



For Information

Board Orientation – Member Legal, Safety & Environmental Responsibilities (Presentation)

Date: January 10, 2019

To: TTC Board

From: TTC General Counsel, Chief Safety Officer

Summary

Brian M. Leck, TTC General Counsel and John O'Grady, Chief Safety Officer will give a presentation to the Board about Member Legal, Safety & Environmental Responsibilities.

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Signature

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January, 2019



| **Fiduciary Duty**

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



Fiduciary Duty

- **A Commissioner is charged with the responsibility of establishing, operating and maintaining a transportation system to serve all of the inhabitants of the City of Toronto**
- **Two important distinctions to bear in mind:**
 1. while Toronto City Council operates as a form of representative government and members of Toronto City Council are expected to represent the interests of their constituents, the TTC Board does not operate as a form of representative government. The Commissioners are appointed, not elected by constituents
 2. Commissioners (Directors) should not act by simply taking instruction or direction from their nominator



Business Judgment Rule

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



| Board Process

Dialogue requires:

- Members to act as colleagues
- Suspension of assumptions
- Spirit of inquiry and reflection
- Assuming role of facilitators
 - creates an informed and proper dialogue
 - leads to the best resolution in the circumstances



| Commissioner Functions

Directors typically involved with:

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



Confidential Information

- The *City of Toronto Act* allows information that concerns security of the property, personal matters about an identifiable individual (including an employee), property acquisitions and dispositions, labour relations, litigation or potential litigation, advice subject to solicitor-client privilege, information received in confidence from third parties (including trade secrets) and a position, plan, procedure, criteria or instruction to be applied to any negotiations to remain confidential



Confidential Information

- No member shall disclose or release by any means to any member of the public, any confidential information acquired by virtue of their office, in either oral or written form, except when required by law, or authorized to do so by the local board, or, if applicable, by Council
- No member shall disclose the content of any such matter as discussed in the in-camera (closed) portion of a meeting until the information is no longer confidential
- Members should not access or attempt to gain access to confidential information in the custody of the TTC unless it is necessary for the performance of their duties and not otherwise prohibited



Occupational Health & Safety Act (OHSA)

Director Liability

- Directors & Officers shall take reasonable care to ensure that a corporation complies with:
 - The *Act* and the Regulations;
 - The orders and requirements of inspectors and directors; and
 - Orders of the Minister
- The general duty provisions under OHSA include: “An employer shall take every precaution reasonable in the circumstances for the protection of a worker”



Directors – Macro/Micro

- Directors not responsible for micromanagement (for example: prompt reporting of every minor mishap)
- Directors however must be satisfied that a proper system is in place and functioning as it should, that personnel are adequately and properly trained to do their jobs and that appropriate levels will be informed about major problems if and when they arise



| OSHA Penalties

Corporations »» **\$1.5M / charge (+25% surcharge)**

Individuals »» **\$100K / charge (+25% surcharge) and/or
1 year in jail / charge**



| Criminal Code – Director Liability

Legal Duty of Care

- Everyone with authority to direct work (from Director, Senior Officer to Foreperson
 - must take reasonable steps to prevent harm to workers and to the public



| Criminal Negligence

Directors / Officers:

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

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

- The test is whether the conduct was a “marked and substantial departure from what a reasonable person would do in the same circumstances.”



| ***Criminal Code Penalties***

Individuals – Jail Time

- up to 10 years on summary conviction
- up to life for indictable conviction

Individuals and Corporations – Fines & Probation

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



Environmental Liabilities

- Directors may be charged for failing to take reasonable care to ensure that their organization does not contravene the *Environmental Protection Act* and Regulations



Reasonable Care for Directors – SH&E Management

- **TTC utilizes a Safety, Health and Environment (SH&E) Management System that:**
 - Conforms to current Global Standards for identifying, assessing and controlling SH&E risks,
 - Meets the requirements of the Ontario OHS Act and Regulations, and
 - Provides Directors with assurance of their General Duty of Care that TTC has a proper system in place for managing SH&E and that it is functioning as it should.
- **Our Safety Executive Committee oversees the SH&E Management System by:**
 - Providing Executive oversight, direction and resources to manage our safety, security and environment risks, and
 - Reviewing safety, security and environmental performance against Key Performance Indicators on a monthly basis and a comprehensive overall SH&E Management System Review on an annual basis.



Safety, Health & Environment Management System



Safety, Health & Environment Management System



PLAN

- The SH&E Policy is the over-arching document of TTC's SH&E Management System and establishes TTC's commitment to a safe workplace for all employees and a safe service to all customers, the public and the environment.
- The Corporate Risk Registry is used to Identify and Assess SH&E Risks.
- Our SH&E Goals & Objectives are established through a review process and act as the strategic plan to manage and control SH&E risks.

Safety, Health & Environment Management System

DO

- Formal written SH&E Programs are developed to control our SH&E risks, and as needed to address changes in legislation or for emerging issues.
- Extensive internal stakeholder consultation occurs during SH&E Program development.
- SH&E Programs are supported in their daily execution and revised or adjusted as needed based on performance analysis.



Safety, Health & Environment Management System



CHECK

- American Public Transportation Association (APTA) Safety Management System Audits conducted every three years.
- 2018 APTA Audit and TTC's Safety Improvement Plan will be provided to the Board in March 2019.
- Safety Assurance Checks and internal SH&E Audits are conducted regularly.
- CEO Report includes monitoring of SH&E Key Performance Indicators.
- Serious Incident Investigation Reports are provided to the Board (i.e. McCowan Fatality Investigation).



Safety, Health & Environment Management System

ACT

- A comprehensive Review of the SH&E Management System is conducted annually to measure the overall effectiveness of the System.
- Annual SH&E Management System Review includes:
 - Review of Key Performance Indicators with trend analysis,
 - Status updates of actions arising from Audits, Investigations, and Initiatives, and
 - SH&E Goals & Objectives and Strategic Plan.
- Annual SH&E Management System Report will be provided to the Board.



Thank you

**Brian M. Leck
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