

**ONTARIO
SUPERIOR COURT OF JUSTICE**

B E T W E E N :

DANIEL CARCILLO, GARRETT TAYLOR and STEPHEN QUIRK

Plaintiffs

- and -

ONTARIO MAJOR JUNIOR HOCKEY LEAGUE, CANADIAN HOCKEY LEAGUE, WESTERN HOCKEY LEAGUE, QUEBEC MAJOR JUNIOR HOCKEY LEAGUE, BARRIE COLTS JUNIOR HOCKEY LTD., GUELPH STORM LTD., HAMILTON BULLDOGS FOUNDATION INC., KINGSTON FRONTENACS HOCKEY LTD., KITCHENER RANGERS JR. A. HOCKEY CLUB, LONDON KNIGHTS HOCKEY INC., MISSISSAUGA STEELHEADS HOCKEY CLUB INC., 2325224 ONTARIO INC. o/a MISSISSAUGA STEELHEADS, NIAGARA ICEDOGS HOCKEY CLUB INC., NORTHBAY BATTALION HOCKEY CLUB LTD., OSHAWA GENERALS HOCKEY ACADEMY LTD., OTTAWA 67'S LIMITED PARTNERSHIP c.o.b. OTTAWA 67's HOCKEY CLUB, THE OWEN SOUND ATTACK INC., PETERBOROUGH PETES LIMITED, 649643 ONTARIO INC. o/a 211 SSHC CANADA ULC o/a SARNIA STING HOCKEY CLUB, SOO GREYHOUNDS INC., SUDBURY WOLVES HOCKEY CLUB LTD., WINDSOR SPITFIRES INC., MCCRIMMON HOLDINGS, LTD., 32155 MANITOBA LTD., A PARTNERSHIP c.o.b. as BRANDON WHEAT KINGS, BRANDON WHEAT KINGS LIMITED PARTNERSHIP, CALGARY FLAMES LIMITED PARTNERSHIP, CALGARY SPORTS AND ENTERTAINMENT CORPORATION, EDMONTON MAJOR JUNIOR HOCKEY CORPORATION, KAMLOOPS BLAZERS HOCKEY CLUB, INC. KAMLOOPS BLAZERS HOLDINGS LTD., KELOWNA ROCKETS HOCKEY ENTERPRISES LTD., PRINCE ALBERT RAIDERS HOCKEY CLUB INC., EDGEPRO SPORTS & ENTERTAINMENT LTD., QUEEN CITY SPORTS & ENTERTAINMENT GROUP LTD., BRAKEN HOLDINGS LTD., REBELS SPORTS LTD., SASKATOON BLADES HOCKEY CLUB LTD., VANCOUVER JUNIOR HOCKEY LIMITED PARTNERSHIP and VANCOUVER JUNIOR HOCKEY PARTNERSHIP, LTD c.o.b. VANCOUVER GIANTS, WEST COAST HOCKEY LLP, WEST COAST HOCKEY ENTERPRISES LTD., o/a VICTORIA ROYALS, MEDICINE HAT TIGERS HOCKEY CLUB LTD., 1091956 ALTA LTD. o/a THE MEDICINE HAT TIGERS, SWIFT CURRENT TIER 1 FRANCHISE INC. and SWIFT CURRENT BRONCOS HOCKEY CLUB INC. o/a THE SWIFT CURRENT, ICE SPORTS & ENTERTAINMENT INC. o/a WINNIPEG ICE, MOOSE JAW TIER 1 HOCKEY INC. D.B.A. MOOSE JAW and MOOSE JAW WARRIORS TIER 1 HOCKEY, INC. WARRIORS o/a MOOSE JAW WARRIORS, LETHBRIDGE HURRICANES HOCKEY CLUB, 649643 ONTARIO INC. c.o.b. as SARNIA STING, KITCHENER RANGER JR A HOCKEY CLUB and KITCHENER RANGERS JR "A" HOCKEY CLUB, LE TITAN ACADIE BATHURST (2013) INC., CLUB DE HOCKEY JUNIOR MAJEUR DE BAIE-COMEAU INC. o/a DRAKKAR BAIE-COMEAU, CLUB DE HOCKEY DRUMMOND INC. o/a VOLTIGEURS DRUMMONDVILLE, CAPE BRETON MAJOR JUNIOR HOCKEY CLUB LIMITED o/a SCREAMING EAGLES CAPE BRETON, LES

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Defendants

Proceeding under the *Class Proceedings Act, 1992*

MOTION RECORD

(Individual Issues Protocol, returnable August 29, September 13 and September 27, 2023)

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Court File No.: CV-20-642705-00CP

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Defendants

Proceeding under the *Class Proceedings Act, 1992*

**NOTICE OF MOTION
(Returnable August 29, September 13 and September 27, 2023)**

THE PLAINTIFFS will make a motion to the Honourable Justice Perell, on August 29, 2023, at 10:00am, September 13, 2023, at 10:00am, and September 27, 2023, at 1:00pm, at 130 Queen St. W, Toronto, Ontario.

PROPOSED METHOD OF HEARING: The motion is to be heard by video conference.

THE MOTION IS FOR:

- (a) An order approving the Individual Issues Protocol, attached hereto as Schedule A;

- (b) An order approving the Notice and Dissemination Plan, attached hereto as Schedule B;
- (c) An order substantially in the form of the Common Discovery Order, attached hereto as Schedule C; and
- (d) Such further and other relief that counsel may advise and this Honourable Court may permit.

THE GROUNDS FOR THE MOTION ARE:

- (e) This action seeks damages on behalf of former Canadian Major Junior Hockey players who experienced physical and sexual abuse, bullying and hazing while playing in the Canadian Hockey League ("CHL");
- (f) The plaintiffs brought a motion seeking certification of this action as a class proceeding which motion was heard from November 14 to 17, 2023;
- (g) On February 3, 2023, the Honourable Justice Perell issued reasons in which he declined to certify the action as a class proceeding and instead ordered that the plaintiffs would have 120 days to:
 - (i) Prepare an "Individual Issues Protocol" for individual joinder-actions and to bring a motion for approval of the Individual Issues Protocol; and
 - (ii) Prepare a Notice to the Class Members of the Individual Issues and a Distribution Plan for the dissemination of the Notice at the expense of the Defendants;
- (h) The Individual Issues Protocol ("IIP"), attached hereto as Schedule A, and the Notice and Dissemination Plan, attached hereto as Schedule B, have been prepared by the plaintiffs pursuant to the February 3, 2023 Order of the Honourable Justice Perell.

- (i) The IIP is appropriate, is necessary to achieve access to justice for players who experienced abuse in the CHL, and will provide for a fair and expeditious determination of those players' claims;
- (j) The Notice and Dissemination Plan is appropriate, and is essential to ensure that the IIP can achieve access to justice for players by notifying players of the IIP, and providing players with information and support in bringing claims under the IIP;
- (k) The IIP and the Notice and Dissemination Plan are necessary in the interest of justice;
- (l) This court has the jurisdiction to order the approval of the IIP and the Notice and Dissemination Plan under the *Rules of Civil Procedure*, and pursuant to the *Class Proceedings Act, 1992*, S.O. 1992, c. 6;
- (m) Sections 7, 12, and 25 of the *Class Proceedings Act, 1992*, S.O. 1992, c. 6; and
- (n) Rules 1.04, 1.05, 2.03, 3.02, 5, 16.03, 20, 54, 55, 57, 76, and 77 of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194; and
- (o) Such further and other grounds as counsel may advise and this Honourable Court may permit.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of the motion:

- (a) The Affidavit of Catherine MacDonald, affirmed June 5, 2023;
- (b) The Affidavits of Dr. Wolfe and Dr. Jaffe, affirmed June 2, 2023;
- (c) The Motion Records, Transcripts, and Factums filed in the motions heard November 14-17, 2022; and

- (d) Such further and other materials as counsel may advise and this Honourable Court may permit.

