

An Investigation into the  
Administration of the Public Appointments Policy

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## 1.0 Executive Summary

1. After every election, City Council must appoint members to the boards of many of the 120 agencies that deliver City services.
2. These agencies, boards and commissions have a substantial impact on the City's operations. They are responsible for 33% of the operating and capital expenditures, employ 48% of the staff at the City of Toronto, and account for \$15 billion of the City's assets.
3. Starting in late 2011, my office received a number of complaints about the way the public appointments process was administered. The complaints related to the lack of diversity among the successful candidates, the inadequacy of staff resources, and criticism about the handling of a potential conflict of interest.
4. The City of Toronto has an award-winning policy that governs the appointment of residents to the City's agencies. The Public Appointments Policy (Policy) states that the schedule for appointing new board members should be one of the first things a new Council undertakes after every election. It is based on a number of principles:
  - Expectations for each position will be clearly communicated to everyone involved in the process.
  - Candidates will be evaluated on merit, after a broad-based recruitment.
  - Boards will include members representing the diversity of the City, including women, youth, First Nations, people with disabilities, and racialized communities.
  - Applicants must identify and disclose any actual, potential or perceived conflicts of interest.
5. Once applications are submitted, the Policy says they are to be screened by the City Clerk's Office to ensure they meet the eligibility criteria. A staff review team led by staff from the City Manager's Office will rank them according to an assessment of the individual's qualifications. A summary of each application and the accompanying evaluation is then to be submitted to the Civic Appointments Committee, who decides which candidates to interview and recommend to City Council for appointment.
6. Soon after the election, the City Manager's Office proposed to the Mayor's Transition Team that the schedule for selecting the public appointments should be placed on Council's agenda at the earliest opportunity. The Mayor's Office deferred, saying it had other priorities at the time, including the Core Services Review.

7. After Council approved changes to the Policy in April 2011, staff from the City Clerk's Office prepared a draft schedule with timelines for member recruitment and selection for the various boards that would be getting new members. Recruitment was to be divided into two phases.
8. The Mayor's staff wrote to the City Manager's Office on June 8, 2011 to say that the proposed schedule was too long and directed staff to speed up the process by approximately two months. Staff from the City Clerk's Office observed that this involvement in scheduling by the Mayor's Office was "something new."
9. The next day a member of the City Manager's Office staff wrote an email to the City Manager listing the problems that would be caused by the accelerated schedule:
  - Recruitment in the summer is not desirable, because people are away.
  - Due to holiday schedules, there would be insufficient staff to screen applications in July.
  - It would be difficult for the Civic Appointments Committee to arrange to meet in August to interview the short-listed candidates.
10. The email raised other concerns. "It will look to cynics as if the fix is already in for appointments and the process is just for show...We now have a governance process that is no longer based on any recognizable principles."
11. On June 13, 2011, a member of the Mayor's staff asked that the deadline for applications be extended by one week to July 11, in order to avoid the Canada Day weekend. This gave staff only one week to screen and evaluate applicants. For previous recruitments, staff had one month to vet and assess the applications.
12. When staff prepared a draft newspaper advertisement seeking applications, they were asked to remove the statement in the ad that encouraged applications from the City's diverse communities. They did not. Staff were directed by the Mayor's office to place the ad in the National Post and the Toronto Sun, but not the newspaper with the largest circulation, the Toronto Star. The City's Advertising Policy states that generally, the placement of media advertisements is decided by the City Clerk's Office.
13. The Civic Appointments Committee met and short-listed the candidates. However, because of the truncated schedule required by the Mayor's office, staff from the City Manager's Office were unable to complete the pre-screening and qualification summaries required for the short-listing.

14. During the assessment of applicant qualifications, a staff member discovered that one applicant had a potential conflict of interest. He told the staff review team that the applicant was known to be actively involved in a business which fell within the board's jurisdiction, and that the applicant had actively appeared as an agent before the board. The application form submitted by the applicant did not note any conflicts of interest, actual or potential.
15. The potential conflict of interest was not recorded on the candidate summary that was submitted to the Committee. Two days later, staff from the City Manager's Office did share the information with the Panel Chair. The Panel Chair requested staff put their concerns in writing, but did not share the information with the other panel members or the Committee.
16. Due to an employee illness, the letter was not written. Staff from the City Manager's Office say they also assumed it was not required because the applicant would be asked questions about eligibility and conflict of interest during the interview. These questions ended up not being asked during the interview.
17. On the day the Civic Appointments Committee met, the City Manager directed staff to tell the Committee about the applicant's conflict of interest and ineligibility for appointment.
18. The Committee decided not to recommend the applicant for appointment to the board.
19. The process for recruiting and selecting citizen members to boards did not follow the requirements set out in the Policy. The failure to adhere to the Policy undermined the principles of openness, competition and equity, and challenged the goal of a merit-based, representative and accountable appointment process.
20. Because of the accelerated schedule and the lack of resources, staff's abilities to carry out their responsibilities under the Policy were compromised. Staff did not have the required time or resources to screen applicants and prepare qualification summaries. This left the integrity of the Committee's review open to perceptions that selections were done in an arbitrary manner, instead of one based on merit.
21. Staff did not have the resources necessary to take proactive measures or conduct the required advance diversity outreach. The significant under-representation of diverse candidates recommended for appointment is of great concern.

22. There was confusion over who is responsible for overseeing the Policy. The City Manager's Office is responsible for coordinating staff review teams, preparing diversity and qualification summaries and providing policy advice to the Committee; the City Clerk's Office is responsible for administering the process. They both field public enquiries.
23. The investigation revealed a significant amount of confusion about how to deal with potential conflicts of interest among applicants. Staff was reluctant to mark an applicant as having a conflict if it was not declared on the form. There is also no formal process to communicate any information about potential conflicts of interest to the Civic Appointments Committee.

## **Recommendations**

- Responsibility for the Policy should be brought together in a single office, staffed with the necessary expertise in policy and governance, human resources, administration and equity, and that it report to a senior executive at the City.
  - A procedure should be developed for immediately reporting to the Civic Appointments Committee any known actual or potential conflicts of interest, or other eligibility issues.
  - Community engagement strategies need to be developed and properly funded and staffed in order to attract and recruit applicants from diverse communities.
  - These recommendations should be put into effect by June 1<sup>st</sup>, 2013.
24. The City Manager and the City Clerk have agreed with the recommendations.

## **2.0 The Investigation**

25. Between late 2011 and early 2012, my office received complaints about the City's public appointments process. The complaints involved the way the process was administered for appointments to boards of City agencies. Allegations included the lack of diversity among the candidates selected; the failure of staff to discharge their responsibilities; the inadequacy of staff resources to implement the process; and the dissatisfaction with staff's handling of a potential conflict of interest situation.
26. Through my office's preliminary inquiries, it became apparent that the complaints raised broader issues about the fairness of the public appointments process. I decided to initiate an investigation on my own

motion rather than investigate each of the complaints separately, and issued a notice of formal investigation to the City Manager and the City Clerk on February 16, 2012.

27. The core issue in this investigation is whether the public appointments process for the City's agencies and the Public Appointments Policy (Policy) were implemented with consistency, integrity, and fairness, which are all stated purposes of the Policy. This investigation examined the following issues:
  - Whether the recruitment and selection processes of the Policy were followed;
  - Whether the Policy and procedures are adequate;
  - Whether the public appointments process is transparent; and
  - Whether staff resources are sufficient and appropriate to administer the process.
28. This investigation did not review the decisions of Council or the Civic Appointments Committee (Committee), which is composed of Councillors, in making public appointments.
29. A significant number of people were interviewed during the investigation. These included current and retired staff from the City Manager's Office (CMO) and the City Clerk's Office (CCO), Committee members, past and present, along with other City Councillors and Mayor's staff.
30. Given the sensitivity of the matter under investigation, witnesses were subpoenaed and their evidence taken under oath.

### **3.0 Public Boards and Governance**

#### **3.1 Good Governance in Public Appointments**

31. The need for fair public processes in the appointment of competent directors and members of agencies, boards and commissions (agencies) is well documented. It is essential if such bodies are to conduct their business efficiently and effectively in the public interest. While merit based hiring in the public service saw its beginnings in early twentieth century Canada,<sup>1</sup> the transformation of appointments to agencies is more recent. Policy statements and reforms at the federal and provincial level have aimed at ensuring merit based appointments through fair and open processes.<sup>2</sup>

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<sup>1</sup> K. Kernaghan, *A Special Calling: Values, Ethics and Professional Public Service* (Ottawa: Canada Public Service Agency, 2007).

