The Complainant told my investigator that he believed they had treated him unfairly. He compared it to an unfair practice in selling a home:

This was clearly a ploy-totally unethical on the Board's behalf. This is where my complaint is coming from. Are they doing this to other fundraising people? Have they bluffed other people? I know from stories I've heard in the past, I know they've used hard-ball tactics for some people in fundraising in the past. I've heard the stories...

It's unethical. In real estate, if I have a \$1million offer, I can't tell you I have it. I can tell you I have an offer and do you want to improve your offer? If I don't have that offer and you find out that I never had an offer, [the agent] loses their license... That's what they did. They didn't have an offer and they tried to get me to give them a fictitious figure they pulled out of the air. That's totally unethical.

206. The Board met on February 22, 2012. The minutes state that there was a "discussion regarding [the Complainant's industry] advertising in the facility" and that the fundraising committee Chair declared a conflict of interest.
207. The General Manager stated that he had advised the Board there was a sensitive issue to be discussed, and that he told the fundraising committee Chair to declare a conflict of interest. He noted that the minutes did not acknowledge that this was his suggestion, but he remembered doing so.
208. He also stated that the fundraising committee Chair stayed in the room and that it was his perception there had been some discussion on the issue outside the Board meeting beforehand, because the matter was pushed through quickly with very little discussion.
209. The minutes also note that there was a discussion about how to divide Zamboni revenue between advertising and capital. The current Board Chair, who was a Board member at that time, said

that the Zamboni advertising was a revenue, not a fundraising item, therefore the EYF could not accept the money.

210. My investigator asked the current Board Chair to explain his concern, and he said that he believed the \$50,000 revenue for advertising would go directly into the operating revenue stream. He did not think that EYF could take the money, as it was not for the capital expansion.
211. The former Board Chair said the Complainant did not exercise the option to renew and that his contract was to expire in April. The Board approved a motion to issue the letter of termination to the Complainant, which had been emailed to him seven days prior.
212. When my investigator asked the former Board Chair why the letter was approved a week after it had already been sent to the Complainant, the former Board Chair stated:

That is unfortunately what happens in communities, you know. Stuff happens... Well, we probably had to backtrack. We felt then that exclusivity was really going to be a hard nut to swallow in the community. So yes we did then backtrack.

It created a lot of issues with Mr. Q who felt his credibility was compromised, which we apologized for. But again you are doing things that you think are best.

... [were] there some sequencing issues that could be done better.. sure. We still felt there were other opportunities.

213. At the same February 2012 Board meeting, they dealt with questions about exclusivity. They noted that only one advertiser had been given exclusivity by the previous arena manager at least nine years prior. That agreement said that she would be the only individual in that industry allowed to advertise on the dashboards. The Board decided to send a notice stating that exclusivity clauses were no longer permitted, but that she would be able to enter into a new contract.
214. The Board passed a motion that no exclusivity clause arrangements would be approved for any advertising or donations or as part of the capital campaign.

215. The former Board Chair explained that the Zamboni deal with the grocer fell through as a result of the grocer's insistence on an exclusivity clause.
216. The former Board Chair provided my investigator with an unsigned, electronic copy of a letter sent to the grocer in March 2012. This letter stated:

I want to write and offer my apology for the process surrounding [the grocery store's] potential corporate sponsorship of the new arena at Leaside Memorial Gardens. I know that [Mr. Q] has spent a great deal of time discussing this opportunity with you and your staff.

As a bit of a background this new arena will be the first City owned arena being built in the past 40 years and as such there is not a great body of knowledge to rely on pertaining to sponsorships as well as naming opportunities.

...

One area that we unfortunately didn't spend time considering was that of a sponsorship where the donor wanted exclusivity as part of the naming opportunity... Over the past couple of months much discussion has taken place surrounding exclusivity and the impact that may have on future boards of management. As a result the board has decided it is not in their best interest to enter into any exclusivity arrangements. For this, I as chairman would like to apologize to you for this matter as well as the length of time you have had to wait for this decision.

217. The letter said that Leaside Arena was community-based and that they relied on local merchants for goods and services. He explained that exclusivity might hamper relationships and that prohibiting exclusivity would ensure the maintenance of the community connection.
218. The letter further explained that Leaside Arena would like to have the grocer as a community donor and asked if he could speak with them further if they were interested in other opportunities.
219. Requests for exclusivity and other benefits occurred outside the Zamboni context. For example, on March 27, 2012, an email was sent from a member of the fundraising committee, to the expansion committee Chair stating that a major financial institution wanted exclusivity as part of its sponsorship of the arena clock. The committee member wrote that the bank did not want any other

financial institution to put their name on a “tangible facility asset like the clock.”