June 5, 2023

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Abuse of Players in the Canadian Hockey League

Individual Issues Protocol

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32. **Discontinuance of the Class Proceeding: *Carcillo v. Canadian Hockey League et al***

1. General

- 1.1 This Protocol governs the procedures for the determination of the claims of individuals who were subjected to or affected by physical and sexual abuse, bullying, harassment, hazing, and tortious conduct while playing in the Canadian Hockey League (including its Member Leagues, the Ontario Hockey League, Western Hockey League, and Quebec Major Junior Hockey League).
- 1.2 This Protocol may be amended by further order of the Court.
- 1.3 In this Protocol:
- a) "**Court**" means the Ontario Superior Court of Justice;
 - b) "**CHL**" means the Canadian Hockey League;
 - c) "**QMJHL**" means the Quebec Major Junior Hockey League;
 - d) "**OHL**" means the Ontario Hockey League;
 - e) "**WHL**" means the Western Hockey League;
 - f) "**Member Leagues**" means the QMJHL, OHL, and WHL;
 - g) "**the *Carcillo* action**" means the action in Court File CV-20-642705-00CP;
 - h) "**IIP Judge**" means the case management judge for the *Carcillo* Action;
 - i) "**IIP Counsel**" means Koskie Minsky LLP, in their role as Counsel responsible for administering the Individual Issues Protocol on behalf of all Claimants;
 - j) "**CHL Counsel**" means the lawyers representing the defendants in the *Carcillo* Action with respect to issues relating to the administration of the IIP Process;
 - k) "**Player**" means any individual who plays, has played, or who attended a training camp or other activities as a prospective player, for any Team within the CHL at any time from 1975 to the present;
 - l) "**Phase A**" refers to the Notice, Claims and Common Discovery period, described in parts 10 to 16, below;
 - m) "**Phase B**" refers to the Claims Mediation and Settlement period, described in parts 17 to 20, below;
 - n) "**Phase C**" refers to the Claims Determination period, described in parts 21-32, below; and
 - o) "**League and Team Damages**" refers to the proportion of the damages owed to a Player that are attributable to the proportionate degree of fault as between only

the Team, the Member League, and the CHL, and does not include any damages that are found to be attributable only to any other party.

- 1.4 Nothing in this Protocol precludes the parties from settling any claim proceeding under this Protocol at any point. Rule 49 applies to any settlement offer made under this Protocol.
- 1.5 Nothing in this Protocol precludes the parties from moving before the IIP Judge for an amendment to the protocol. The parties may consent to procedural modifications to the protocol.
- 1.6 Where there is disagreement on the interpretation or application of this Protocol requiring directions of the Court, a case management conference will be convened with the IIP Judge to determine the most expeditious and efficient manner to resolve the dispute.

2. Eligibility

- 2.1 Any claim made by a Player in relation to physical and sexual abuse, bullying, harassment, hazing, and tortious conduct that affected the Player while playing in the CHL, and that took place between 1975 and the present, is eligible for consideration under this Protocol.
- 2.2 Only those claims made prior to the Claims Deadline, as defined in part 11.1, below, will be eligible to participate in Phase B (Claims Mediation and Settlement).
- 2.3 Late claims (claims made after the Claims Deadline) may be included in Phase C (Claims Determination) on the consent of the parties or, absent the consent of the parties, on motion to the IIP Judge.

3. Confidentiality

- 3.1 Any information provided, created or obtained in the course of carrying out this protocol, whether written or oral, will be kept confidential by the defendants and their counsel, the Claimants and their counsel, the Administrator and the Claims Adjudicator(s) and will not be shared or used for any purpose other than this protocol, unless required provided for or required by law.
- 3.2 Other than documents filed without seal pursuant to Phase C (Claims Determination), any party, including – without limitation – any defendant, Claims Adjudicator or the Administrator, or their counsel, shall treat all information and records received in relation to this protocol confidentially, and must execute an undertaking regarding confidentiality.
- 3.3 In the case of a defendant, each individual who will have access to confidential information or records must also execute an undertaking regarding confidentiality.
- 3.4 A defendant, Claims Adjudicator or the Administrator shall disclose information and records received in relation to this protocol only as required to carry out the protocol,

and only after requiring the individual to whom information will be disclosed to execute an undertaking regarding confidentiality.

3.5 Claimant information, including material in printed and/or electronic format, shall be stored in a secure manner to ensure that only authorized persons who have signed the undertaking regarding confidentiality may access the information.

3.6 Nothing in this part prevents any Claimant from disclosing their own story.

4. Available Relief

4.1 Each Claimant will indicate, upon initiating a claim, the forms of relief that they seek in their claim.

4.2 A Claimant may:

- a) Claim for monetary compensation;
- b) Request an apology from the Claimants' Team, Member League, the CHL;
- c) Opt to participate in the External Reviewer process, as described at part 8, below.

5. Administrator

5.1 "**Administrator**" means [NTD: ADD COMPANY] ADD RE INTAKE

5.2 The Administrator shall distribute the Notice and the Claims Form approved by the Court in accordance with this Protocol, as set out in part 10, below.

5.3 The Administrator shall provide services for the intake and indexing of claims, as described in parts 12 and 13, below.

5.4 The Administrator shall comply with the Personal Information Protection and Electronic Documents Act, S.C. 2000 c. 5.

5.5 The Administrator shall be paid for their services by the defendants.

6. Claims Adjudicators

6.1 In this Protocol, "Claims Adjudicators" or "Adjudicator Roster" means the group of legal professionals agreed to by the parties or appointed by the Court under this Protocol to adjudicate Track 1 and 2 claims.

6.2 Four months prior to the Claims Deadline, as defined at part 11.1, below, IIP Counsel and CHL Counsel will constitute the Adjudicator Roster by agreement, failing which the Court shall appoint the Adjudicator Roster from lists of candidates submitted by ICP Counsel and CHL Counsel.

6.3 If ICP Counsel and CHL Counsel cannot agree as to the number or identities of Claims Adjudicators, each of ICP Counsel and CHL Counsel will submit a number and list of

proposed Claims Adjudicators, with brief written submissions, to the Court, and the Court will appoint the Adjudicator Roster.

- 6.4 The costs of the Claims Adjudicator process, including the fees of the Claims Adjudicators, will be paid by the defendants.

7. Wellness Supports for Claimants

- 7.1 Wellness Supports will be made available to each Claimant or potential Claimant, from the start of the Notice, Claims and Common Discovery Period until the Claimants' claim has been determined.
- 7.2 The Wellness Supports provided to Players will be paid for by the defendants.
- 7.3 The Wellness Supports made available to Claimants will include access to a trained individual capable of providing appropriate psychosocial support to Claimants ("the Support Person").
- 7.4 The Support Person will not be affiliated with any current or former Team, Member League, or the CHL.
- 7.5 The Support Person will respond promptly to all contacts from Claimants and will be available to meet with Claimants by phone or video call.
- 7.6 All meetings, calls and communications between a Claimant and the Support Person will be confidential. No information provided to the Support Person by a Claimant will be shared with any other party or individual unless such disclosure is at the explicit request of the Claimant or is necessary to prevent harm to the Claimant or others.

8. External Reviewer

- 8.1 An External Reviewer will be appointed by the Court at the time this Protocol is ordered.
- 8.2 The External Reviewer will be a current or former judge, or well-respected legal professional.
- 8.3 The External Reviewer will collect, consider, and report on the experience of Players who participate in the Protocol, and the phenomenon of pervasive abuse in the CHL, as means to provide restorative justice.
- 8.4 Each Claimant will have the following options:
- a) Sharing no information with the External Reviewer;
 - b) Sharing their story with the External Reviewer on an anonymous basis; and
 - c) Sharing their story with the External Reviewer without anonymization, but with an indication of whether or not they wish to be anonymous in the External Reviewer's public report.

- 8.5 Those Claimants who share their story with the External Reviewer without anonymization will indicate, in providing their story, whether they would be willing to meet with the External Reviewer.
- 8.6 For each Claimant who chooses to share their story with the External Reviewer, ICP Counsel will provide the External Reviewer with the Claim Summary, described at part 17, below.
- 8.7 Each Claimant may additionally choose to prepare and share with the External Reviewer a personal written account describing their experiences playing in the CHL, and the impact these experiences have had on their life.
- 8.8 After the Claims Period is complete, the External Reviewer will prepare a public report reflecting on any abuse that has occurred in the CHL, why such abuse has been pervasive, and any recommendations for reform. This report will be based on:
- a) Written stories of individual Claimants who have chosen to share their stories with the External Reviewer;
 - b) Meetings held with Claimants at which the Support Person may also be present;
 - c) Meetings with and written submissions from individuals associated with the CHL, the Member Leagues, and the Teams, as requested by the External Reviewer;
 - d) Meetings with any other stakeholders that the External Reviewer believes may have relevant information;
 - e) The Reasons of Perell J. on the certification motion, the Independent Review Panel Report, and the Players First Report; and
 - f) Current and past League and Team policies.
- 8.9 The External Reviewer's Report will not be admissible as evidence for any of the claims and will not contain any legal findings.
- 8.10 The costs of the External Review process will be paid for by the defendants.