<sup>2</sup> Government of Canada, Federal Accountability Action Plan, 2006 (see "Making Qualified Appointments"); Government of New Brunswick "An Appointment Policy for New Brunswick's Agencies

32. Agencies perform a myriad of functions and require different kinds and levels of experience and expertise. Nonetheless, the common attribute of seeking competency through understood and fair process is critical. Increasingly this aspect of appointment is being embedded in legislation and policy. Ontario's *Adjudicative Tribunals Accountability, Governance and Appointments Act, 2009* provides one example of this trend.<sup>3</sup> Section 14(1) of that Act indicates that "the selection process for the appointment of members to an adjudicative tribunal shall be a competitive, merit-based process" and then goes on to describe the experience and aptitude necessary to be an adjudicator.<sup>4</sup>
33. Not all agencies are adjudicative and some of the attributes mentioned may not be germane to other types of agencies but the process of selection should be similarly concerned with merit, openness and fairness.
34. While it is understood that often public bodies are required to have political representatives, it is the duty of members of all agencies to fulfill their respective mandates and to act in the public interest in doing so. Each agency needs the best and brightest to do its work and each member of the public needs to know that the selection to the boards of agencies reflects a merit based approach. Public trust and confidence demand no less.
35. Public services often play a role in helping ensure fair process in selecting agency members. While ultimate selection may remain with "political" bodies, the appointment process ought to reflect fair play and a merit based approach. To this end, organizations often adopt policies available to the public for scrutiny and which the public reasonably expects that the government will follow. The City of Toronto has such a policy which is described below.
36. The stated principles of the City's Public Appointments Policy of openness, competition and equity, support a merit-based, representative and accountable appointments process.<sup>5</sup>
37. Openness fosters accountability and ensures that members of the public have confidence in the system as a result of having access to information

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Boards and Commissions" checked 2012; Ministry of Government Services (Ontario), *Report of the Special Advisor on Agencies* (2010).

<sup>3</sup> S.O. 2009. c. 33 Schedule.

<sup>4</sup> The Act legislatively codified the Ontario Government's Agency Establishment and Accountability Directive of 2006. The directive and the Act are part of a trend toward more accountability in appointments and other administrative processes – see Ministry of Government Services *Report of the Special Advisor on Agencies* (2010), pp. 7,8.

<sup>5</sup> In April 2011, Council added the principle of impartiality to indicate that the selection process is conducted at arm's length from the boards being recruited for.

on relevant aspects of the appointments processes. An open, transparent process is a means of gaining and maintaining public confidence in boards. Conversely, a lack of transparent process runs the risk of a perceived lack of credibility, even if the persons appointed are qualified candidates.

38. As the work of public bodies and the decisions made by their board members impact on the lives of citizens, the extent to which boards are representative of the diverse communities they serve is of great salience.
39. The principles contained in the City of Toronto's Policy are found in other jurisdictions. For example, the Ontario Public Appointments Secretariat describes a commitment to appointing the most qualified people, to diversity representation and to a more open and transparent system in its statement of principles.<sup>6</sup>
40. In Alberta, competency, transparency and openness, and diversity are among the principles guiding the provincial appointments process.<sup>7</sup>
41. The British Columbia government cites merit and transparency among the governing principles of their appointments process.<sup>8</sup>
42. The United Kingdom's Commissioner of Public Appointments, an independent body tasked with overseeing and monitoring appointment practices, includes merit, openness, transparency, and equal opportunities among seven guiding principles outlined in its Code of Practice.<sup>9</sup>

### **3.2 City of Toronto Public Boards**

43. The delegation of the delivery of certain programs or services to arm's length public bodies is a common practice of government. The City of Toronto currently has 120 such bodies, City and partnered agencies that provide a wide variety of municipal services to a large number of people with diverse needs.

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<sup>6</sup> Ontario Public Appointments Secretariat (n.d.). *Principles governing the appointments process*. [www.pas.gov.on.ca/scripts/en/generallinfo.asp?#4](http://www.pas.gov.on.ca/scripts/en/generallinfo.asp?#4)

<sup>7</sup> Alberta Agency Governance Secretariat (2008). *Public Agencies Governance Framework*. Edmonton, AB: Government of Alberta. [www.treasuryboard.alberta.ca/docs/AGS/GovernanceFrameworkwebversion.pdf](http://www.treasuryboard.alberta.ca/docs/AGS/GovernanceFrameworkwebversion.pdf)

<sup>8</sup> British Columbia Board Resourcing and Development Office (n.d.). *Appointment process*. [www.fin.gov.bc.ca/brdo/appoint/index.asp](http://www.fin.gov.bc.ca/brdo/appoint/index.asp)

<sup>9</sup> Office of the Commissioner for Public Appointments (OCPA) (2005). *Code of Practice for Ministerial Appointments to Public Bodies*. London, England: OCPA. [publicappointmentscommissioner.independent.gov.uk/wp-content/uploads/2012/02/New-Code-of-Practice-for-Ministerial-Appointments-to-Public-Bodies-August-2009.pdf](http://publicappointmentscommissioner.independent.gov.uk/wp-content/uploads/2012/02/New-Code-of-Practice-for-Ministerial-Appointments-to-Public-Bodies-August-2009.pdf)

44. Agencies have decision-making authority, but their assets are generally owned by the City and Council approves their budgets, sets certain policies, and makes certain decisions. There are three types of agencies:
- *Service agencies*: include the Police Services Board, Public Library Board, Toronto Parking Authority, Toronto Zoo and Toronto Transit Commission. They employ their own staff, have their own administrative capacity and deliver a specific service under the direction of a board.
  - *Community-based agencies*: include Arena Boards and Business Improvement Areas. The City provides the capital budget and a range of administrative supports but community involvement and volunteers are relied on to deliver programs.
  - *Quasi-judicial & adjudicative boards*: include the Committee of Adjustment and Toronto Licensing Tribunal. They are tasked with making binding decisions, but rely on City staff for all administrative support, and their costs are included in divisional budgets.
45. The work of City agencies and the decisions made by their board members have a major impact on City operations, policy and strategy. Many crucial City services are delivered through agencies.<sup>10</sup>
46. Boards also have a substantial impact on the City's costs. Collectively, they are responsible for approximately 33% of the City's combined annual operating and capital budgets; a considerable asset base, with the public transit and housing assets alone valued at almost \$15 billion; and employing 48% of City of Toronto staff.
47. According to a March 2011 staff report,<sup>11</sup> the City appoints 1,436 residents to the boards of agencies and advisory bodies that fall under the Policy, and six external boards. Of those, 428 residents are publicly nominated through a City-run process.
48. 1,008 residents are nominated by external bodies through other means, including Business Improvement Areas (772 board members) and Association of Community Centres' boards (104 board members).
49. In 2007, the City received the Diversity in Governance Award from the Maytree Foundation for demonstrating commitment and innovation in creating inclusive boards. This award was based on best practices for recruiting, appointing and engaging board members from diverse communities, which included strategies such as well-established diversity

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<sup>10</sup> For a list of City agencies, see Appendix A.

<sup>11</sup> Staff Report, as revised on authority of Executive Committee - Amendments to Public Appointments Policy, March 9, 2011, <http://www.toronto.ca/legdocs/mmis/2011/ex/bgrd/backgroundfile-36607.pdf>

policies, outreach to diverse communities, measurement and reporting on diversity goals and professional development of board members.

## **4.0 The Facts**

### **4.1 The Public Appointments Policy**

50. An interim policy was adopted by City Council in 1998 and revised several times in the intervening years.
51. In September 2006, Council adopted the Policy governing appointments to City of Toronto agencies.<sup>12</sup> The Policy applies to citizen appointments and not to appointments of Councillors to City boards.
52. According to the CMO, the Policy was introduced to improve, consolidate, update and clarify public appointments practices and processes for Councillors and the public, and to introduce mechanisms to address barriers faced by under-represented groups.
53. The Policy articulates the guiding purposes of the process: applicant eligibility and qualifications; board terms and lengths of service; recruitment methods; the application process; privacy issues; codes of conduct; conflict of interest; the selection process; and the standards of conduct for appointees.
54. Each board has a separate mandate, with different sets of duties and responsibilities, and a variety of qualifications. Requirements specific to individual boards are detailed separately in *Board-Specific Processes and Requirements for Public Appointments*, and are attached as schedules to the Policy.
55. Since 2006, parts of the Policy have been amended by Council, most recently in April 2011.<sup>13</sup> Key changes in April included the establishment of a schedule in which Council considers the Policy as one of its first policy items each term; that recruitment begins after approval of the Policy and is spread out over six months to even out the workload of the Committee; and amendments to the composition of boards generally and specifically.

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<sup>12</sup> By decision of City Council (EX21.17), the Policy was extended to include advisory bodies in June 2008. The key features of the Policy are included in the briefing binders prepared for all Councillors in the 2011 incoming Council.

<sup>13</sup> Toronto City Council Decision, EX4.7 Amendments to Public Appointments Policy, April 12 /13, 2011.

56. Amendments to board specific requirements have been updated on the City's website by the CMO. City staff refer to it for board specific information.
57. The Policy document has not been updated since 2006. The CMO has recognized the need to do so and recently assigned that task for completion.

#### **4.1.1 Purpose of the Policy**

58. The purpose of the Policy is to:
  - Act as a guide for Council and public servants to ensure consistency, integrity and fairness in the administration of the process.
  - Provide a framework aimed at ensuring the most suitable candidates are selected and appointed as board members.
  - Provide information about the process for those interested in applying.