220. On March 28, 2012, the expansion committee Chair wrote to the former Board Chair, stating he did not believe that any of the other banks would be contributing further, as they had already been asked. He stated that there was still an insistence on some level of exclusivity from the bank, and that "this should not be compared to the [grocer] or the [other advertiser who previously had an exclusivity clause] situation for reasons that are obvious."
221. On March 28, 2012, the Board met. The Councillor was present for the first portion of the meeting. The minutes record that the \$2.5 million target required by the City had been met, but that fundraising was continuing, so there would be less borrowing required. The Councillor explained that until the \$2.5 million was given to the City, the project would not move ahead. He said the City needed secured funds to cover the costs beyond the City's contribution.
222. The former Board Chair raised the issue of the major financial institution's request for exclusivity in exchange for their \$50,000 donation to advertise on the arena clock. He asked if this would violate the previous Board decision prohibiting exclusivity in advertising contracts. He asked if it would be possible to sell dasherboard or Zamboni advertising to other banks.
223. The former Board Chair said that the Board needed to clarify what the Zamboni advertising fees were as well as the conditions, with the year-to-year purchase of advertising space. They requested that the General Manager forward the contract to them for review.
224. The former Board Chair explained at this meeting that the deal with the grocer had fallen through due to exclusivity demands, but that the Zamboni naming opportunity was still "in play" and they were trying to get \$125,000.
225. On April 19, 2012, the Complainant wrote to the expansion committee Chair:

I confirm that you/the Board have approached me in an attempt to renegotiate rental space on the Zamboni. In our recent negotiations you had held out that you had a firm deal with another party, and I have since discovered that this was not a firm deal at all. I exercise my right of first refusal under

the contract based on the false assumption that you actual [sic] had a firm deal...

226. He went on to state that as a result, he felt he was not able to legitimately exercise his right of first refusal and that he would continue next year in accordance with the initial contract. He said that once the new arena opened he would be prepared to pay \$4,500 per year over ten years. He asked the Board to let him know within four days.
227. On April 24, 2012, the Treasurer forwarded the Complainant's email to the Board. He explained that he had met with the Complainant in early April and that he knew about the grocery store deal falling through. He said that the Complainant had wanted another deal and he mentioned that when he had earlier approached the Complainant, he thought that they had a firm deal with the grocer.
228. The Treasurer of the Board stated that he believed the Complainant was incorrectly interpreting his contract and that he felt the Complainant had been properly notified that his contract was terminated. He recommended not accepting the Complainant's proposal.
229. On April 25, 2012, the Board met. The Treasurer of the Board reviewed the above information. The minutes note that "[the Fundraising Chair] stated that she would not participate in this discussion, as she had a conflict of interest however, as fundraising chair she would like to ask the Board that if an offer was received when will the contract begin."
230. The minutes note the Complainant had filed a complaint with the Ombudsman.
231. On May 23, 2012, the Board met. The current Board Chair requested that an informal meeting held at the Sunset Grill on May 12, 2012 should be properly minuted.
232. The Treasurer informed the Board that he had discussed its decision regarding his offer for advertising with the Complainant.
233. The former Board Chair told my investigator that the Board probably could have handled the exclusivity discussions with the grocer better, but that they had no experience with these matters.

... there was that discussion about exclusivity and this is where you get into a number of discussions that we originally

thought we could work it out. But there was push back by people, and you are part of a board. And again when it came back we realized it definitely was not the route. So it was a bit of a learning curve. Did we do the right thing? Probably not. Initially, we should have thought about it more. But again at the time we were feeling pressure from the City to raise \$2.5 million...

234. On September 19, 2012, the Board reached an agreement with the grocer to advertise on the Zamboni for ten years.

235. The agreement stated:

In exchange for the payment of the sum of \$125,000 [the grocer] will secure the sole naming rights for the Zamboni at Leaside Memorial Community Gardens.

The term will extend for a period of 10 years, commencing in September 2012 and expiring in September 2022.

Payment terms: \$75,000 upon signing of this agreement (payable by September 30, 2012) and \$50,000 to be paid January 11, 2013. Cheques are to be made out to the "East York Foundation."

...

[The grocer] recognizes that there currently is one competing grocery retailer that during the course of the fundraising drive has made a donation to the campaign and will accordingly be recognized at the appropriate support level on the donor wall as well as at the table and four chairs where they secured their naming rights.

The Board agrees throughout the course of this term not to pursue naming right opportunities from other competing grocery retailers that have yet to make a donation to the campaign.

236. The contract acknowledged that the grocer would also be receiving recognition in social media and on the donor display wall.

237. That same night the Board met. The minutes note the introduction of a "sizable donation" from the grocer, and the request for the Board to approve the agreement.