9. Judicial Mediator

- 9.1 The Court will appoint a sitting judge of the Ontario Superior Court of Justice to act as Judicial Mediator for this protocol.
- 9.2 The Judicial Mediator may, on consent:
- a) Mediate any issues that arise from or in relation to the IIP; or
 - b) Mediate individual claims, or groups of claims, under the IIP.

Phase A: Notice, Claims and Common Discovery Period

10. Notice and Notice Plan

- 10.1 In this Protocol, "Notice" means the Short Form Notice and the CHL Abuse Website, as defined in the Notice and Dissemination Plan, providing players with notice of the individual issues and claims process under this Protocol, substantially in the forms approved by this Court.
- 10.2 The Administrator shall translate the English Notice into French.
- 10.3 Notice will be disseminated by the Administrator, by IIP Counsel, and by the defendants in accordance with the Notice and Dissemination Plan, as approved by the Court.
- 10.4 The Notice will include a toll-free phone number that accepts phone calls or SMS messages, an email address, mailing address, and website address through which Players can contact the Administrator or IIP Counsel to initiate a claim.
- 10.5 The reasonable cost of the Notice and the Notice Program shall be paid by the defendants.
- 10.6 The date the Notice is first transmitted, posted, or otherwise disseminated to Players by the Administrator shall be the "Notice Date".

11. Claims Period

- 11.1 The Claims Deadline will be twelve months after the Notice Date. Players will have until the Claims Deadline to initiate a claim.
- 11.2 The period between the Notice Date and the Claims Deadline will be referred to as the Claims Period.
- 11.3 A Claim will be deemed to have been initiated on the date that the Claimant first contacts the Administrator, regardless of the form through which they do so.

12. Initiation of Claims

- 12.1 For each Claim initiated, the Administrator will record the date that the Claim was initiated and will assign the Claim a Unique Claim Identification Number ["UCI"].
- 12.2 Each Claimant will, upon initiating a claim, indicated whether they intend to be represented by:
 - a) IIP Counsel; or
 - b) Other counsel identified by the claimant.
- 12.3 Each Claimant who opts to be represented by counsel will, upon initiating a claim, consent to the Administrator sharing their information with the counsel of their choice.

- 12.4 The Administrator, upon being advised of the Claimant's choice of representation will:
- a) If the Claimant wishes to be represented by IIP Counsel, provide IIP Counsel with the information they have received from the Claimant, the date on which the Claim was initiated, and the Claimant's UCI;
 - b) If the Claimant wishes to be represented by other counsel, or wishes to self-represent, provide the counsel identified and/or the Claimant with:
 - (i) The information described in part 12.4(a), above;
 - (ii) A copy of this IIP; and
 - (iii) A list of the information required for the Claims Index, and the format in which this information should be provided.

13. Claims Index

- 13.1 An index of Claims (the "Claims Index") will be created by the Administrator on a rolling basis during the Claims Period.
- 13.2 For each Claim, the Claims Index will include:
- a) The Claimant's UCI;
 - b) The date on which the Claimant's claim was initiated;
 - c) The Member Leagues and Teams against which the Claimant has claims;
 - d) The time period in relation to which the Claimant has claims;
 - e) A brief description (of 50 words or less) of the experiences of the Claimant on which their Claim is based;
 - f) Whether the Claimant requests an apology, monetary compensation, or both; and
 - g) The name and contact details of the counsel retained by the Claimant, if any.
- 13.3 Counsel to any Claimant will provide this information to the Administrator within 60 days of the initiation of a claim, and no later than 30 days after the Claims Deadline.
- 13.4 Sixty days after the Notice Date, and every 60 days thereafter, the Administrator will distribute a copy of the Claims Index, containing information for the Claims received to that date, to IIP Counsel, CHL Counsel, and any other Claimant's or Defending Counsel.
- 13.5 The Claims Index will include all Claims made to the date on which the Claims Index is provided.
- 13.6 The Claims Index will not contain any identifying information about any Claimant.

- 13.7 The Claims Index will be for counsel eyes only and will only be provided on the condition that all counsel undertake to take no steps, and to ensure no defendant or Claimant takes any steps, to identify any Claimant based on the information provided in the Claims Index.
- 13.8 The Administrator will provide a Claims Index listing all Claims made before the Claims deadline to all counsel within 45 days of the Claims Deadline.
- 13.9 Counsel for a claimant will inform the Administrator, and the Administrator will record in the Claims Index, each time that a claim is settled, and the value for which the Claim was settled.
- 13.10 No Claims will be removed from the Claims Index.

14. Identification of Defendants and Defending Counsel

- 14.1 For the purposes of this Protocol, "Defending Counsel" refers to the counsel responsible for defending each individual Claim.
- 14.2 For each claim, CHL Counsel will inform the Claimant's counsel of the names, and contact details of the Defending Counsel for each claim and will identify who Defending Counsel represents.
- 14.3 CHL Counsel will also provide this information to the Administrator to be added to the Claims Index.
- 14.4 This information must be provided as soon as possible for each Claim, and no later than 30 days after receiving the final Claims Index.
- 14.5 Defending Counsel, once identified, will assume primary carriage of the Claim and will undertake any task assigned to either CHL Counsel or Defending Counsel, below.

15. Common Discovery

- 15.1 Common Discovery will proceed throughout the Claims Period, in accordance with the Common Discovery Order approved by the Court at the same time as this Protocol.
- 15.2 CHL Counsel will be responsible for ensuring that the Common Discovery Order is complied with.
- 15.3 CHL Counsel will report to the Court every 60 days, from the date on which the Common Discovery Order is made, to update the Court on its progress in fulfilling the Common Discovery Order.
- 15.4 Documents produced pursuant to the Common Discovery Order will be produced in a digital form accessible to IIP Counsel, to which any other counsel representing a Claimant will also be given access.
- 15.5 Part 3 of this protocol (Confidentiality) applies to documents produced pursuant to the Common Discovery Order.

16. Team Transfer Information

- 16.1 To permit counsel to advise a Claimant during Phase B (Claims Mediation and Settlement), CHL Counsel and Defending Counsel will provide Team Transfer information.
- 16.2 Within 60 days of this Protocol being ordered, CHL Counsel will provide the following information to IIP Counsel, in a manner that will be made accessible to all Claimants' counsel:
- a) The names of the current owners (whether they be individuals, partnerships or corporations) of each Team in the CHL;
 - b) For each Team, the date on which the current owners took ownership of that Team;
 - c) The previous franchise names used by each Team during its history, including under previous ownership; and
 - d) The name, location, ownership, and dates of existence of any Team whose membership in the CHL was terminated and was not transferred to new ownership.
- 16.3 Each time that a Claim is made in relation to events on a Team that occurred prior to that Team's current owners taking ownership, CHL Counsel or Defending Counsel will provide, in a digital form accessible to all Claimant's Counsel, the following:
- a) The names and contact details of former owners, and the dates on which the former owners took ownership, going back to the date that the Claimant played for the Team; and
 - b) Any and all documents involved in the transfer of Team ownership.
- 16.4 Requests for Team Transfer information will be made at the same time as, or after a Claim is included in the Claims Index by the Administrator.
- 16.5 CHL Counsel will have 60 days to provide Team Transfer information after it is requested.
- 16.6 All requests for Team Transfer Information must be satisfied within 90 days of the Claims Deadline.