#### **4.1.2 Principles of the Policy**

59. To encourage broad participation of residents, Council's stated commitment is to a process based on principles of openness, competition, and equity.
  - Openness: clear expectations for each position are identified and communicated to all associated with the selection process.
  - Competition: commitment to widespread recruitment of candidates and evaluating applicants based on merit.
  - Equity: practices are consistent with achieving participation that affirm the diversity of Toronto, including the removal of barriers to the recruitment, selection, and retention of members of disadvantaged groups, including women, youth, First Nations and Aboriginal Peoples, people with disabilities, and racialized people.
60. Candidate selection is to be guided by the recognition that the City is best served when qualified candidates are matched to the needs of individual boards and that they reflect the geographic distribution and diversity of the community. The Policy stipulates that proactive strategies are to be pursued to achieve this end.

#### **4.1.3 Recruitment Methods**

61. With few exceptions, the recruitment process begins as soon as possible after a municipal election.

62. Board recruitment may be done through advertised recruitment, where applicants from the public at large are invited to apply through web-based, local and City wide advertising.<sup>14</sup>
63. The responsibility for placing media advertisements is that of the CCO, done in accordance with the City's advertising policy.
64. The extent and type of advertising vary from those aimed at the general public, to more targeted efforts designed to reach specific groups through vehicles such as ethnic newspapers, trade bulletins and community newsletters.
65. Recruitment methods are to include strategies to attract diverse candidates. All advertisements are to emphasize that the City encourages applications from diverse communities.
66. Advance outreach initiatives may be conducted by City staff for equity-seeking groups identified as under-represented in the applicant pool from the last round of appointments.
67. At the start of the advertised recruitment process, staff are responsible for holding public information sessions open to all interested applicants.

#### **4.1.4 Application Process**

68. Interested persons must complete a standard application and submit it by the stated deadline to the CCO.
69. Applicants are encouraged to provide information on the application form about their gender, age group, aboriginal status, racial group, disability status, or sexual orientation, to assist in appointing boards reflective of the City's demographics.
70. Applicants must identify and disclose any actual, potential or perceived conflicts of interest. This enables an assessment by the nominating panel during the short-listing process by the Committee.
71. Potential conflicts of interest include applicants or their relatives:
  - Doing business with or working as a consultant for the City or an agency of the City;
  - Serving as a lobbyist during the current or previous term of Council;

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<sup>14</sup> As amended by Council in April 2011. Other recruitment methods are by Interest Group Nomination, and Membership-Based Nomination.

- Being engaged in a business over which a quasi-judicial body has jurisdiction with respect to a quasi-judicial body appointment;
  - Having direct or indirect interest in outstanding litigation involving the City or a City agency; and
  - Having tax arrears that remain outstanding to the City.
72. Councillors are restricted from providing references for or endorsing candidates in accordance with Council's Code of Conduct and Council rules.

#### **4.1.5 Selection Process**

##### **Eligibility Screening**

73. The CCO screens for eligibility by reviewing all applications for purposes of identifying whether citizens have met the general eligibility criteria or have submitted a late application; incomplete applications; and whether an applicant is an incumbent and, if so, their length of service.
74. To be eligible for public appointment, a person must be a resident of Toronto, at least 18 years of age, and a Canadian citizen where required by law for specific boards. In accordance with Council policy, a resident must not be a spouse, partner, child or parent of a Councillor. With some exceptions, the limit on the length of service for any resident is two consecutive terms on the same board.

##### **Qualifications Screening**

75. Following the eligibility screening, a staff review team (SRT) pre-screens applicant qualifications. The team is made up of staff from the CMO, the Equity, Diversity & Human Rights Division, and other appropriate divisions<sup>15</sup> who review the applications in accordance with the Policy and the board-specific qualifications approved by Council.
76. For each applicant, the staff review team decides by consensus which qualifications are sufficiently demonstrated in the application.
77. A summary is prepared containing the results of the eligibility screening for each applicant, as well as the assessment and ranking by category of qualifications. In addition, information contained in the application form concerning the applicant's ward of residence, any diversity information disclosed, along with potential conflicts of interest are included.

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<sup>15</sup> CMO invites program staff from the City division that is related to the board being recruited for.

## **Short-listing by the Civic Appointments Committee**

78. Short-listing of candidates for interview is the responsibility of the Committee.
79. The Committee shortlists candidates, recommending them to Council for its decision.
80. The CMO acts as a policy advisor.
81. To inform the short-listing, the Committee is given the candidate applications, the summaries prepared by the staff review team and any additional pertinent information available by request.
82. Short-listed candidates may be asked to provide the names of three references, at which point staff will conduct reference checks and provide the results to the panel on the day of interviews.
83. The Committee assesses any identified or potential conflicts of interest to determine whether applicants should be considered further.
84. The applicant pool is screened with the goal of arriving at a short-list of “excellent” candidates to interview. Candidate selection is based on the eligibility and explicit position-related criteria set out by Council, geographic distribution, and diversity objectives.

## **Candidate Interviews & Nomination Process**

85. The nominating panel is responsible for interviewing candidates. The Committee then recommends a candidate for each vacant position to Council for final approval.
86. Interview questions are specific to each board with two questions about eligibility and conflict of interest asked of all candidates. Staff may act as advisors during interviews, by invitation of the panel.
87. In evaluating a candidate's qualifications, the nominating panel considers how well the qualifications are demonstrated in the application; available test results if relevant; the strength of answers to interview questions; information gathered from reference checks; and board evaluations of incumbents where available.
88. Nominees are then selected on the basis of achieving a board composition that strikes a balance of applicants covering the range of qualifications specified for the board; experienced and new members; geographic and diversity representation.

89. The nominating panel may also identify alternates to be called on if a vacancy occurs before the end of the term, as well as candidates who, with their permission, can be included in a skills registry. The nominating panel may refer to the skills registry if a vacancy occurs for a board with no eligible alternates.

## **Diversity Monitoring**

90. For the purpose of assessing how well the diversity objectives of the Policy are being met, self-identified diversity data are tabulated and reported on in summary form for each stage of the selection process – applicant pool, short-listed candidates and appointed members.
91. In April 2011, Council directed the City Manager to report on how equity targets under the Policy had been met. The reports were to accompany Committee recommendations for appointment.

## **4.2 Public Appointments Process 2011 - 2012**

### **4.2.1 Staff Roles**

#### **Overall Responsibilities**

92. Staff responsibility for administering the public appointments process is divided between the CMO and the CCO. The CMO is responsible for policy advice. The CCO is responsible for administrative functions of the process. Both divisions work together to coordinate the process.
93. The CCO responsibilities include scheduling and coordination of Committee meetings and the agenda; distribution of materials; attendance at Committee meetings, including interviews; recording decisions; and preparation of minutes.
94. The CCO is responsible for preparing and placing advertisements in consultation with the CMO. It also sends out notifications to interested parties and Councillors, prepares application kits and organizes public information sessions.<sup>16</sup>
95. The CCO handles the intake of all applications, reviews them for basic eligibility requirements, and prepares eligibility summaries and application binders for the Committee.
96. The CCO organizes interviews and follows up with the applicants.

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<sup>16</sup> In June 2011, the Committee in effect altered the Policy by authorizing its Chair and the CCO to develop a marketing strategy within the current budget (Part 4, item CA2.1, June 10, 2011).

97. The CMO is responsible for reviewing agendas, monitoring Committee meetings; approving and co-ordinating advertisements, information kits, postings on the city website, advertising on external agency websites; drafting interview questions; coordinating staff review teams; preparing applicant diversity and qualification summaries; and providing guidance and policy advice to the Committee and interview panels.
98. The CMO and the CCO both field public enquiries. These include requests for information regarding policy and processes, and the impact of policy changes on boards. The CMO handles enquiries from applicants about the status of their applications.

### **Preparation of Qualifications and Diversity Summaries**

99. The CCO provides the eligibility summaries to the CMO along with copies of the application binders. The CMO then prepares a qualifications and diversity spreadsheet summary for each board, to assist Committee members in short-listing candidates for interview.
100. The staff review team reviews all the applications according to board specific skill sets. The relevant box on the spreadsheet is ticked if an applicant demonstrates meeting the qualification.
101. The staff review team compiles a qualifications summary sorted by: eligible and most qualified, eligible and less qualified, eligible but does not meet minimum requirements, and ineligible.
102. The CCO provides the summaries and application binders as agenda materials for meetings of the Committee.

### **4.2.2 Start of the 2011 Public Appointments Process**

103. The CMO took the public appointments item to the Mayor's transition team to be placed on the Council agenda at the earliest opportunity, in keeping with the provisions of the Policy.
104. The CMO also wanted the public appointments process to begin early because of provincial regulatory requirements for certain boards to be appointed before the fall.
105. The CMO was asked to defer it, as the Mayor's Office did not want to proceed at that time, given other priorities, such as the core services review.