238. The minutes provided a summary of the agreement:

The agreement is for a donation of \$125,000 over 10 years... with sole naming rights on the Zamboni. He [a

Board member] outlined further advertising issues and discussed in detail the agreement clause that states the Board agrees not to pursue naming rights opportunities with any other company that has not already made a donation and that [the grocer] will have the first right of refusal should another Zamboni be required.

239. The Treasurer moved that:

The letter of agreement with [the grocer] be approved and to direct the Board to enter into a separate agreement (\$5000 per year) for the advertising rights on the Leaside Gardens Zamboni.

240. The motion carried.

241. The former Board Chair explained that the Zamboni deal was the only one that was a combination of advertising revenue and donation. He told my investigator that he did not know if a tax receipt had been issued for some or all of the funds given by the grocer. He said that if there was a commercial benefit, then a tax receipt should not be issued. The current Board Chair corroborated this position.

242. When asked if the final deal, with the clause about not approaching competitors for donations, was a form of exclusivity, the former Board Chair said he was unsure, and that there was a knowledge gap on the Board on how to handle such matters.

243. My investigator asked the current Board Chair about the description in the minutes of the funds being split into advertising and capital. He believed that \$75,000 was to be paid immediately, and the grocer would pay \$5,000 each year, over time. He said that the EYF would only hold the \$75,000 and that the remainder was the Leaside Arena's money. He did not know if a tax receipt had been issued.

244. The Chair subsequently provided documentation that two cheques were issued by the grocer and deposited by EYF. He confirmed that no tax receipts were issued.

245. Fundraising for the arena expansion continues, and as of January 21, 2013, efforts had raised \$3.1 million. To date, the arena has not had to call on Infrastructure Ontario for its \$1 million loan undertaking.

246. The new ice-pad opened on October 5, 2013.

## **7.0 Other City Examples of Advertising**

### **7.1 Other City Arenas Operated by a Board of Management**

247. My office interviewed the general managers at each of the eight City arenas operated by boards of management. There were differences in advertising practices, with some arenas having significant and well-developed advertising, and some with limited and basic advertising. General managers explained this was due to the variations in the communities served by each arena, and in the physical structure of the buildings.
248. Some arenas have spectator bleachers, which are associated with more advertisements, and others do not. The number of arena employees ranged from five to 35, including part-time workers, depending on the season.
249. Four arena general managers said they had an advertising policy, but of these, three stated that this only specified prohibiting certain advertising content such as tobacco and alcohol.
250. One general manager explained that the arena did have a policy, but said the content was about the process for submitting the proposed advertisement / art work, bringing this to the Board for approval, and setting a price. He said that the policy did not speak to issues such as exclusivity.
251. Three general managers reported no advertising policy. One said there was only incidental advertising currently in the arena, arising from the arena's soft drink provider.
252. Three of the seven general managers stated that advertising contracts were secured through an external company, Futuresign Multimedia (Futuresign), a company specializing in community media advertising. It also provides advertising services for PFR-operated arenas and recreation facilities.
253. One general manager stated Futuresign's contract was for increasing advertising in the arena, and that a set fee was established for each sign. He reported that the arena was expecting an additional \$20,000 in revenues as a result of the contract obtained by Futuresign.

254. Another general manager said that advertising space was limited and space was only allocated to community groups. However, he noted that a new form of advertising was a television in the lobby, displaying the ice schedule, along with a sidebar of advertisements. A company had installed this at no charge to the arena and had also supplied free cable TV. In exchange, the company sells the advertising space on the screen.
255. One general manager noted that the City “likes to lump rinks together” but he believed that each was unique and responded to local needs. He stated that arenas deal directly with the community and are more successful than PFR rinks. Some of the arenas also have banquet halls or swimming pools in the facility. Some host seniors' programs and children's camps. Some have large spectator areas and others do not.
256. The former Board Chair said that each community and arena was different, so a single advertising policy might not work.
257. The Councillor agreed that there was a degree of variation across the eight arenas:

We have had a long and tortured history of trying to define the relationship between the City and the hockey rink boards, across the city. We've got eight of them. Each one is its own story, with its own history, its own personality, and its own expectations.

## **7.2 City-run Arenas**

258. One acting manager, Mr. X, explained that City arenas and recreation facilities have a variety of advertising.
259. He told my investigator that all advertising is handled by one of the City's two agents: Mega Media or Futuresign, with whom they have worked for over a decade. City golf courses also have advertising in the washrooms, with Zoom media acting as the agent.
260. If an advertising request is made that is unusual, such as wrapping the lobby of a facility with an advertisement, Mr. X's group would deal with this directly.
261. He explained that recently, LCD screens with specialized programming have been installed with scrolling information on recreation programs on one side and advertisements on the other. The ad space is sold by the advertising agent.