Phase B: Claims Mediation and Settlement

17. Claims Summaries

- 17.1 Counsel for each Claimant will prepare and provide to Defending Counsel a Claim Summary for each Claimant.
- 17.2 Each Claim Summary will include:
- a) The Claimant's Name and UCI Number;

- b) Details of the Teams, Leagues and years in which the Claimant played;
- c) A "will say" statement describing the Claimants' experiences in the CHL, and the impact those experiences have had on the Claimant;
- d) The causes of action that the Claimant expects to pursue; and
- e) A list of the documents or further affidavits that the Claimant believes they can provide in support of their claim, without prejudice to the Claimant's ability to provide further documents in Phase C.

17.3 Claim Summaries will be provided on a rolling basis as claims are made, and all claim summaries will be provided within 90 days of the Claims Deadline.

18. Insurance Information

18.1 To permit counsel to advise Claimants during Phase B (Claims Mediation and Settlement), CHL Counsel or Defending Counsel will provide counsel for each Claimant with the Insurance Information relevant to their Claim, within 60 days of receiving the Claim Summary.

18.2 For each Claimant, CHL Counsel or Defending Counsel will provide the following information:

- a) The details of any insurance policy that may respond to the Claim and a copy of the policy, if it has not already been produced in a manner accessible to the Claimant's counsel;
- b) The sums currently available under the responsive policy and how much has been paid out of the policy including on defence costs;
- c) The insurer's position on coverage, including whether the insurer has committed to coverage, taken an off-coverage position, or reserved their rights;
- d) If the insurer takes an off-coverage position, the reasons for the insurer's position and whether the insurer and the insured are in agreement; and
- e) If the insurer has taken an off-coverage position, or if no insurance policy is responsive to the Claim:
 - (i) Hockey Canada's position on whether it will commit to covering the claim; and
 - (ii) If Hockey Canada will not cover the claim, the reasons for its refusal.

18.3 CHL Counsel or Defending Counsel will report to IIP Counsel and Claimant's Counsel, every 60 days from the provision of the first Insurance Information until this protocol is exhausted, on the erosion, to that date, through fees paid to counsel in the *Carillo* action or under this process, of the limits of the policies identified as responsive to the Claims.

19. **Early Testing of Claims for the Purpose of Settlement**

- 19.1 Where, after reviewing a Claim Summary, Defending Counsel may be prepared to engage in reasonable settlement discussions, a limited testing of the Claim will be permitted.
- 19.2 Where Defending Counsel wishes to test a claim for the purpose of potential settlement, they can request, through a Claimant's counsel, to review the evidence described in the Claims Summary, and/or to interview the Claimant. Defending Counsel will have 30 days, after receiving the Claim Summary, to make such a request.
- 19.3 A Claimant may refuse a request to review documents or attend an interview, and such refusal will have no bearing on the determination of the Claim in Phase C.
- 19.4 Where the Claimant agrees to an interview, the interview:
- a) Must be conducted within 60 days of the Claimant's confirmation;
 - b) Will be conducted by Defending Counsel in the presence of the Claimant's counsel and the Support Person;
 - c) Will not be longer than 2 hours, unless the parties agree to extend it;
 - d) Will not be recorded;
 - e) Will be held on a without prejudice basis, and may not be used – in any form or for any reason – in the determination of any Claim in Phase C;
 - f) Will be conducted in a trauma-informed manner; and
 - g) Can be terminated by the Claimant at any time.
- 19.5 Where documents are requested, the Claimant will have 30 days to provide the documents to Defending Counsel.

20. **Early Settlement Offers**

- 20.1 Any early settlement offers will be made by the latest of the following dates:
- a) If no interview or documents are requested, 30 days after the Claim Summary is provided to Defending Counsel;
 - b) If the Claimant declines to provide an interview or documents, 30 days after that decision is communicated to defendants' counsel;
 - c) If an interview is conducted, 30 days after the interview; and
 - d) If documents are requested, 30 days after the documents are provided.
- 20.2 Any early settlement offer must be valid for a period of at least 30 days.

- 20.3 Where a Claimant has requested an apology, any early settlement offer provided must specify whether such an apology will be forthcoming, from whom the apology will emanate, and any conditions under which the apology will be made.
- 20.4 Where an early settlement offer is accepted, the Administrator will be informed and will record this information in the Claims Index.

Phase C: Claims Determination

21. Selection of Tracks by Claimants

- 21.1 Each Claimant who wishes to proceed with the determination of their claim shall select a Track for the determination of their claim.
- a) Track 1 and 2 claims will be heard by a Claims Adjudicator from the Adjudicator Roster.
 - (i) Track 1 claims are for non-pecuniary League and Team Damages only and will be determined on a paper record without a hearing. Damages awarded for a Track 1 claims will not exceed \$100,000. Costs in Track 1 will be capped at \$12,000, unless a Rule 49 offer to settle has been made to which cost consequences apply.
 - (ii) Track 2 claims are for any League and Team Damages and will be determined at a hearing.
 - b) Track 3 claims will proceed by summary judgment, with the modifications set out below.
- 21.2 Counsel for the Claimant, or the Claimant, will advise the Administrator of the Track selected by the Claimant.
- 21.3 The Administrator will add the Track chosen by the Claimant to the Claims Index and will provide a copy of the Index, with this information listed for each Claim, to counsel for each Claimant.

22. Filing of Joinder Actions

- 22.1 Claimants will be grouped by the Team on which the majority of the abuse that they experienced occurred, at the discretion of IIP Counsel or counsel for the Claimant.
- 22.2 Up to two joinder actions will be commenced per Team:
- a) For each Team for which at least two Claimants have opted for Track 1 or 2, a joinder action will be commenced.
 - b) For each Team for which at least two Claimants have opted for Track 3, a Track 3 joinder action will be commenced.

- 22.3 Where there is only one Track 1 or 2 Claimant, or only one Track 3 Claimant, for a Team, an individual action will be commenced. The adjudication procedures, described below, will apply to these actions.
- 22.4 Each action under this Protocol will be filed in Toronto. No defendant or Claimant will move to transfer any action under this Protocol.
- 22.5 All Track 1 and 2 actions will proceed in sealed court files in accordance with s. 137(2) of the *Courts of Justice Act*, R.S.O. 1990, c. C.43. Track 3 claimants may apply in the regular course to seal all or part of their court file.
- 22.6 Each action will name, as defendants, the Team, Member League, and the CHL, and any additional Teams against which a Claimant in that action has claims.
- 22.7 Track 1 and 2 Actions will be commenced within 6 months of the Claims Deadline.
- 22.8 Defending Counsel will accept service of the action on behalf of the defendants that they represent.
- 22.9 No motion, other than motions contemplated in this Protocol, may be brought on an action under this Protocol without leave of the court.

23. Lifting of the Implied Undertaking Rule

- 23.1 The Deemed Undertaking Rule (rule 30.1) will not apply between actions commenced under this Protocol.
- 23.2 Evidence obtained in one action commenced under this Protocol may be proffered in any other action commenced under this Protocol, provided that it is relevant and material to the action in which it is proffered.

Procedure and Protections for Track 1 and 2 Claims

24. Allocation of Adjudicators to Track 1 and 2 Claims

- 24.1 Each individual Track 1 and 2 Claim will be referred to a Claims Adjudicator for determination in accordance with this Protocol.
- 24.2 Track 1 and 2 Claims will be determined out of court.
- 24.3 Track 1 and 2 Claims will be allocated to Claims Adjudicators in a manner that promotes efficiency and consistency in determinations.
- 24.4 To the greatest extent possible, the same Claims Adjudicator or Adjudicators will consider all of the Track 1 and 2 Claims from one Member League.

25. Lead Adjudicator Opinion

- 25.1 An individual Claims Adjudicator will be appointed, from the Adjudicator Roster, by the IIP Judge to act as Lead Adjudicator.

- 25.2 The opinions expressed by the Lead Adjudicator in their reports will guide other Claims Adjudicators in considering similar issues to those considered by the Lead Adjudicator. Claims Adjudicators should provide reasons for departing from these opinions.

26. Common Documents Package

- 26.1 To reduce duplication of efforts, IIP Counsel and CHL Counsel will endeavour to agree on a Common Documents Package for all claims.
- 26.2 The Common Documents Package, if one is agreed upon, will be provided to all Claimants' counsel, and will form part of the record before a Claims Adjudicator on each Track 1 and 2 Claim.
- 26.3 The admissibility of, and weight to be given to, evidence contained in any Common Documents Package will be for each Claims Adjudicator to decide.