106. The Mayor's staff informed my investigator they were aware that the appointments process would be prolonged but it was not an immediate priority.
107. My investigator was informed that the role of the Mayor's staff was to monitor the Committee process and the applicants being short-listed, in order to keep the Mayor informed.
108. In April 2011, four months after the start of the new term, the Policy was considered and amended by Council.
109. A motion passed at the April Council session effectively delayed recruitment by two months, because of the uncertainty it created about board composition.
110. The motion required boards to have 11 members or more, with a minimum of three Councillors appointed by Council and the Mayor or his designate. Exceptions were specified boards and those whose membership had been established by legislation or shareholder direction.
111. Council's motion had not been proposed by staff.
112. Staff informed my investigator that the recruitment process could not begin until the impact of this decision had been addressed.
113. Shortly after the April Council decision, the CMO prepared a briefing note regarding the implementation of the motion.
114. The briefing note described process and timing issues and the way 107 boards were impacted by the Council decision. Because the Council decision did not specify how board positions were to be filled, 47 positions were unclear. Further, Council decisions were required on the composition of 24 boards.
115. The briefing note identified significant changes to the Policy's principles and raised a number of issues including: the delegation of authority to the Mayor to appoint members, the independence of adjudicative bodies and the reduction of community members on community-based boards. Other issues included whether quorum could be achieved with Councillors being required on all boards.
116. The Mayor's staff and CMO staff informed my investigator that, from April to June, they attempted to resolve the issues raised by the Council motion. Ultimately, a decision was made by the City Manager and the Mayor's Office to exempt by motion, on a case by case basis, each

impacted board as it came before Council for consideration, rather than bring the whole matter back to Council.

117. Subsequently, at the request of individual Council members and the City Clerk, the use of motions was replaced with a report from the City Manager to be considered in conjunction with the report from the Committee for respective boards.

#### **4.2.3 April 18, 2011 Committee Meeting**

118. At the first meeting of the Committee on April 18, 2011, the CMO gave a presentation on the public appointments process that reviewed the objectives of the Policy; the different nomination processes and recruitment methods; board specific qualifications; outreach; eligibility screening by the CCO; qualifications screening by the staff review team; the Committee's short-listing and interview process; selection objectives; confidentiality; conflicts of interest; and references by Councillors.
119. The CMO also provided the briefing note to the Committee which the Committee received and did not discuss.
120. The Committee decided the Chair would establish three panels to conduct interviews and recommend candidates to the Committee as a whole.
121. The Committee requested that the CMO provide a list of the "top 30" applicants. According to the CMO, this list was to be done for each board.

#### **4.2.4 Recruitment and Selection Schedule**

122. In May 2011, the CCO and the CMO discussed preliminary timelines and which boards to recruit for. The CCO prepared a draft schedule for Committee approval. The schedule from the prior term was used as a guide and Councillors' availability over the summer was considered. The schedule contained two phases:
  - The first phase was to recruit for about half the boards beginning in June, with an application deadline of July 11, staff review team summaries by September 1, Committee short listing in October, interviews in November and recommendations to Council at the end of that month.
  - The second phase was to recruit for the remaining boards beginning in September, an application deadline of September 30, staff review team summaries by November 9, short listing by the end of November, interviews during December, and recommendations to Council in February 2012.

123. On May 24, 2011, the Mayor's staff wrote to the CMO with a list of priority boards. The list included the Board of Health, Police Services Board, Library Board, Parking Authority, the Toronto Port Authority, and seven other boards.
124. The Mayor's staff told my investigator that his Office decided recruitment should begin for the boards with the larger budgets.
125. On May 30, 2011, the Mayor's staff requested that other boards be added to the list. In addition, an update was asked for on the rollout for the first batch of appointments. The CMO responded that they had reviewed the schedule with the CCO and would send the revised version.
126. The Mayor's staff wanted to be briefed on the schedule as his Office wished to move as quickly as possible. The Mayor's staff told my investigator that the reason for the latter was to ensure that the appointees to the agencies would be responsible for the newly allocated budget.
127. On June 2, the CMO and the CCO met with the Committee Chair to discuss the draft schedule. The Chair then approved a recommended protocol, dated June 7, 2011 for the Committee.<sup>17</sup> It was put on the agenda for the June 11 Committee meeting.
128. The protocol included a process and schedule for recruitment, short-listing of candidates by the Committee, interviews by the panels and reporting of Committee recommendations to Council. It reflected the two phased recruitment process and had similar timelines to those proposed by the CCO.
129. After the Committee agenda was issued, the Mayor's staff contacted the CCO and the CMO. On June 7, the Mayor's staff wrote to the CMO indicating that his Office would like to speed up the process.
130. In a June 7 communication to the CMO, the Mayor's staff asked why certain boards that they had asked to be considered first were not listed on the Committee agenda. The CMO explained that this was because one board had members whose term had not expired, four were not selected through the Committee process, and one board's composition was not defined because of Council's April decision.
131. The Mayor's staff wrote to the CCO on June 8, indicating that his Office had spoken to the Chair and that "amendments to the agenda will be required".

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<sup>17</sup> *Proposed Process for the Recruitment, Short-listing and Interviewing for Public Appointments to City Agencies and Nominations to External Bodies, June 7, 2011*

132. The CCO informed my investigator that the Mayor's staff said that there were issues with the schedule - that it was too long and needed to be changed. The CCO observed to my investigator that the involvement of the Mayor's Office in scheduling was "something new".
133. On June 8, the Mayor's staff wrote to the CMO saying that the reason for the earlier request for the schedule was to allow for the Mayor's Office input before the release of the Committee agenda. The Mayor's staff outlined their expectations: that the short-listing for the first batch be completed by the end of July with interviews in August and recommendations to Council in September. For the second batch, the short-listing was to be completed by the end of August, interviews in September and recommendations to Council in October.
134. On June 8, the CMO and the CCO met with the Committee Chair and the Mayor's staff to revise the schedule. The Chair informed my investigator that she did not recall this meeting. The Mayor's staff told my investigator that CMO/CCO staff at the meeting were asked to tighten the schedule. When City staff mentioned problems with resources, the Mayor's staff told them to "see what you can do to tighten it up."
135. The CCO informed my investigator that the CMO raised the impact of the April Council decision on board composition. In addition, the CMO stressed with the revised schedule, there would be no time to complete the staff review process, and the Committee would therefore have to do its own review.
136. Staff told my investigator that in order to meet the Mayor's October timeline, recruitment had to be launched simultaneously for both phases.
137. CMO staff emailed the City Manager on June 9 outlining a number of concerns. The email indicated that the Mayor's staff had called the CMO and the CCO about the Committee agenda. The Mayor's staff was described as being "upset" about the schedule and that the boards that had been proposed were not considered. The email said that the CCO had established a "doable" schedule and had met with the Chair who was happy with the original timelines and would speak to the Mayor's Office but did not do so. The email stated "they" were "not happy" with the schedule and wanted it "shortened very considerably" and to be "all wrapped up in October Council."

138. The email identified several problems with the shortened schedule:
- The composition of 27 boards was still unknown because of the April Council decision and the “huge” logistical problems that were a consequence of it.
  - The Mayor’s Office wanted the Committee to hold all its meetings and interviews in August. The CMO was not sure if dates could be found for the Committee meetings.
  - The staff review team would have to meet during July, already a busy month, to screen the anticipated high volume of applications.
  - The staff review team did not have the resources to provide a “top 30” for the Committee because of the shortened timelines. When this was brought to the attention of the Mayor’s staff, the individual said that the Committee “would just have to do without.”
  - Recruitment in the summer was not desirable because people would be unavailable.
  - “It will look to cynics as if the fix is already in for appointments and the process is just for show”. The email said that this concern was raised with the Mayor’s staff who said they were prepared to address it.
  - There was still a lack of intention to “fix” Council’s April decision on board composition.
  - “We now have a governance process that is no longer based on any recognizable principles.”
139. The City Manager told my investigator that he would have raised these issues with the Mayor’s Office but he did not have a specific recollection of doing so. He said his office moved as quickly as it could on the process.
140. The CCO finalized the schedule following the June 8 meeting. A revised protocol<sup>18</sup> was provided to the Committee.
141. It was approved at the Committee meeting on June 10, 2011. The protocol contained the following revised schedules for recruitment, short-listing, interviews, and reporting to Council:
- Recruitment to start in June for 22 boards.
  - Committee short-listing of candidates to be done in six meetings, with the first meeting on July 18 and the last on September 16.
  - Interviews to be held between August 2 and October 5.
  - Committee recommendations for half the boards to be reported to Council on September 21/22, and the other half at its October 24/25 session.

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<sup>18</sup> *Revised Proposed Process for the Recruitment, Short-listing and interviewing for Public Appointments to City Agencies and Nominations to External Bodies*, June 10, 2011.

142. The protocol also contained selection procedures. Staff were to provide a list of all qualified candidates based on a review of the applications to the Committee. Committee members were to review the applications of qualified candidates and shortlist two or three for interview to fill each position.
143. Seven<sup>19</sup> nominating panels were established to interview, select and recommend candidates to the Committee. Each panel had three members with one person as chair; the panels were assigned specific boards for interview. Panels were to rank the candidates using the score sheets prepared by staff.
144. During the June 10 meeting, Panel Chairs were elected. The Committee Chair indicated that if required, the interviews could be rescheduled by the panel chairs in consultation with the CCO.
145. Committee members informed my investigator that they were unaware of the involvement of the Mayor's Office in setting the schedule. Some Committee members understood that only the CCO was responsible for preparing the schedule.