262. The agencies own the physical structure on which the ads are placed (e.g. LCD screen). Mr. X explained that in the case of the LCD screen or backlit "information screen" advertising, the City is paid an annual flat rate per facility of \$1,100.
263. The City ice rinks have poster ad space and dashboards. It receives 60% of the gross billing, after the billing has been reduced by 10% to cover administration costs.
264. Mr. X said there was no advertising policy or protocol, and that matters were dealt with on a case-by-case basis.
265. He stated that there is no process in place when more than one potential advertiser is interested in a single advertising opportunity or when a request for exclusivity is made. However, Mr. X did state that there were industry norms, such as allowing exclusivity but charging a premium for it.
266. Mr. X said that PFR follows the City's requirement not to advertise alcohol or tobacco. Similarly, he says that they do not permit political advertisements, and noted that very occasionally the advertising agents would contact PFR if there was a questionable advertisement proposed, so that his group could vet them.
267. According to Mr. X, there is no standard form of contract used for advertising. Twice a year, the ad agencies provide the City with a detailed description of all the advertising income and the City receives a percentage of the revenues. Mr. X explained that the prices are set by the market.

### **7.3 Toronto Public Library Advertising**

268. The Toronto Public Library's advertising policy sets out prohibited content such as "advertising material promoting discrimination, stereotypes, socially unacceptable behavior, gratuitous violence, obscene or profane language or unfair representation... advertising that is partisan or political in nature; the promotion of religious beliefs or convictions... the promotion of tobacco and alcohol companies and products."
269. The policy sets out the process and says that the advertising policy is approved by the library Board and that certain persons are authorized to enter into advertising contracts. It establishes an advertising review working group to deal with complaints from the public or "appeals" from groups who have had their proposed advertising declined by the library.

270. In February 2012, the Toronto Library Board approved a request for proposals from external vendors that would provide the paper for due-date slips in exchange for the right to sell advertising on the back of these papers. This program was estimated to save the libraries about \$20,000 per year.
271. The request for proposals specified that the advertisements could not “adversely or negatively impact the library’s image” and should “maintain the welcoming and functioning elements of the library environment and the integrity of its spaces.”
272. This project began a six-month trial in April 2013. The company, Receipt Media, retains the profit from selling advertisements.
273. The Library Board also approved the use of advertisements on its wireless internet service, although it did not approve advertisements on the library website.

#### **7.4 TTC Advertising**

274. Approved in June 2012, the TTC's policy for advertising provides that all advertisements must comply with all applicable laws, policies, and guidelines (section 5.1). All advertisements must first be approved by the third-party company contracted by the TTC, and the third-party company must forward all advertisements to the TTC for further review (section 4.2).
275. Where the third-party believes an advertisement may contravene TTC's policy, it must forward the advertisement first to the TTC for review to determine whether it should be approved (section 4.3). Where an advertisement is not approved, advertisers may have the decision reviewed by a working group composed of TTC Board Members and staff (section 4.4). The working group will also review any advertisement when the TTC has received at least 5 complaints (section 4.5).

#### **7.5 Advertising on Street Furniture**

276. In 2006, the City released a request for proposals to vendors interested in providing advertising on outdoor structures such as bus shelters and waste bins, known as street furniture.
277. As part of the request for proposal, the City specified that the structures would have carefully defined and limited advertising space for the successful bidder to sell to third party advertisers.

278. It required that vendors must comply with criteria set by the Canada Advertising Standards Council and with "the City's advertising policy." The City reserves the authority to approve ads or request the removal of an advertisement, and its decisions are final.
279. Prohibited content is set out, including tobacco and related products and "any advertising, which is, in the opinion of the City, acting reasonably, not of good character and appearance, free from vulgarities or indecent suggestion of any kind or nature."
280. The winning vendor is to submit any questionable advertisements to a panel of three commissioners prior to posting the advertisement. The panel would be made up of three Councillors sitting on the Public Works Committee.<sup>13</sup>

## **8.0 Ombudsman Findings**

281. Members of the Leaside Arena Board are all volunteers. They are to be commended for their contributions to the community and for the tremendous amount of time and effort they volunteer in serving the public.
282. Without such selfless and committed volunteerism, local neighbourhoods and communities would be much the poorer.
283. This investigation showed that the Board members have done the best they can to deal with a new, expensive and complicated capital construction project.
284. They had not engaged in a project like this before, and a number of them noted that the City has not built a new arena in over 40 years.
285. Notwithstanding, this investigation has identified problems.
286. Increasingly, other models of service delivery are being considered by governments. As this happens, the requirement for good governance becomes even more important.
287. I hope this report will be helpful not only to the Leaside Arena Board, but to other agencies and to the City of Toronto with respect to the governance of local boards and the associated supports that are necessary.