27. Cross-Examination with Support Person Present

- 27.1 On Track 1 and 2 Claims, a Claimant may request that their cross-examination be conducted in the presence of the Support Person.
- 27.2 The Support Person will provide support before, during and after the cross-examination, and may speak with the Claimant about their evidence during any breaks in the cross-examination.

28. Track 1 Claims

- 28.1 Only non-pecuniary League and Team Damages of up to \$100,000 will be available in Track 1.
- 28.2 There will be no examinations for discovery in Track 1.
- 28.3 The process for litigating a Track 1 claim will be as follows:
- a) The Claimant will provide, to the Claim Adjudicator and the defendants, a personal affidavit.
 - b) The Claimant may also provide, at the same time, up to four additional affidavits in support of their claim.
 - c) Within 60 days of receiving the Claimant's affidavits, the Defendants may provide, to the Claim Adjudicator and the Claimant, up to 5 affidavits.
 - d) Within 30 days of receiving the Defendants' affidavits, if any, the Claimant may provide reply affidavits.
 - e) Upon the last of these affidavits being provided, each of the affiants may be cross-examined:

- (i) Orally, for a duration of no more than 2 hours, unless the parties agree to extend it; or
 - (ii) By written interrogatories of equivalent length to that permitted orally.
- f) All cross-examinations will be conducted, and all written interrogatories responded to, within 90 days upon request.
- g) The Claimant will provide written submissions of no more than 30 pages:
- (i) If no cross-examinations are requested, within 60 days of the final affidavit being provided;
 - (ii) If cross-examinations are requested, within 60 days of the transcript being delivered for the final cross-examination.
- h) Within 45 days of receiving the Claimant's written submissions, the Defendants may provide one set of written submissions of no more than 30 pages.
- i) Within 20 days of receiving the Defendants' written submissions, the Claimant may provide a short 5-page reply.
- 28.4 No other evidence, other than any Common Documents Package, can be provided on a Track 1 Claim. However, where relevant, the Adjudicator may consider an affidavit or a cross-examination provided or conducted on another Track 1 or Track 2 Claim.
- 28.5 After receiving the Defendants' written submissions, the Claims Adjudicator shall prepare a report addressing the points described at part 30.1, below, and shall endeavour to do so within 90 days.
- 28.6 On a Track 1 Claim, an Adjudicator may not award costs of more than \$12,000.

29. Track 2 Claims

- 29.1 Only League and Team Damages will be available in Track 2.
- 29.2 IIP Counsel and CHL Counsel will agree upon a roster of joint experts in the following areas for use in all Track 2 Claims:
- a) Psychology/Psychiatry;
 - b) Cost of Future/Past Healthcare;
 - c) Vocational; and
 - d) Accounting.
- 29.3 The cost of the joint experts will be borne by the Defendants in each Track 2 claim until a final decision is made with respect to costs and disbursements.

29.4 The process for making a Track 2 claim will be as follows:

- a) Affidavits of Documents:
 - (i) The Claimant will provide an affidavit of documents.
 - (ii) Within 60 days of receiving the Claimant's affidavit of documents, each Defendant will provide an affidavit of documents;
- b) Examinations for Discovery:
 - (i) Within 90 days of the exchange of affidavits of documents, examinations for discovery will take place.
 - (ii) No party shall, in conducting oral examinations, exceed a total of three hours of examination, regardless of the number of parties or other persons to be examined.
- c) Fact Evidence:
 - (i) Within 120 days of the completion of examinations for discovery, the joint experts shall deliver their reports to the parties.
 - (ii) Within 45 days of the completion of the joint expert reports, the Claimant shall provide a personal affidavit in support of their claim, and any additional affidavits.
 - (iii) Within 45 days of receiving the Claimant's affidavits, the Defendants may provide responding affidavits.
 - (iv) Within 30 days of receiving the Defendants' responding affidavits, the Claimant may provide reply affidavits.
- d) Upon the last of these affidavits being provided, each of the affiants may be cross-examined:
 - (i) Orally, for a duration of no more than 4 hours, unless the parties agree to extend it; or
 - (ii) By written interrogatories of equivalent length to that permitted orally.
- e) All cross-examinations will be conducted within 60 days upon request.
- f) The Claimant will provide written submissions of no more than 40 pages:
 - (i) If no cross-examinations are requested, within 45 days of the final affidavit.
 - (ii) If cross-examinations are requested, within 45 days of the final cross-examination transcript being delivered.

- g) Within 30 days of receiving the Claimant's written submissions, the Defendants may provide written submissions of no more than 40 pages.
 - h) Within 15 days of receiving the Defendant's written submissions, the Claimant may provide reply submissions of no more than 10 pages.
- 29.5 Within 15 days of receiving the final written submissions, the Claims Adjudicator will convene an oral hearing of no more than one day.
- 29.6 The Claims Adjudicator shall, following the oral hearing, prepare a report addressing the points described at part 30.1, below, and shall endeavour to release the report within 90 days.

30. Adjudicator Reports and Confirmation Motions

- 30.1 Upon determining a Track 1 or Track 2 claim, the Claims Adjudicator will issue a report stating:
- a) The events that the Claims Adjudicator is satisfied, on a balance of a probabilities, took place;
 - b) The harms that the Claims Adjudicator is satisfied, on a balance of probabilities, were suffered by the Claimant as a result of these events;
 - c) The defendants that the Claims Adjudicator finds liable for these harms, and why;
 - d) The apportionment of liability as between defendants, and to any non-parties, if applicable;
 - e) The damages that the Claims Adjudicator recommends awarding to the Claimant; and
 - f) Any award of costs that the Claims Adjudicator deems appropriate.
- 30.2 Claimants' Counsel will bring motions to confirm the Claims Adjudicators' reports, which motions may be brought individually or in batches.
- 30.3 IIP Counsel, Claimant's Counsel, Defending Counsel or CHL Counsel may make submissions on a confirmation motion.

31. Track 3 Claims

- 31.1 Track 3 Claims shall be determined by summary judgment motions pursuant to the *Rules of Civil Procedure*, with the alterations described below.
- 31.2 One or more summary judgment motions will be brought to determine the claims in each Track 3 joinder action, at the discretion of Claimant's Counsel.

31.3 For each Claimant on a Track 3 Claim, the Statement of Claim will provide, to the best of the Claimant's knowledge, information identifying the individuals who directly perpetrated the abuse at issue in their claim. These individuals:

- a) May be named, additionally to the Claimants' Team, Member League and the CHL, as defendants on the Statement of Claim; or
- b) May be the subject of a Third Party Claim brought by the Defendants within the timeframe set out below.

31.4 The process for determining Track 3 Claims will be as follows:

- a) Within 30 days of receiving a Statement of Claim for a Track 3 joinder action, the Defendants shall deliver their Statement of Defence and any Third Party Claim, pursuant to part 31.3(b), above.
- b) The Claimants shall deliver their reply:
 - (i) Within 30 days after receiving the Statement of Defence, if no Third Party Claim has been made;
 - (ii) Within 45 days after receiving the Statement of Defence, if a Third Party Claim has been served in Ontario;
 - (iii) Within 60 days after receiving the Statement of Defence, if a Third Party Claim has been served elsewhere in Canada or in the United States; or
 - (iv) Within 90 days after receiving the Statement of Defence, if a Third Party Claim has been served anywhere else.
- c) Within 120 days after delivering their reply, the Claimants shall deliver a notice of motion for Summary Judgment, and their supporting affidavits for the motion.
- d) Within 120 days after receiving the Claimants' motion and supporting affidavits, the Defendants and any Third Party may deliver affidavits in response to the summary judgment motion.
- e) Within 60 days after delivery of the Defendants and Third Party's responding materials, any party may deliver reply affidavits.
- f) No less than 30 days after the delivery of the Defendants and Third Party's responding materials, the Claimants shall bring a motion to fix a timetable for the balance of the summary judgment motion.

32. Discontinuance of the Class Proceeding: *Carcillo v. Canadian Hockey League et al*

32.1 Pursuant to s. 28 of the *Class Proceedings Act*, as it stood when the *Carcillo* action was filed, the limitation period for claims under this Protocol was suspended on June 18, 2020.