#### **4.2.5 Recruitment**

146. Staff indicated that the revised schedule of June 10, 2011 meant that a lot of work had to be done very quickly. In the ensuing weeks, staff prepared the application forms and information kits for each of the boards.
147. The CCO held three information sessions in June 2011 for the public to obtain information about the boards being recruited for and to pick up applications kits.
148. The CCO prepared the advertisement for the board positions which was sent to the CMO for approval on June 10.
149. As requested by the Mayor's staff, on May 24 and June 10, the CCO also provided the draft advertisement to the Mayor's Office.
150. The advertisement had an application deadline of July 4, 2011, which allowed two weeks for the submission of applications, in accordance with the schedule approved by the Chair.
151. On June 13, the Mayor's staff wrote to the CMO and the CCO asking that the application period be extended by one week to July 11. The Mayor's staff informed my office the extension was needed because of the holiday

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<sup>19</sup> Four of the panels concerned are Committees of Adjustment.

long weekend and applicants potentially having problems submitting their applications by July 4.

152. The extension of the application deadline meant that instead of two, there would be one week for staff to process applications for the Committee short-listing meeting on July 18. The CCO informed my investigator that the CMO had said the Chair was in agreement with the extension. CCO staff understood that the CMO had informed the Chair about the impact of the extension and the associated concerns.
153. Committee members told my investigator that they were unaware of the request from the Mayor's Office to extend the deadline.
154. CMO staff informed my investigator that they were directed by the Mayor's staff on which publications to place the advertisements. They were not to be placed in the Toronto Star.
155. CMO had concerns with that direction, given the Star has a diverse readership, the largest circulation in Toronto and the "best demographics". The CMO informed my investigator that when they raised this with the Mayor's staff, they were told that "we do not like the Star".
156. CMO staff expressed surprise by the direction from the Mayor's staff but did not feel in a position to challenge or refuse it.
157. The Mayor's staff denied giving any such direction and did not recall telling staff not to advertise in a specific paper.
158. There were several emails between the Mayor's staff and the CMO and the CCO. On June 13, there was a request for a cost estimate for a one day ad in the Toronto Sun and National Post, which staff provided that day. The Mayor's staff informed my investigator that quotes were asked for because the Mayor wanted to know how much was being spent. The CCO informed my investigator that the cost of advertisements came out of the City Clerk's budget.
159. The Mayor's staff informed my investigator that costs for the Post and the Sun were requested and not the Star because staff had already provided an oral quote. The Mayor's staff did not recall who had provided that quote. The CCO and the CMO informed my investigator that they did not provide the Mayor's staff with a quote for the Toronto Star.
160. On June 14, the Mayor's staff asked about the size of the advertisement. Later that day, instructions were given for a quarter page ad to be placed in the Post on June 20 and June 25, and a half page ad in the Sun on June 20 and June 26.

161. CMO staff forwarded these communications to the City Manager, describing them as “detailed direction”. The City Manager said he would have told the CMO to follow the protocol or policy but did not recall a specific discussion on the issue.
162. CMO staff informed my investigator that they were asked by the Mayor's Office to remove the statement in the advertisement that encouraged applicants from the City's diverse population to apply. Staff refused to do so.
163. The CCO followed the instructions on the placement of ads. Staff did not question why the advertisement would not be placed in the Star.
164. Both CMO and CCO staff expressed concern about the level of direction from the Mayor's Office. The CCO stated that such involvement could impact their responsibilities under the Policy. The CCO informed my investigator that in their experience, they had not received instructions from the Mayor's Office before on the costing and placement of advertisements. Staff said these were not matters on which they needed approval from the Mayor's Office.
165. A senior CMO staff observed to my investigator that the decision about advertising is an administrative one.
166. The City Clerk said she was not aware of the detailed level of communications from the Mayor's Office. Had she known, she would have informed the Mayor's staff that the direction on ad placement did not comply with the Policy and was unacceptable.
167. The advertisement was placed in three newspapers (Post, Sun and Metro) on June 20, 25 and 26 and posted on the City's website. The ad was also placed in a Chinese newspaper as the CMO had identified the East Asian community as one that was under-represented in the applicant pool during the last round of appointments.
168. The advertisement was not placed in community newspapers due to lack of time. As part of targeted advertising, the CMO circulated the advertisement to ethno-racial community networks, along with professional and business groups.
169. On June 22, 2011, CMO wrote to the Committee and advised that because it wanted to shorten the timeframe to complete the appointments process, there was no time to pre-screen the applications, or provide the Committee with a list of qualified candidates or a “top 30” list. The

Committee would have to review the applications without any pre-screening.

170. CMO also provided the Committee with the information about the placement of the advertisements and outreach efforts.

#### **4.2.6 Application Processing**

171. About 1,700 applications were submitted by the deadline of July 11.
172. The Committee met on July 18 to short-list 512 applications received for the first boards under consideration: the Metro Toronto Convention Centre, Toronto Parking Authority, Toronto Police Services Board, Toronto Port Authority, Toronto Public Library Board, and the Board of Health.
173. The CCO screened the applications for eligibility and prepared summary spreadsheets containing the applicants' names, contact information and eligibility. For each of these boards, the CCO also prepared application binders containing all the application forms and resumes.
174. Because of the timelines and high volume of applications, the CCO re-assigned six staff from their regular duties to assist.
175. The CCO provided the application binders and eligibility summaries to the Committee and to the CMO on July 15.
176. The CMO was not able to compile the diversity information, conduct the staff review team review, or prepare the summary of qualifications and diversity data before the July 18 Committee meeting.
177. CMO staff informed my investigator that generally, the CCO and CMO would have one month to review the applications and pre-screen applicant eligibility and qualifications. In this first round of appointments, staff were given one week.
178. While the eligibility summaries are not normally provided to the Committee, the CCO informed my investigator that they were provided so that the members would have something to review rather than nothing at all.
179. In the week following the application deadline, the Mayor's staff attended the CCO and reviewed the application binders for the first group of boards as the Mayor's proxy. The Mayor and Councillors are allowed access to the applications.

#### 4.2.8 July 18, 2011 Committee Meeting

180. At this meeting, the Committee short-listed candidates to be interviewed for the Metro Toronto Convention Centre, Toronto Parking Authority, Toronto Police Services Board, Toronto Port Authority, and the Toronto Public Library Board.
181. The short-listing was done without the staff pre-screening and diversity summaries. The Committee did not ask for anything further.
182. Some Committee members informed my investigator that they were not aware the qualification summaries were required as part of the Policy. Most Committee members indicated that they were not familiar with the different roles that the CCO and CMO played with respect to application screening. They were not aware that the CCO conducted the eligibility screening, while the CMO did the qualification and diversity screening.<sup>20</sup>
183. The Mayor's staff attended the July 18 meeting. Staff was there to observe the meeting in order to keep the Mayor informed.
184. In response to a concern raised by a Councillor about political staff attending in-camera sessions of the Committee, it passed a motion to allow the Mayor's staff to attend.
185. The CCO observed that political staff attendance during Committee in-camera sessions was "unusual" and that it had never happened before in their experience.
186. Accounts of the Mayor's staff activities during the meeting varied. One attendee said that the Mayor's staff had several files with lists of names marked confidential. The attendee said that the lists were on some of the members' desks.
187. Another attendee saw a list of names for each committee on a few of the members' desks.
188. A third attendee saw the Mayor's staff handing a member sheets of paper with names on them.
189. Several attendees saw the Mayor's staff talking to Committee members.
190. Others said the Mayor's staff just observed and did not participate, speak or give any direction at the meeting.

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<sup>20</sup> At a meeting on April 18, 2011, a briefing was provided to the Committee by CMO staff (see para. 94). That presentation included information about screening and qualifications. The CMO also wrote to the Committee drawing attention to the qualifications screening procedure.

191. The Mayor's staff told my investigator that they had a list of applicants which were for their own purposes. This list had been generated from the names of applicants provided by Councillors from their respective wards. The Mayor's staff did not share the list with anyone except for CMO when the issue of a "confidential" list was raised by an attendee.
192. The Mayor's staff also told my investigator that they spoke to a Committee member at that member's request. The Mayor's staff did not recall speaking to any other committee members.

#### **4.2.9 Committee Screening**

193. Following the July 18 meeting, CMO staff completed the pre-screening and summaries for subsequent boards. Committee short-listing was done with the qualifications and diversity summaries.
194. All Committee members said they used the summaries to assist them in assessing qualifications. Members described the summaries as a guide or reference, which helped them screen out unqualified candidates, and balance the diversity of the candidates.
195. Members stressed that they reviewed all the applications and that the summaries had not replaced their own review.
196. One member informed my investigator that the staff summary was sometimes ignored in favour of a member selecting someone even if the candidate was unqualified.
197. A review of the Committee's selections revealed that while applicants for the most part were chosen from the top two categories, some were also selected from the third category which did not meet minimum requirements.
198. Members informed my investigator that sometimes they did not agree with the staff summary and recommended applicants they believed were the best qualified for the board from the less qualified categories. At other times, they would recommend from the less qualified categories because there were not enough from the more qualified pool.
199. Staff stated that an applicant who is stellar in a few qualifications could be categorized as less qualified than an applicant who might meet a greater number of qualifications but not be as good in each category. The Policy stipulates that the entire board, and not each applicant, must have a range of qualifications. For those reasons, according to the CMO, the

Committee, in weighing these qualifications might end up selecting applicants who have been categorized by staff as less qualified.