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<sup>13</sup> September 8, 2006 Notice to Potential Vendors regarding request for proposal number 9103 – 06 – 7316. Purchasing and Management Services.

## 8.1 Zamboni Advertising Contract

288. At the heart of this complaint was the treatment of the Complainant when he was asked to "match" the Zamboni advertising offer of another business.
289. My investigation found an absence of fairness and transparency, along with inadequate communication.
290. The Complainant was not treated fairly.
291. As an arm of local government, the Board is obligated to act fairly. It is handling public assets and in so doing has particular responsibilities.
292. The senior Purchasing staff interviewed by my investigator described that duty best when he said that there is an additional burden on the City and its agencies because "as a public entity... [we] need to show that we're being transparent and that what we're doing is in the best interest of the tax-payers..."
293. Board members are subject to and must abide by the *Municipal Conflict of Interest Act*, the *Code of Conduct for Members of Local Boards* and the *Municipal Freedom of Information and Protection of Privacy Act*.
294. Exactly when the negotiations with the grocer began is not identifiable based on the available evidence. However, it is obvious from documents we obtained that negotiations were going on in August 2011. Yet, nobody told the Complainant until December 23, 2011.
295. An email sent on August 23, 2011, showed that discussions with the grocer were not in their early stages. Rather, a price had been named, and a request for exclusivity was on the table.
296. The Complainant was to make a decision almost immediately. This was unreasonable.
297. When he balked and said he would not be back until the new year, he was contacted again on January 1, 2012. During that conversation, the Complainant was told that he needed to decide by the end of the week, as the Board had to confirm the amount of money raised for the expansion project, and inform Council on January 15.

298. On January 10, 2012, the former Board Chair contacted the Complainant again, five days before City Council was to meet.
299. The Board's actions also created an urgency of its own making, requiring the Complainant to make a significant business decision within an unreasonably tight deadline.
300. The Leaside Arena Board had been negotiating with the grocer for nearly four months, but expected the Complainant to decide in a matter of days.
301. The Complainant was misled with erroneous information. He was told that he would have to pay \$125,000 up-front to maintain his Zamboni advertising. He was informed that this was the offer he had to match.
302. In reality, his competitor was offering a deal that provided \$75,000 towards the capital campaign and the remaining \$50,000 for Zamboni advertising, to be paid months after.
303. Characterizing the \$125,000 payment as a "donation" is an inaccurate representation of what the Complainant was told. The amount was seven times more than the \$1,800 the Complainant had anticipated paying for his next one year contract.
304. The Complainant observed that if a real estate agent had acted as the Board had done, by telling a potential homebuyer that they had to match a competing offer, when there was no firm offer meeting the description provided, that agent could lose her real estate license.
305. I agree. Such conduct would be unethical.
306. The Board's communication with the Complainant was unacceptable and inaccurate. Whether the Board intentionally meant to mislead is not for me to say, but regardless, of intent, the impact was precisely that.
307. The Complainant was disadvantaged and was not able to legitimately exercise his right of first refusal.
308. Throughout the Zamboni negotiation, the language of donations, sponsorship and contracts for advertising was used interchangeably when, in fact, the concepts are quite different.

309. Correspondence was sent to the Complainant canceling his advertising contract one week before that letter was presented to the Board for its endorsement.
310. While the Board is well within its rights to terminate the contract, provided appropriate notice is given, the approach followed in this matter was wrong. The Board should have met to first decide on the Complainant's fate, and then issue the letter, not the other way around. The explanation that "stuff happens" is unacceptable.

## **8.2 Support from the City**

311. Agencies have a responsibility to implement relevant Council directives when they are advised of them.
312. As a result of the problematic public appointment process in 2011, which was the subject of one of my investigations, governance training of new Board members did not take place, further compounding members' lack of knowledge about City processes.
313. Board training should be mandatory and held at regular intervals, particularly in light of this investigation's findings.
314. CMO staff observed that agencies ought to be responsible for creating and complying with their own policies.
315. The one basic mechanism set out in the Relationship Framework, is that City agencies are to file copies of policies, such as human resources, procurement and procedural policies with the CMO.
316. Yet compliance is at issue. Agencies' responsibilities are clear.
317. In the case of the Leaside Arena Board, it has not developed the policies required by the City.
318. City staff reaffirmed their commitment to assist agencies, but because of their heavy workload, they explained that the onus is on the agencies to approach them.
319. I agree with the City's position. That responsibility is clearly delineated in the Relationship Framework.
320. Board members were not given any direction or parameters about what they could and could not do in terms of fundraising.