- 32.2 Pursuant to s. 28 of the *Class Proceedings Act*, as it stood when the *Carcillo* action was filed, the limitation period for claims under this Protocol will remain suspended until the class proceeding is discontinued.
- 32.3 When IIP Counsel is satisfied that all joinder actions contemplated by this Protocol have been issued, IIP Counsel will bring a motion to discontinue the class action.
- 32.4 If IIP Counsel fails to do so, CHL Counsel may bring a motion to discontinue the class action.
- 32.5 The Dismissal Order of Perell J., on the *Ragoonanan* motion brought by the defendants in the *Carcillo* action will remain suspended until the class proceeding is discontinued, unless the IIP Judge orders otherwise.

SCHEDULE B

Abuse of Players in the Canadian Hockey League IIP

Notice and Dissemination Plan

1. General

- 1.1 This Notice and Dissemination Plan governs the procedure for notifying Players (as defined below) who played in the Canadian Hockey League (including its Member Leagues, the Ontario Hockey League, Western Hockey League, and Quebec Major Junior Hockey League) of the Individual Issues Protocol ("IIP") and the opportunity to opt-in to make a claim under the IIP.
- 1.2 In this Notice and Dissemination Plan:
- a) **"Administrator"** means a company to be determined by the parties providing administration services;
 - b) **"CHL"** means the Canadian Hockey League;
 - c) **"QMJHL"** means the Quebec Major Junior Hockey League;
 - d) **"OHL"** means the Ontario Hockey League;
 - e) **"WHL"** means the Western Hockey League;
 - f) **"Member Leagues"** means the QMJHL, OHL, and WHL;
 - g) **"Teams"** means the major junior hockey teams of the Member Leagues;
 - h) **"the *Carcillo* action"** means the proposed class action, *Carcillo v. Canadian Hockey League*, CV-20-00642705-00CP;
 - i) **"IIP Judge"** means the case management judge for the *Carcillo* Action;
 - j) **"IIP Counsel"** means Koskie Minsky LLP, in their role as Counsel responsible for administering the Individual Issues Protocol on behalf of all Claimants;
 - k) **"CHL Counsel"** means the lawyers representing the defendants in the *Carcillo* Action with respect to issues relating to the administration of the IIP Process;
 - l) **"Player"** means any individual who plays, has played, or who attended a training camp or other activities as a prospective player, for any Team within the CHL at any time from 1975 to the present;
 - m) **"Notice Date"** means the date on which the Administrator sends an email to Players, as contemplated in part 3.2(d); and
 - n) **"Claims Period"** means the 12-month period between the Notice Date and the deadline for making a claim.

2. Form of Notice

2.1 Notice of the IIP will be provided to Players:

- a) In the short form set out in Appendix A, as distributed in accordance with this plan; and,
- b) In the form of a website ("the CHL Abuse Website"), as described in part 4, below, and Appendix B, a link to which will be distributed in accordance with this plan.

3. Distribution of Short Form Notice

3.1 The Short Form Notice will be distributed by the Administrator, IIP Counsel, CHL Counsel and the Defendants, as described below.

3.2 The Short Form Notice shall be distributed to Players by email, as follows:

- a) Each defendant Team, Member League, and the CHL shall provide the Administrator with the email address of every current and former Player for whom the Team or League has this information within 30 days of this Notice and Dissemination Plan being ordered.
- b) CHL Counsel shall ensure that every defendant Team and League fulfils the obligation set out in part 3.2(a), above.
- c) IIP Counsel shall provide the Administrator with the email address of every current and former Player who has contacted IIP Counsel regarding abuse in the CHL, within 30 days of this Notice and Dissemination Plan being ordered.
- d) When parts 3.2(a) to 3.2(c) have been complied with, the Administrator shall send to each Player for whom an email address has been provided the Short Form Notice, in both English and French.

3.3 The Administrator shall send the Short Form Notice and the French language translation to any Player who requests it after the Notice Date.

3.4 The defendants and CHL Counsel shall provide a copy of the Short Form Notice to any individual who contacts them during the Claims Period regarding abuse of Players.

3.5 On the Notice Date, or within 7 days thereafter, IIP Counsel shall issue a press release, in English and French through Canada Newswire, announcing the claims process and including within it the Short Form Notice.

3.6 The Administrator and IIP Counsel shall post the Short Form Notice and its French language translation on their websites on, or within 7 days after, the Notice Date.

3.7 Each defendant that maintains a website or websites shall post the Short Form Notice and its French language translation on their websites.

- a) This posting must be made in a prominent, easily accessible section of the defendants' websites, and – if the websites contain a section relating to player support – shall be posted in that section.
 - b) This posting must be made on, or within 14 days after, the Notice Date.
- 3.8 Within 14 days of the Notice Date, each defendant Team shall post, and re-post as necessary, paper copies of the Short Form Notice in the arena in which that Team plays:
- a) In a prominent location by or close to each entrance/exit used by the public in attending hockey games; and
 - b) In a prominent location in each locker room used by any Player.
- 3.9 The defendants are responsible for ensuring that all paper copies of the Short Form Notice are replaced if removed, defaced or damaged.

4. The CHL Abuse Website

- 4.1 The Administrator, with input from IIP Counsel and CHL Counsel, will create a website ("the CHL Abuse Website").
- 4.2 The CHL Abuse Website will become public on the Notice Date, shortly prior to or simultaneously with the sending of the email contemplated in part 3.2(d).
- 4.3 The CHL Abuse Website will be maintained until the IIP is exhausted or the External Reviewer publishes their report, whichever occurs later, and for at least 5 years thereafter.
- 4.4 The CHL Abuse Website will include the pages and content set out in Appendix B, and any additional content that the parties agree to include, or that the IIP Judge orders be included.
- 4.5 The CHL Abuse Website will include a professionally produced video, to be produced at the expense of the defendants.
- 4.6 The CHL Abuse Website will include a pop-up warning, when first accessed from a particular device and internet browser, regarding the nature of the details of abuse described therein.
- 4.7 The CHL Abuse Website will include a prominent "Exit Website" button on every page, allowing individuals to navigate away from the CHL Abuse Website.
- 4.8 The CHL Abuse Website will be available in both English and French.
 - a) The Administrator will translate each page of the website into French.
 - b) Prominent buttons in the header of the website, included on every page, will allow visitors to the website to switch between the English and French versions.

- 4.9 Once complete, the External Reviewer's public report, as described in part 8 of the Individual Issues Protocol, will be posted on the CHL Abuse Website.

5. Dissemination of Link to the CHL Abuse Website

- 5.1 In addition to the distribution of the Short Form Notice, the link directing Players to the CHL Abuse Website will be disseminated with the following text:
- a) "Did you play in the Canadian Hockey League at any time since 1975? If you suffered abuse in the Canadian Hockey League, you can claim compensation. Your claim can be kept confidential. Visit [[CHL Abuse Website](#)] to learn more and make a claim;" or
 - b) "Did you play in the Canadian Hockey League at any time since 1975? If you suffered abuse in the Canadian Hockey League, you can claim compensation. Your claim can be kept confidential. Click here to learn more and make a claim."
- 5.2 The Administrator shall post advertisements, using the text set out in part 5.1, above, and containing a link to the CHL Abuse Website, in the following ways, to be maintained through the Claims Period:
- a) Internet banner notices on Google Display Network, Facebook, and advertisements on social media applications, including but not limited to Instagram and Twitter; and
 - b) Advertisements on website dedicated to sports reporting, including but not limited to [thehockeynews.com](#), [hockeyfeed.com](#), [sportsnet.ca](#); and [theathletic.com](#).
- 5.3 Each defendant that maintains a social media account, including but not limited to an account on Facebook, Instagram, or Twitter, shall post the text set out in part 5.1, above, including a link to the CHL Abuse Website, on each social media account at least 4 times during the Claims Period, with each post no less than 30 days apart.

Appendix A: Short Form Notice

DID YOU PLAY IN THE CANADIAN HOCKEY LEAGUE?

If you were abused while playing in the CHL, you can claim compensation through a confidential process now.

Since 1975, hockey players have experienced bullying, hazing and abuse while playing on teams in the Canadian Hockey League. A claims process has been created to allow these players to claim compensation.

Am I eligible to make a claim?