#### **4.2.10 Resources**

200. The CCO described its workload as labour intensive and highly time consuming. The public appointments work was in addition to other Council responsibilities and priorities staff were tasked with. In order to meet the timelines, they “did what we had to get it done”. The CCO staff said their workload would have been more manageable had the schedule been spread out.
201. The City Clerk reported to my investigator that staffing had been "squeezed... to bare bones".
202. CMO said that while staff from the Equity, Diversity and Human Rights Division are suppose to participate in the staff reviews, they were only able to attend four meetings due to lack of resources.
203. The CMO said that an enormous amount of work needed to be done in a very short time. CMO staff resources were not sufficient. The CMO was also tasked with other priorities identified by Council.
204. A senior manager said that resources were the “biggest barrier” they had, that “between the staffing freeze and budget cuts” staff were “doing two and three jobs.”
205. Previously, CMO responsibility in public appointments lay with a senior policy consultant, who had extensive governance and public appointments experience. That individual left the CMO at the end of 2010 and the position was not filled. The former staff member did not provide anyone with training on the Policy. This was confirmed by current CMO staff who had to learn on the job.
206. The Mayor’s staff noted to my investigator that due to the absence of key CMO staff, there was a loss of corporate memory and knowledge about the public appointments process, which was problematic.

#### **5.0 Conflict of Interest and Board Appointments**

207. A complaint received by my office alleged that the CMO failed in its responsibilities and that staff acted inappropriately while processing applications for an adjudicative board. The matter involved a specific applicant and arose during the selection process.

208. The staff review team, consisting of CMO staff and program staff from the City division related to the adjudicative board, assessed applicant qualifications to prepare the qualifications summary for the Committee's consideration.
209. When the specific application came up for discussion on November 4, 2011, the program staff member informed the staff review team that the applicant had a potential conflict of interest. He told them that the applicant was known to be actively involved in the business over which the board had jurisdiction and had regularly appeared before the board acting as an agent.
210. The application form provides examples of conflicts of interest such as any direct or indirect interest in matters related to the board's jurisdiction, or engagement in a business over which the board had jurisdiction. The applicant submission did not note any conflicts of interest, actual or potential.
211. The program staff member expected the information that he had provided would be noted on the summary by CMO staff. The CMO check marked the "agent" box on the summary but not the "conflict of interest" box. CMO staff informed my investigator that the conflict of interest was not noted because the applicant had stated there were no conflicts and the CMO did not have any proof that there was a conflict of interest.
212. During the Committee short-listing meeting on November 16, 2011, the applicant in question was nominated by the Panel Chair and the applicant was short-listed for interview. CMO did not provide any information about the applicant during the short-listing.
213. The following day, the program staff member wrote to the CMO and provided information about the applicant, saying that the division had had several dealings with the applicant about matters related to the adjudicative board. The Division staff was certain that the applicant continued to act as an agent, and that as a result, the applicant was not eligible and was in a possible conflict of interest.
214. The program staff member also provided documents: a decision from the board showing the applicant as an agent, and a document from the internet showing that the applicant was a senior executive of a company engaged in a business related to the board's jurisdiction.
215. CMO staff met with the Panel Chair and relayed the information regarding the applicant's eligibility and potential conflict of interest. CMO informed my investigator that the documents provided by the program staff were shown to the Panel Chair. CMO also referred the Panel Chair to parts of

*The Code of Conduct for Members of Adjudicative Boards City of Toronto*, July 2008, regarding the prohibition against board members acting as a paid agent.

216. The Panel Chair reported to my investigator that staff had told him the applicant could have a potential conflict of interest because the person was an agent and therefore might be ineligible. The Panel Chair said the CMO did not show him any documents.
217. The Panel Chair took the position that being an agent did not prevent the applicant from becoming a member of the board because that applicant could stop appearing before the board, just as a lawyer might if appointed to the board.
218. The Panel Chair requested that CMO put the concerns in writing. He informed my investigator that this was because the Committee had already made a motion to shortlist the applicant. Therefore, something in writing was necessary to withdraw the motion.
219. CMO asked Legal Services whether it could write the letter. Staff was informed that this constituted policy not legal advice and could be done by the CMO.
220. CMO did not write the letter as requested by the Panel Chair. CMO informed my investigator that this was due to the illness of staff. CMO also said that it had assumed the Panel Chair did not require it, given the interview questions approved by him included questions on applicant eligibility and conflict of interest.
221. The Panel Chair informed my investigator that he never gave the impression that he no longer wanted the letter, at one point reminding staff about it. In hindsight, he said that he should have put his request in writing. He did not inform anyone on the Committee that CMO had raised concerns about the applicant.
222. Just before the candidate interviews, the nominating panel decided to delete two questions, including the question dealing with conflict of interest. None of the panel members could recall the specific reason for the deletion, but indicated that at times questions are dropped because of repetition or because there are too many.
223. The panel forwarded its list of candidates to the Committee for recommendation to Council. The applicant in question was recommended by the panel to be Chair of the adjudicative board.

224. Shortly before the Committee meeting, the agenda was issued which included the names of those recommended for appointment in a confidential attachment.
225. A Committee member recognized the applicant as having recently come before Community Council on a contentious matter against the City. The member contacted senior staff expressing concern about the conflict of interest. The Councillor requested that staff attend the Committee meeting to explain the applicant's conflict.
226. On the day of the meeting, the City Manager directed staff to tell the Committee about the applicant's conflict of interest and ineligibility for appointment. Program staff of the division and legal staff also attended.
227. During the meeting, CMO staff explained that the applicant was an agent before the board and outlined the conflict of interest issue.
228. The Panel Chair asked CMO staff why the letter he requested had not been provided. CMO said that the letter had not been written due to illness on the part of the manager charged with the task. CMO added that the information had nevertheless been previously conveyed to the Panel Chair.
229. My investigator was told by attendees that the Panel Chair interrupted CMO staff. He became "angry", "upset" and "objected" to the information that CMO was providing. The Panel Chair questioned why so many staff were present, saying that they were "targeting" the applicant.
230. The Panel Chair said that the applicant seemed to be the most qualified candidate. One panel member said he had rejected the applicant when he reviewed the application, showing his notes to the Committee.
231. Another member expressed concern that the individual had stated on the application that they were not involved in matters related to the adjudicative board, when in fact the person had been.
232. Attendees reported that the Panel Chair pointed at staff saying, "I'm going to get you." He was reported to say in a raised voice that staff had other Councillors fooled, but not him.
233. Some staff described the Panel Chair's manner as "threatening". One staff described the process as "gruelling and humiliating".
234. The Panel Chair informed my investigator that staff should have written the letter he had requested. He stated that he had not been provided with

the necessary information to enable him to determine whether the applicant was in conflict.

235. The Panel Chair said he was frustrated by the process. He reported feeling "intimidated" by staff, when a number of them surrounded him minutes before the meeting outside the committee room to speak to him about the applicant being in a position of conflict.
236. The Panel Chair stated that a staff member told him the applicant could not be Chair because of the conflict but perhaps they could "compromise" by allowing the person's candidacy to stand as a member of the board.
237. The Panel Chair could not recall who made this statement and no staff asked by my investigator confirmed saying this to him.
238. The Committee decided not to recommend the applicant for appointment to the board.
239. The Policy refers to situations of potential conflicts of interest but does not set out a procedure for notifying the Committee.
240. Staff stated that conflict of interest was an important issue and that it was their responsibility to provide relevant information they may have to the Committee for its consideration.
241. Staff did not identify a specific procedure for conveying information about conflict of interest. Staff indicated that this information should be conveyed to the Committee Chair or the Committee as a whole.
242. Committee members indicated that issues of potential conflict of interest were extremely important and must be brought to their attention if staff become aware of information that might affect an individual's candidacy.
243. Committee members said that any potential conflicts should be noted on the qualification summary. In addition, notification should be in writing or if there is no time to do so, orally, before or at, the Committee meeting.
244. Some Councillors indicated that interviews should always include a question about conflict of interest.
245. Staff indicated that a conflict of interest interview question is important and should be mandatory.