321. Neither did they seek clarification, an obvious onus simply ignored by the Board.
322. If the presence of a City Councillor and a member of staff from PFR, is intended to "provide an essential link" between the Board, City Council and the Toronto Public Service, as it states in the Relationship Framework, such an expectation is vastly overstated. The Councillor and PFR staff are valuable resources, but they are insufficient to meet the test of "essential link."
323. The Councillor attends meetings as available and provides assistance when it is requested. The Councillor's role is not one of monitoring adherence to policies or being involved in operations. In fact, he was not copied on some correspondence and not included in other critical communications. As a member of the Board, he ought to have received the same information as any other Board member.
324. The former Chair called a vote by email on whether to terminate the Complainant's contract. Two Board members were not included in that email, one of whom was the Councillor. Whether intentional or an oversight, the failure to include all Board members is problematic.
325. In terms of PFR staff, they were given no direction as to their role by management. Staff did not think they were qualified to advise on policy issues. I would concur and note that the employees involved were from operations in City community centres and arenas.
326. I agree with the staff's assessment. Such expertise is not a part of their job duties. If it was the intention of the drafters of the framework to have PFR staff act in a policy capacity, then the division must ensure that staff with the appropriate skill set attend board meetings.
327. The mere requirement for one board member to be a Councillor and for a PFR employee to attend meetings is insufficient. There appears to be a disconnect between what the roles of the Councillor and staff are purported to be as opposed to what can reasonably be expected of these roles.
328. Staff must be clear about their role, and if the Councillor is to play a specific role, those responsibilities should be clarified and spelled out.

- 329. This investigation demonstrates that the current governance model is not working as intended. It either needs improvement or other models of governance and service delivery mechanisms should be examined. I note that the KPMG core service review in 2011 made such a recommendation.
- 330. CMO staff should canvas this matter and provide its best advice to City Council for its consideration.

### **8.3 Failure to Comply with Council's Direction**

- 331. The City requires the Board to have policies and apply them consistently. Compliance was almost entirely absent in this instance.
- 332. It has been 18 months since the Toronto Office of Partnerships wrote to arena boards outlining the requirement to create a policy with respect to naming rights and sponsorships. To date, no policy exists.
- 333. Despite the requirement in law and in the Relationship Framework for boards to have human resources and procurement policies, Leaside Arena has neither.
- 334. There was a prevailing view from a number of Board members that the City often changes the Relationship Framework, making it onerous for community agencies to keep up with or understand the rationale for the changes.
- 335. The City's evidence was that there had been three changes to the Relationship Framework over a period of some four years.
- 336. My review of these changes are not in keeping with Board members' views. Not only are the changes few, but they have been necessary.
- 337. There is a profound lack of understanding on the part of some Board members that policies must change over time to respond to new situations that arise, or to correct errors and gaps in earlier versions of policy.
- 338. The Relationship Framework is obviously not a contract, binding parties. Rather, the City permits some limited delegation of authority to local boards.

339. However, the City has the right and obligation, set out in legislation and the Framework, to direct boards and update its directions as necessary over time.
340. The anger expressed by some Board members toward the City demonstrates a lack of understanding or acceptance of the relationship. It also betrays an ignorance of basic governance principles.

#### **8.4 Inconsistency**

341. So long as there is a lack of policy, protocol or documented practice, inconsistency is likely to continue.
342. That is certainly the case in this matter. Historically, the Board allowed some contracts to include exclusivity clauses. In fact, the reason the Complainant had advertised on the Zamboni originally, was because a competitor had an exclusive contract to advertise on the dashboards.
343. The Board struggled with the demands for exclusivity made by the grocer. It dealt with similar demands by other advertisers in the context of the arena expansion, including a bank. The expansion committee determined the bank would be the only financial institution with its name on a piece of physical property in the arena.
344. This decision was made after the Board had voted unanimously to prohibit exclusivity in contracts for advertising. The contract with the grocer contains an assurance that the Board will not actively pursue grocers that have not already contributed to the arena.
345. Is this exclusivity? Even some of the Board members interviewed were unsure.
346. The Board was able to refuse an exclusivity clause that would have prohibited serving food from any other retailer than the grocer. This is still a restriction on future contracts with competitors and therefore constitutes a form of exclusivity.
347. Perhaps the best indicator of the confusion about the well intentioned efforts of the Board to fund raise, was the interchangeable use of language to describe the Zamboni deal.
348. It was alternately called a donation, a sponsorship opportunity, and an advertising contract. When asked to clarify, my investigator was

told that one portion of the money, \$75,000, was a donation, and the rest was part of an advertising contract.