You are eligible to make a claim if:

- 1) You played for, or participated in training or tryouts for, a team in the CHL, including any team in the OHL, WHL, or QMJHL, at any time since 1975; and
- 2) You experienced bullying, hazing or abuse while playing in the CHL.

What can I claim?

You can make a claim for compensation for the abuse that you experienced. If successful, you will receive money to compensate you for the harms that you suffered because of that abuse.

You will also be able to share your story on an anonymous basis with a third-party reviewer, who will compile a public report on abuse in the CHL.

How will my claim be determined?

You will choose how your claim is determined from three possible tracks. The simplest of those tracks is **confidential**, does not involve a court hearing, and will allow you to claim up to **\$100,000**. However, you may be entitled to **much more money**.

What do I have to do to make a claim?

This is an opt-in claims process. To start a claim using this process, visit [CHL Abuse Website]_or contact Koskie Minsky LLP or the Administrator by [Claims deadline], using the information below.

Koskie Minsky LLP	Administrator
[Telephone]	[Telephone]
[Email]	[Email]

For more information visit: [CHL Abuse Website]

Appendix B: Contents of the CHL Abuse Website

Home Page

This page will contain:

- a) A professionally-produced video featuring former players;
- b) A short introductory paragraph; and
- c) An adapted form of the Short Form Notice, with links to other pages in the website where appropriate.

Abuse in the CHL

This page will include buttons to download Perell J.'s Certification Reasons, the Independent Review Panel Report, the Affidavits of Players filed on the Certification Motion, in addition to the various types of abuse that this process aims to compensate.

The Claims Process

This page will contain a button to download a full copy of the Individual Issues Protocol, in addition to text providing a plain language description of each of the Phases and Tracks of the Protocol.

Wellness Support

This page will contain:

- d) Information on contacting the Support Person, as described in the IIP.
- e) Links to other external online supports, not to include resources of any kind created by the defendants.

Make a Claim

This page will contain a short webform through which Players can provide the information required to initiate a claim.

FAQs

This page will include a list of questions, that can be expanded to view the answer.

SCHEDULE C

Court File No.: CV-20-642705-00CP

**ONTARIO
SUPERIOR COURT OF JUSTICE**

THE HONOURABLE) _____, THE _____
)
 JUSTICE PERELL)
) DAY OF _____, 2023

B E T W E E N :

DANIEL CARCILLO, GARRETT TAYLOR and STEPHEN QUIRK

Plaintiffs

- and -

ONTARIO MAJOR JUNIOR HOCKEY LEAGUE, CANADIAN HOCKEY LEAGUE, WESTERN HOCKEY LEAGUE, QUEBEC MAJOR JUNIOR HOCKEY LEAGUE, BARRIE COLTS JUNIOR HOCKEY LTD., GUELPH STORM LTD., HAMILTON BULLDOGS FOUNDATION INC., KINGSTON FRONTENACS HOCKEY LTD., KITCHENER RANGERS JR. A. HOCKEY CLUB, LONDON KNIGHTS HOCKEY INC., MISSISSAUGA STEELHEADS HOCKEY CLUB INC., 2325224 ONTARIO INC. o/a MISSISSAUGA STEELHEADS, NIAGARA ICEDOGS HOCKEY CLUB INC., NORTHBAY BATTALION HOCKEY CLUB LTD., OSHAWA GENERALS HOCKEY ACADEMY LTD., OTTAWA 67'S LIMITED PARTNERSHIP c.o.b. OTTAWA 67's HOCKEY CLUB, THE OWEN SOUND ATTACK INC., PETERBOROUGH PETES LIMITED, 649643 ONTARIO INC. o/a 211 SSHC CANADA ULC o/a SARNIA STING HOCKEY CLUB, SOO GREYHOUNDS INC., SUDBURY WOLVES HOCKEY CLUB LTD., WINDSOR SPITFIRES INC., MCCRIMMON HOLDINGS, LTD., 32155 MANITOBA LTD., A PARTNERSHIP c.o.b. as BRANDON WHEAT KINGS, BRANDON WHEAT KINGS LIMITED PARTNERSHIP, CALGARY FLAMES LIMITED PARTNERSHIP, CALGARY SPORTS AND ENTERTAINMENT CORPORATION, EDMONTON MAJOR JUNIOR HOCKEY CORPORATION, KAMLOOPS BLAZERS HOCKEY CLUB, INC. KAMLOOPS BLAZERS HOLDINGS LTD., KELOWNA ROCKETS HOCKEY ENTERPRISES LTD., PRINCE ALBERT RAIDERS HOCKEY CLUB INC., EDGEPRO SPORTS & ENTERTAINMENT LTD., QUEEN CITY SPORTS & ENTERTAINMENT GROUP LTD., BRAKEN HOLDINGS LTD., REBELS SPORTS LTD., SASKATOON BLADES HOCKEY CLUB LTD., VANCOUVER JUNIOR HOCKEY LIMITED PARTNERSHIP and VANCOUVER JUNIOR HOCKEY PARTNERSHIP, LTD c.o.b. VANCOUVER GIANTS, WEST COAST HOCKEY LLP, WEST COAST HOCKEY ENTERPRISES LTD., o/a VICTORIA ROYALS, MEDICINE HAT TIGERS HOCKEY CLUB LTD., 1091956 ALTA LTD. o/a THE MEDICINE HAT TIGERS, SWIFT CURRENT TIER 1

FRANCHISE INC. and SWIFT CURRENT BRONCOS HOCKEY CLUB INC. o/a THE SWIFT CURRENT, ICE SPORTS & ENTERTAINMENT INC. o/a WINNIPEG ICE, MOOSE JAW TIER 1 HOCKEY INC. D.B.A. MOOSE JAW and MOOSE JAW WARRIORS TIER 1 HOCKEY, INC. WARRIORS o/a MOOSE JAW WARRIORS, LETHBRIDGE HURRICANES HOCKEY CLUB, 649643 ONTARIO INC. c.o.b. as SARNIA STING, KITCHENER RANGER JR A HOCKEY CLUB and KITCHENER RANGERS JR "A" HOCKEY CLUB, LE TITAN ACADIE BATHURST (2013) INC., CLUB DE HOCKEY JUNIOR MAJEUR DE BAIE-COMEAU INC. o/a DRAKKAR BAIE-COMEAU, CLUB DE HOCKEY DRUMMOND INC. o/a VOLTIGEURS DRUMMONDVILLE, CAPE BRETON MAJOR JUNIOR HOCKEY CLUB LIMITED o/a SCREAMING EAGLES CAPE BRETON, LES OLYMPIQUES DE GATINEAU INC., HALIFAX MOOSEHEADS HOCKEY CLUB INC., CLUB HOCKEY LES REMPARTS DE QUÉBEC INC., LE CLUB DE HOCKEY JUNIOR ARMADA INC., MONCTON WILDCATS HOCKEY CLUB LIMITED, LE CLUB DE HOCKEY L'OCÉANIC DE RIMOUSKI INC., LES HUSKIES DE ROUYN-NORANDA INC., 8515182 CANADA INC. c.o.b. as CHARLOTTETOWN ISLANDERS, LES TIGRES DE VICTORIAVILLE (1991) INC., SAINT JOHN MAJOR JUNIOR HOCKEY CLUB LIMITED, CLUB DE HOCKEY SHAWINIGAN INC. o/a CATARACTES SHAWNIGAN, CLUB DE HOCKEY JUNIOR MAJEUR VAL D'OR INC. o/a VAL D'OR FOREURS, 7759983 CANADA INC. c.o.b. as CLUB DE HOCKEY LE PHOENIX, 9264-8849 QUÉBEC INC. c.o.b. as GROUPE SAGS 7-96 AND LES SAGUENÉENS, JAW HOCKEY ENTERPRISES LP c.o.b. ERIE OTTERS, IMS HOCKEY c.o.b. FLINT FIREBIRDS, SAGINAW HOCKEY CLUB, L.L.C., EHT, INC., WINTERHAWKS JUNIOR HOCKEY LLC, PORTLAND WINTER HAWKS INC., THUNDERBIRDS HOCKEY ENTERPRISES, L.L.C, BRETT SPORTS & ENTERTAINMENT, INC., HAT TRICK, INC., TRI-CITY AMERICANS HOCKEY LLC, and TOP SHELF ENTERTAINMENT, INC.