## 6.0 Diversity of Candidate Selections

246. Complaints to my office raised concerns about the lack of diversity in the candidates selected for the first group of boards and alleged that this under-representation had to do with the lack of staff resources, along with insufficient time to administer the process.
247. While diversity representation improved in the second round of appointments, the concern remained that appointments in the first round were about boards with very large budgets having a greater financial significance to the City.
248. This issue was raised at Council in September 2011.
249. Diversity summaries on recommendations for appointment made by the Committee to Council were prepared by the CMO in October and November 2011 and January 2012, and reported to Council.<sup>21</sup> Data were compiled on a cumulative basis.
250. The January staff report to Council indicated significant under-representation of a variety of groups.
251. The Policy recognizes equity as a principle and states that proactive measures be followed to recruit for boards that reflect the diversity of the communities served. The Policy provides for targeted outreach and that staff conduct advance outreach to groups identified as under-represented.
252. CMO did not identify any proactive measures or advance diversity outreach initiatives taken with respect to the 2011 round of appointments.
253. CMO staff informed my investigator that staff resources from the Equity, Diversity and Human Rights Division would be most suited for outreach efforts. Any proactive strategies or diversity outreach initiatives should involve community engagement that builds community capacity and relationships between the City and its communities. Such strategies should be ongoing. Strategies should also transcend all City divisions and not be isolated to the CMO. An effective community engagement strategy would assist in gathering a pool of diverse applicants when the appointments process begins.
254. CMO staff said that outreach strategies need adequate resources and time for effective implementation. My investigator was told that the

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<sup>21</sup> Composition of Certain Board and Diversity in Public Appointments, Staff Report, October 24, 2011; Diversity in November Public Appointments, Staff Report, November 23, 2011; Diversity in Public Appointments, Staff Report, January 30, 2012.

appointments process was too rushed and staff resources, already limited, were stretched beyond capacity.

## **7.0 Towards a Public Appointments Office**

255. The City Manager was of the view that the role of administering the public appointments process for agencies should be with the CCO. He viewed it better fitting within the City Clerk's role given the responsibilities to support Council and its Committees. CMO would remain responsible for governance issues relating to boards and provide policy support to the CCO.
256. CMO staff informed my investigator that public appointments should be handled by a public appointments office within the CCO. Having one office deal with the process would ensure streamlining and better organization.
257. An experienced former CMO employee was of the view that public appointments would be best administered by a dedicated public appointments team within the CCO, since most of the responsibilities are process related.
258. That employee stated that the team should include CMO staff with the requisite expertise responsible for policy aspects of the process.
259. The team should also include a member of the Equity, Diversity and Human Rights Division because of its responsibility for diversity outreach.
260. The City Clerk stated that prior to the policy changes in 2006, her office was much more engaged in the public appointments process. At that time, CMO had a more hands off approach. With the changes in 2006, responsibilities shifted to the CMO. The City Clerk was of the view that the process needed to be administered by a dedicated unit with the requisite expertise and experience.
261. Senior staff at the CCO said, "[role clarification] has to be attended to on a regular basis in the carrying out of the policy. Management acknowledgement of that relationship requires constant vigilance and constant discussion to make sure that the roles are being carried out the way they were envisioned."
262. This staff member noted the utility of a single public appointments function that would eliminate the need for "that constant evaluation of whose role...that might be...maybe perhaps eliminating the division of responsibilities."

263. The CCO and the CMO have initiated a new protocol which is to be used for the recruitment of Toronto Transit Commissioners. The impetus for the protocol comes out of a recognition that the coordination of tasks between the two offices needs improvement.
264. City staff have taken steps at the beginning of the recruitment process to identify the roles that each of the two offices will play, rather than doing so during implementation. If it is successful, the CCO and the CMO indicated that the template may be used for future board recruitment.

## **8.0 Ombudsman Findings**

265. This investigation revealed that the process for recruitment and selection of citizen members to boards did not follow the requirements set out in the Public Appointments Policy.
266. City staff's ability to carry out their responsibilities under the Policy was compromised.
267. The requirements were not complied with when it came to the recruitment of applicants. For example, the staff did not complete pre-screening for the first group of board appointments.
268. There were insufficient resources particularly when the timelines changed.
269. Staff evidence demonstrates a need to clarify roles. The lack of clarity is compounded by the fact that responsibility for administering the Policy lies in two different divisions.
270. There is an absence of formal process to deal with potential conflicts of interest.
271. There was no advance diversity outreach to traditionally under-represented communities, although the Policy provides for proactive diversity strategies and advance diversity outreach.
272. It is widely understood that diversity outreach should be conducted as a continuous cycle with coordinated strategies. Its absence is a failing on the part of the public service but I note that such outreach can only be achieved successfully with the appropriate level of dedicated resources.
273. The significant under-representation of diverse candidates recommended for appointment is of great concern. That would have been reduced with thorough outreach efforts. The numbers might well have been different if staff had had the time to develop a strategy and conduct proper outreach.

274. Staff did their best in the circumstances and I note that when CMO was asked by the Mayor's Office to remove a reference in the advertisement encouraging applications from diverse groups, staff refused to do so based on Policy provisions.
275. Assuming the City is committed to ensuring that the boards of agencies are reflective of Toronto's communities, a concrete, sufficiently resourced strategy must be put in place to achieve that end.
276. I agree with the CMO's suggestion that any outreach strategies to increase representation in the applicant pool, should include long-term community engagement strategies as a coordinated effort across the public service.
277. My investigation revealed that the incomplete pre-screening for the first group of boards was not the result of staff neglect or omission. Rather, it was the consequence of a rushed process that was beyond staff control. Public servants simply were not given enough time to meet the expected standards of due diligence when it came to fulfilling their responsibilities.
278. Public servants tried to have the public appointments process started early in the new Council term by bringing the Policy amendments forward during the 2010 transition period. The matter was not considered by Council until April 2011 due to other priorities for the new administration.
279. Implementation of the public appointments process was further delayed because of a motion passed at the April 2011 Council session which affected the composition of all boards and caused uncertainty about how board members would be recruited. This created a second delay in the recruitment process, this time until June, when a solution was found to deal with the impact of the decision.
280. Despite the delay, staff prepared a recruitment schedule in May for the Chair of the Civic Appointments Committee which outlined two phases of the recruitment process to be completed by February 2012.
281. Notwithstanding the Chair's approval of the schedule and subsequent Committee adoption of the revised schedule, it was nonetheless considerably shortened as a result of direction from the Mayor's Office.
282. The situation was made worse when timeframes were truncated by the extension of the application deadline at the further instruction of the Mayor's Office. The impact of this direction was that staff had one week before the Committee meeting to process applications received.

283. Most of the week was spent by the CCO doing application intake, preparation of the eligibility summaries and application binders for over 500 applications. This had a domino effect because it only left the weekend for the CMO to complete pre-screening, prepare the qualification summaries and provide a “top 30” list of candidates as directed by the Committee.
284. The Mayor’s desire to have the process completed quickly is understandable. However, past experience demonstrates that one month is generally needed for staff to complete the process properly.
285. While staff articulated concerns to the Committee and to the Mayor’s Office, they were put in an untenable position. On the one hand, public servants have a duty to serve the best interests of the corporation and through it, the public. On the other, staff felt they could not refuse the directions given to them by the Mayor’s Office.
286. In some cases, staff signalled the problems to senior management; in others they did not. It is clear that the environment rendered it futile to do so in either case.
287. The compressed schedule imposed a considerable burden on staff resources, which were already limited and overloaded.
288. Staff did the job as directed in one week with the inevitable flaws that resulted.
289. The changes to the schedule did not emanate from the Committee but from the Mayor’s Office. Committee members were not aware of the direction from the Mayor’s Office.
290. The decision to select citizen appointees rests entirely with the Committee and Council, and the public service is responsible for the process leading up to that decision.
291. Ensuring the process is administered properly is critical. It is labour intensive and requires diligence and dedicated resources if the provisions of the Council-approved Policy are to be respected. As such, the appropriate supports, time and staffing must be provided to do the job properly.
292. The lack of pre-screening and preparation of applicant information by staff for the Committee’s review leaves the integrity of the process vulnerable to perceptions that selections are being done in an arbitrary manner rather than on merit.

293. During the investigation, some attendees at the July 18 Committee meeting stated that Mayor's staff provided lists of preferred appointees to Committee members. Based on the evidence, I cannot make a determination that this in fact occurred.
294. The investigation revealed a significant amount of confusion about how to deal with potential conflicts of interest among applicants. Staff do not determine whether there is a potential conflict of interest. The Committee does. However, staff do have a duty to report any information they may obtain about an applicant's potential conflict of interest.
295. While the Policy sets out the types of situations that may constitute potential conflicts of interest, it does not outline a process for staff to report to the Committee those about whom they may become aware.
296. The application form requires applicants to identify a potential or actual conflict of interest. My investigation revealed that the applicant in question had marked that he did not have a conflict of interest, though contrary information had come independently to the attention of staff.
297. CMO staff stated they were reluctant to mark an applicant as having a potential conflict when it was not declared on the application form.
298. The information was only communicated orally to the Panel Chair. CMO staff erred in not noting on the summary sheet the potential conflict reported by program staff.
299. A letter requested by the Panel Chair was not provided by the CMO which should have been done. However, I note that the Panel Chair had been made aware of the potential conflict. That information was not shared with the Committee.
300. It is true that the Panel Chair requested the matter to be put in writing which staff failed to do. Notwithstanding that omission, I find that no material difference comes of the oversight.
301. Where staff become aware of applicant eligibility issues or potential conflicts of interest, there should be an established procedure for bringing these matters to the Committee's attention.
302. I find that staff conducted themselves appropriately in bringing the applicant's conflict of interest to the attention of the Committee at its meeting.
303. Events at that meeting had a chilling and intimidating effect on staff.