## **8.5 Poor Record Keeping**

349. Poor record-keeping was evident throughout the investigation.
350. There was an initial problem with providing documents about the Zamboni matter. Less than a dozen sheets of paper were initially provided to my investigator. Even when more disclosure was made, following many attempts on my investigator's part, emails documenting Zamboni discussions prior to August 2011 were not provided.
351. The minutes of Board meetings were silent on topics that were being heatedly discussed by some members outside those meetings. For instance, there was no explicit mention of the Zamboni contract in the December 2011 minutes, despite the fact that members were frequently emailing each other at this time about the matter.
352. This is problematic as it limits the transparency of the Board's decision-making process.
353. There was at least one meeting held off-site at a restaurant, with only some members present. A Board member had to request the meeting be documented in the minutes after the fact.
354. In reviewing my draft report, the Chair stated it was not possible to document the fact that something did not exist. While I have no reason to disbelieve the Chair, the absence of any paperwork about which donors were issued tax receipts and which were not, is surprising.
355. The ad hoc committees established for the expansion project, specifically, the fund-raising committee, failed to keep records of their work.
356. Difficult fundraising decisions were made.
357. Important decisions about six-figure deals were reached with relatively little discussion at Board meetings, suggesting that they had already been discussed by at least some prior to meetings. In the case of the Zamboni advertising, emails document some of these outside discussions.

358. While volunteers' hard work is to be commended, accountability and transparency are hallmarks of good governance. Both are absent in this story.
359. Who should have the authority to negotiate contracts? While I do not make a finding on whether it was appropriate for an individual who was not on the Board to have negotiated the contract with the grocer, the Board must establish clear policy about who is authorized to negotiate contracts on its behalf.

## **9.0 Ombudsman Conclusions**

360. 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.
361. I have considered these definitions in reaching my conclusions.
362. It was unreasonable for the Board to have let four months elapse before discussing the competing offer on the Zamboni advertising with the Complainant. The failure to act earlier was compounded when the Board imposed a timeline to respond that was both unreasonable and unfair.
363. It was unreasonable and misleading of the Board to characterize the competing offer as firm with all monies to be paid up-front when it was not.
364. It is unacceptable that the Board has failed to create the required policies.
365. It was wrong of the Board to make decisions without the entire body given the opportunity to participate, including the decision to terminate the Complainant's contract.

366. The decision to prohibit exclusivity was followed by at least two contracts that contained exclusivity clauses. This is contrary to the Board's own rule.
367. It is also problematic that the ad hoc fundraising committee kept neither minutes nor records of basic decisions made, obscuring transparency and its reporting obligation to the entire Board.
368. This investigation has highlighted some problematic governance issues with the Board.
369. City staff carry out Council directives which implicate agencies. There is room to implement more robust feedback mechanisms with agencies to ensure that City Council directives are addressed.
370. If City Council wishes to have greater monitoring and supervision of boards and agencies, then more resources would be required.
371. I am not persuaded that this is the heart of the problem, however.
372. With respect to the Arena Board, it has failed to meet the most basic governance requirements and in this regard, there is a pressing need for education about its rights and obligations.
373. As governments more frequently consider different models of service delivery, from public-private partnerships to other mechanisms, the obligations and gaps revealed by this investigation should identify a need for greater awareness, transparency and accountability.
374. Such models must be properly supported by City staff through improved board governance policy and board training and enhanced governance relations.

## **10.0 Ombudsman Recommendations**

375. Taking into account all of the evidence gathered during this investigation, I am making the following recommendations.
1. That, with the necessary support and expertise, Leaside Arena develop the required policies as directed by City Council, including but not limited to
    - a. Procurement;
    - b. Procedure requirements for board proceedings;
    - c. Human resources;

- d. Naming rights and sponsorship.
2. That the above recommendation be fulfilled and filed with the City Manager's Office by July 31, 2014, and that the Board notify my office when this is completed.
3. That, as required, the Board seek advice from the City should it be unsure of its obligations.
4. That, by June 2015, the City Manager examine a variety of governance models and service delivery mechanisms related to arena boards with the objective of providing best advice on options for Council's consideration.
5. That, by June 2015, the role of elected representatives on arena boards be clarified and communicated during the orientation of newly appointed Councillor board members.
6. That the City Manager review resources to ensure there are appropriate levels of staffing to support good governance for arm's length agencies, and particularly, for community-based boards.
7. That the City Manager confirms in writing to my office by August 31, 2014, that the above recommendation has been completed, with an explanation for the conclusions reached.
8. That, following consultation with other arena boards and City officials:
  - a. The Leaside Arena General Manager develop an advertising policy;
  - b. The policy be approved by the Board by March 1, 2014; and
  - c. A copy of the policy be provided to my office by March 15, 2014.
9. That the General Manager be held accountable by the Board for ongoing compliance with City Council directives and the provisions of the Relationship Framework.
10. That, should the individual general manager not possess the required expertise to implement recommendation 9, the Board procure the expertise to do so, as set out in the public appointments policy.

11. That the Board ensures it receives governance training by March 1, 2014.
12. That the General Manager be responsible for ensuring that Board members receive governance training upon their appointment.
13. That by January 1, 2014, the role of the Parks Forestry and Recreation representative on the arena board be properly defined with appropriate reporting relationships within the division.
14. That effective immediately, the minutes of all Board meetings accurately reflect the deliberations in sufficient detail for the reader to understand the nature of the decisions made.
15. That the Board consult with the Integrity Commissioner by December 15, 2013, regarding its members' compliance with the Code of Conduct.
16. That by December 15, 2013, the Chair of the Board apologize in writing to the Complainant for the Board's handling of the matter.
17. That a draft of that letter be provided to my office by December 1, 2013.
18. That effective immediately, the Board delegate to the General Manager, the authority to negotiate contracts on behalf of the Board; and in cases where another individual is to do so, that written instructions be provided by the Board to that individual.

## **11.0 The Board and the City's Responses**

376. Pursuant to s. 172(2) of the *City of Toronto Act, 2006*, I provided both the Leaside Arena Board, and the City Manager with an opportunity to review a draft of my investigation report, so that they could respond to the tentative findings and recommendations.
377. We met with the Board Chair to receive the Board's feedback and clarification on some points. Following these discussions, the Chair wrote to me on October 24, 2013, ensuring me that my recommendations would be followed according to the timelines set out in my report (Appendix A).

378. The Chair wrote: "In reviewing the report and your recommendations it is evident that they will result in improved governance, accountability and more efficient operation..."
379. My office also met with staff from the City Manager's office to discuss the draft report and receive comments.
380. On October 30, 2013, the City Manager wrote to me, stating that he concurred with each of my recommendations relating to his office (Appendix B). He expressed confidence that his staff would work cooperatively to implement my recommendations.

(Original signed)

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Fiona Crean  
Ombudsman  
November 4, 2013

## Appendix A: Leaside Arena Board's Response

Leaside Gardens

1073 Millwood Road  
Toronto, Ontario  
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Tel: 416-421-4944  
Fax: 416-421-1925  
Email: leasidegardens@on.aibn.com

October 24, 2013

Ms. Fiona Crean  
Ombudsman  
City of Toronto  
375 University Avenue, Suite 203  
Toronto, ON  
M5G 2J5

Dear Ms. Crean,

**Re: An Investigation into the contracting of Advertising at Leaside Arena Board.**

I have your final report as referenced above. The opportunity to review your draft report and recommendations with you and your staff was greatly appreciated and facilitated a deeper understanding of the findings and recommendations.

I want to assure you that the recommendations that pertain to the Leaside Gardens Board will be carried out in accordance with the timelines suggested in the report. I can confirm that recommendations 16 and 17 have been carried out on October 21, 2013, well in advance of the prescribed timeline.

In reviewing the report and your recommendations it is evident that they will result in improved governance, accountability and more efficient operation of the Leaside Memorial Community Gardens. Combined with the great accomplishment of building a new facility the implementation of your recommendations will clearly establish the Leaside Gardens Board among the leaders in best practices for community based boards in Toronto.

With many thanks,



Raymond White  
Chair of the Board of Directors

Leaside Memorial Community Gardens  
Arena Banquet/Reception Facilities Swimming Pool

## Appendix B: The City Manager's Response



Joseph P. Pennachetti  
City Manager

City Hall  
100 Queen Street West  
East Tower, 11<sup>th</sup> Floor  
Toronto, Ontario M5H 2N2

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October 30, 2013

Ms. Fiona Crean, Ombudsman  
375 University Ave, Suite 203  
Toronto, ON M5G 2J5

**Re: File # 8644-8905**

Dear Ms. Crean,

I have reviewed the draft report, *An Investigation into the Contracting of Advertising at Leaside Arena Board*, sent to me on September 30, 2013 for review and response.

I concur with the recommendations that relate to my office including Recommendation 2 which speaks to City staff supporting Leaside Arena in developing any required City Council directed policies. I also concur with Recommendations 4 and 5 regarding the Strategic and Corporate Policy (S&CP) division providing advice to City Council on governance models and service delivery mechanisms, and clarifying and communicating the role of elected representatives on arena boards.

I am confident that S&CP staff will continue to work cooperatively with your office throughout the implementation of your recommendations.

Yours truly,

Joseph P. Pennachetti  
City Manager