304. Staff must feel free to speak without fear or intimidation, so that they can provide their best advice.
305. On the conflict of interest front, it is crucial to the integrity of the appointments process that the appointment of board members be free of any perceived or actual conflict of interest. While this is important for all boards, it is particularly so for adjudicative boards in light of the specific provisions of the *Code of Conduct for Members of Adjudicative Boards*.
306. The investigation revealed that the decision to place the advertisements was effectively taken out of the CCO's hands as a consequence of detailed direction from the Mayor's Office about the size, dates and placement of the advertisements.
307. The Policy clearly intends ad placement to be an administrative task, not the responsibility of elected officials.
308. I also note that the Committee's decision to authorize its Chair to work with the City Clerk on a marketing strategy arguably authorizes political involvement in the placement of advertisements and related outreach strategies.
309. This decision in effect alters a provision of the Policy which was adopted by City Council as a whole.
310. Two City staff reported to my investigator that specific direction was given not to place any advertisement in the Toronto Star. The Mayor's staff denied any such direction. The employees' evidence was consistent with the detailed instruction from the Mayor's Office to place advertisements in the National Post and the Toronto Sun.
311. My investigation revealed a lack of appropriate staff resources, notwithstanding the constraints of the accelerated schedule.
312. The senior CMO staff position responsible for the public appointments process was not filled following the incumbent's departure. Staff expertise and experience were not replaced.
313. The responsibility to ensure adequate staff resources lies with management. Senior managers in this investigation described scant resources, one defining them as "close to the bone." When that reality is coupled with impossible timelines, the result is a public appointments process that may lack credibility.
314. This investigation has demonstrated that the City of Toronto's Public Appointments Policy is leading edge in its field. It is all the more important

to respect the process and ensure the public service is adequately resourced to implement the spirit and intent of the Policy properly.

315. The splitting of the responsibility for administering the public appointments process between the City Manager's Office and the City Clerk's Office is also problematic.
316. Consolidation and streamlining of the roles are required. I agree with the views of staff that this could be achieved by creating a dedicated unit within the City Clerk's Office that is responsible for administering the process with the requisite expertise and experience. Those requirements would include administration, governance, policy, human resources and equity.

## **9.0 Ombudsman Conclusions**

317. The 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.
318. I have considered those definitions in reaching my conclusions.
319. My findings and conclusions uphold the merits and efficacy of the City's Policy. In no way, should they be construed as a critique about the integrity of decisions made about citizen appointees by the Civic Appointments Committee.
320. Nor do the findings impugn the qualifications of citizens selected for recommendation to Council. Their tasks are often onerous and their volunteerism is to be applauded.
321. That said, the Public Appointments Policy, approved by City Council, was not followed. The failure to do so was both unreasonable and wrong.
322. The failure to adhere to the Policy undermined principles of openness, competition, equity and challenged the value of a merit-based, representative and accountable appointments process.

323. There was an absence of a clearly articulated process to deal with applicants' potential conflicts of interest.
324. The absence of any advance diversity outreach impacted negatively on the composition of applicants in the qualified pool.
325. Any confusion between staff of the CMO and the CCO was magnified by heavy workloads, acute resource shortages and unreasonable timelines.
326. The City of Toronto has a broadly recognized best practice in its Public Appointments Policy. Refinements may be required and processes clarified but adherence to its provisions can only go towards better governance.
327. There were many factors that conspired against a fluid implementation of the Policy. There was a significant turnover of elected representatives, a newly elected Mayor, newly recruited political staff, a paucity of experienced public servants to manage the public appointments process and diminished resources. In addition, there were many significant corporate initiatives underway consuming both CMO and CCO resources.
328. Public appointments correctly rest within the purview of Mayor and Council decision-making. Simultaneously, the staff process is designed to be apolitical and must be applied with integrity, transparency and fairness.
329. Public servants have an obligation to give their best advice. Their duties ought not to be interfered with or compromised in any way.
330. The results of this investigation support my abiding concern and ongoing observation about the importance of a separation between legislators and public servants. The facts demonstrate the need for more buffers to better delineate where the roles of elected representative and public servant coincide and where they differ.
331. An open, merit-based, representative and accountable public appointments system is essential for a healthy democracy.
332. Residents would expect no less.

## 10.0 Ombudsman Recommendations

333. Taking into account the evidence gathered through this investigation, I am making the following recommendations.
1. That responsibility for the implementation of the Public Appointments Policy resides in a single unit to include the following elements:
    - (i) The unit reports to a senior executive.
    - (ii) The unit be staffed with the requisite expertise and experience in administration, governance, policy, human resources and equity.
    - (iii) The senior executive responsible for the unit acts as the liaison with elected officials during the public appointments process.
  2. That the unit be properly resourced with the supports necessary to ensure its success.
  3. That the above be put into effect by June 1, 2013.
  4. That the City Manager, in consultation with the City Clerk, review the Policy for any omissions or improvements, including any required processes or procedures and bring the matter forward to City Council by June 1, 2013.
  5. That a procedure be developed to ensure that any known applicant conflicts of interest, actual or potential, or eligibility issues are immediately reported by staff in writing to the Civic Appointments Committee; and that this procedure be completed by June 1, 2013.
  6. That in keeping with the Policy, sufficiently resourced ongoing community engagement strategies, coordinated across the public service, be developed and implemented to attract and recruit applicants from diverse communities.

## 11.0 The City's Response

334. Before issuing my final report, I notified the City of my tentative findings and recommendations and provided it with an opportunity to make representations, pursuant to section 172(2) of the *City of Toronto Act, 2006*.
335. Following discussions with City officials in which some facts were clarified, the City Manager and the City Clerk responded in writing on August 23, 2012 (see Appendix B).

336. In that response, the City has agreed with my recommendations. City officials state that they remain committed to the principles of the City's Public Appointments Policy of openness, competition, equity and transparency.

(Original signed)

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Fiona Crean  
Ombudsman  
September 25, 2012

## Appendix A: City of Toronto Agencies and Corporations



Agencies <sup>1</sup>			Corporations <sup>2</sup>	
Service Agencies	Quasi-Judicial & Adjudicative Boards	Partnered Agency	City Corporations	Partnered Corporations
<ul style="list-style-type: none"> <li>➢ Board of Health</li> <li>➢ Exhibition Place</li> <li>➢ Heritage Toronto</li> <li>➢ Police Services Board</li> <li>➢ Public Library Board</li> <li>➢ Sony Centre for the Performing Arts (operating name for Hummingbird Centre)</li> <li>➢ St. Lawrence Centre for the Arts</li> <li>➢ Toronto Atmospheric Fund</li> <li>➢ Toronto Centre for the Arts</li> <li>➢ Toronto Parking Authority</li> <li>➢ Toronto Transit Commission</li> <li>➢ Toronto Zoo</li> <li>➢ Yonge-Dundas Square</li> </ul> <p><b>Community-Based</b></p> <ul style="list-style-type: none"> <li>➢ 8 Arena Boards</li> <li>➢ 10 Association of Community Centre Boards (AOCCs)</li> <li>➢ 72 Business Improvement Areas (BIAs)</li> </ul>	<ul style="list-style-type: none"> <li>➢ Committee of Adjustment</li> <li>➢ Committee of Revision</li> <li>➢ Compliance Audit Committee</li> <li>➢ Property Standards Committee / Fence Viewers</li> <li>➢ Rooming House Licensing Commissioner <sup>3</sup></li> <li>➢ Sign Variance Committee</li> <li>➢ Toronto Licensing Tribunal</li> </ul>	<ul style="list-style-type: none"> <li>➢ Toronto and Region Conservation Authority</li> </ul>	<ul style="list-style-type: none"> <li>➢ Build Toronto Inc.</li> <li>➢ Casa Loma Corporation</li> <li>➢ Invest Toronto Inc.</li> <li>➢ MasterCard Centre (operating name for Lakeshore Arena Corporation)</li> <li>➢ Toronto Community Housing Corporation</li> <li>➢ Toronto Hydro Corporation</li> <li>➢ Toronto Port Lands Company (operating name for Toronto Economic Development Corporation)</li> </ul>	<ul style="list-style-type: none"> <li>➢ Enwave Energy Corporation</li> <li>➢ Waterfront Toronto</li> </ul>

**Notes:**

1. Previously referred to as agencies, boards and commissions.
2. *Ontario Business Corporations Act* (OBCA) corporations.
3. Rooming House Licensing Commissioner and Deputy are Officers, rather than an agency of the City, but in all other respects function as a quasi-judicial and adjudicative board.

**Updated: April 2012**

## Appendix B: City of Toronto Response



Joseph P. Pennachetti  
City Manager

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August 23, 2012

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

Dear Ms Crean:

The City Clerk and I have reviewed your investigation into the Public Appointments Policy.

We appreciate your recognition of the extraordinary effort by City staff during the recruitment and appointment of community members following the 2010 municipal election.

We remain committed to the principles of the City's public appointments policy of openness, competition, equity and transparency.

We agree with the recommendations contained in your report and have already started making improvements to the administration of the policy.

Yours truly,

A handwritten signature in blue ink, appearing to read "J. Pennachetti".

Joseph P. Pennachetti  
City Manager

A handwritten signature in black ink, appearing to read "Ulli S. Watkiss".

Ulli S. Watkiss  
City Clerk