Defendants

Proceeding under the *Class Proceedings Act, 1992*

COMMON DISCOVERY ORDER

THIS MOTION, made by the Plaintiffs for the approval of an an Individual Issues Protocol ("**IIP**") and an order addressing the process for and scope of common production of documents pursuant to that IIP was heard this day;

ON READING the Notice of Motion of the Plaintiffs, the affidavit of Catherine MacDonald dated June 5, 2015 and the exhibits thereto, the Affidavits of Dr. Wolfe and Dr. Jaffe, affirmed June 2, 2023 and the exhibits thereto, the Motion Records, Transcripts,

and Factums filed in the motions heard November 14-17, 2022, the and on hearing the submissions of the lawyers for the Plaintiffs and the Defendants, and such other counsel as were present and listed on the counsel slip:

1. **THIS COURT ORDERS** that the Defendants produce to the Plaintiffs the following documents (collectively, "**Common Discovery Documents**"):

- (a) Any survey, poll, questionnaire, sampling or investigation commissioned, prepared, or distributed by the Canadian Hockey League ("**CHL**"), the Ontario Hockey League ("**OHL**"), the Western Hockey League ("**WHL**"), or the Quebec Major Junior Hockey League ("**QMJHL**") since the commencement, relating to the experience of any Player¹ who experienced Abuse² while playing in the CHL between May 8, 1975 and the present, and the results thereof;
- (b) Any minutes, record, narrative, proceedings, summary, or notes of:
 - (i) any CHL Executive Council meeting at which Abuse was discussed, discussed, debated, considered, reviewed, examined or explored between May 8, 1975 and the present;
 - (ii) any CHL Board meeting at which Abuse was discussed, discussed, debated, considered, reviewed, examined or explored between May 8, 1975 and the present;
 - (iii) any other meeting of any other committee, board, cabinet, chamber, panel, or task force of the CHL at which Abuse was discussed,

¹ "**Player(s)**" means any individual who plays, has played, or who attended a training camp or other activities as a prospective player, for any Team within the CHL at any time from 1975 to the present.

² "**Abuse**" means, inter alia, physical and sexual assault, hazing, bullying, physical and verbal harassment, sexual harassment, forced consumption of alcohol and illicit drugs, and the use of homophobic, sexualized and /or racist slurs directed against minors playing in the Leagues, perpetrated by players, coaches, staff, servants, employees and agents of the Leagues, including players, coaches, staff, servants, employees and agents of the Teams, as further particularized in the Fresh as Amended Statement of Claim dated March 25, 2022.

discussed, debated, considered, reviewed, examined or explored between May 8, 1975 and the present;

- (iv) any OHL, WHL and/or QMJHL Board of Governors meeting at which Abuse was discussed, discussed, debated, considered, reviewed, examined or explored between May 8, 1975 and the present;
 - (v) any other meeting of any other committee, board, cabinet, chamber, panel, or task force of the OHL, WHL and/or QMJHL at which Abuse was discussed, discussed, debated, considered, reviewed, examined or explored between May 8, 1975 and the present;
 - (vi) to the extent not captured by any of subparagraphs (b)(i) to b(v), any *ad hoc* committee of the CHL, OHL, QMJHL, and/or WHL at which Abuse was discussed, discussed, debated, considered, reviewed, examined or explored May 8, 1975 and the present;
- (c) Any policy, procedure, memorandum, opinion, blueprint, code or guideline prepared by the CHL, OHL, WHL, or QMJHL relating to Abuse or the prevention of Abuse used between May 8, 1975 and the present;
 - (d) Any constitution, charter, cannon, laws or regulations governing the CHL, OHL, WHL, QMJHL, whether these organizations were identified by that name or any other name including the Canadian Major Junior Hockey League used at any time between May 8, 1975 and the present;
 - (e) Any relevant document relating to a decision to discipline, punishment, sanction or correction (collectively, "**Sanctions**") of any Team³ or Player relating to Abuse by:

³ "**Team(s)**" means all the hockey clubs that participate in the CHL, OHL, WHL, and QMJHL between May 8, 1975 and the present, whether the hockey club continues to exist or operate, regardless of the business organization through which that hockey club operated. A non-exhaustive list of Teams is included as part of Appendix A.

- (i) the CHL;
- (ii) the OHL;
- (iii) the WHL; and
- (iv) the QMJHL.

regardless of whether the Sanction was formal or informal, or whether the decision was made to impose Sanctions or not to impose any Sanctions, made between May 8, 1975 and the present;

- (f) All relevant documents in the power, possession or control of the CHL, the OHL, the WHL, and/or the QMJHL effecting or otherwise relating to any direct or indirect sale, conveyance, transfer, assignment or other disposition (voluntary or involuntary, by operation of law or otherwise, and whether or not for consideration) (each, a "**Transfer**") between May 8, 1975 and the present, of:
 - (i) any interest in all or a portion of the assets of any Team, except for Transfers of assets which do not comprise a significant portion of the assets of any Team conducted in the normal course of business of such Team(s);
 - (ii) any interest in all or a portion of the shares, units, or other ownership interests in any Team. For clarity, any issuance or cancellation of any shares, units or other ownership interests in a Team which results in any change in the ownership of the Team shall be considered a "**Transfer**" subject to this section;
- (g) All relevant documents effecting or otherwise relating to a change in Control⁴ of any entity with a direct or indirect ownership interest in any

⁴ "**Control**" means the direct or indirect power to direct the management, policies, decisions or activities of any individual person, corporation, partnership (including a limited partnership), trust, company (including a limited liabilities company), joint venture, unincorporated association, government or agency.

Team or which Controlled any Team between May 8, 1975 and the present in the power, possession or control of the CHL, the OHL, the WHL, and/or the QMJHL; and

- (h) All relevant documents in the power, possession or control of the CHL, the OHL, the WHL, and/or the QMJHL effecting or otherwise relating to the amalgamation, merger, reorganization, restructuring, dissolution, liquidation, wind-up, termination, cancellation, insolvency or bankruptcy of any Team between May 8, 1975 and the present.

2. **THIS COURT ORDERS** that the Defendants shall produce the following specified list of documents in their power, possession or control (the "**Hockey Canada CHL Insurance Documents**"):

- (a) Hockey Canada, "History of the National Equity Fund" referenced at footnote 544 of the Final Report, Hockey Canada Governance Review of the Honourable Thomas Cromwell, C.C., dated October 31, 2022 ("**Final Cromwell Report**");
- (b) Hockey Canada, Board of Directors, Minutes of Meeting (held on 1-3 December 1989) referenced at footnote 559 to 560 of the Final Cromwell Report;
- (c) Note 9 to the Hockey Canada, "Financial Statements" (year end 30 June 2000) referenced in footnote 425 of the Interim Report, Hockey Canada Governance Review of the Honourable Thomas Cromwell, C.C., dated October 31, 2022 ("**Interim Cromwell Report**");
- (d) Application made to the Court of Queen's Bench of Alberta by the Trustees of the Legacy Trust (25 January 2019) referenced at paragraph 574 and 577 of the Final Cromwell Report;
- (e) Hockey Canada presentation from the 2018 Spring Congress to its Members referenced at footnote 580 of the Final Cromwell Report;

- (f) Canada Hockey Association, “Trust Agreement” (1 June 1999) (the "**Trust Agreement**") referenced in footnote 426 to 428 of the Interim Cromwell Report and footnote 573 and 575 of the Final Cromwell Report, and any prior or subsequent iterations of the same document, including any document modifying the Trust Agreement;
- (g) Canadian Hockey Association, “Tail Coverage Agreement” (24 May 1999) referenced in footnote 429 of the Interim Cromwell Report and footnote 576 of the Final Cromwell Report, and any prior or subsequent iterations of the same document;
- (h) Email to BFL Canada from AIG (11 May 2022) referenced in footnote 621 of the Final Cromwell Report; and
- (i) Any other document related to moneys available to Hockey Canada (or its predecessor the Canadian Hockey Association) used to reduce insurance costs for the benefit of CHL, OHL, WHL, and/or QMJHL, or their Players.

3. **THIS COURT ORDERS** that, in accordance with the Abuse of Players in the Canadian Hockey League Individual Issues Protocol dated _____, 2023 the Defendants shall produce the Common Discovery Documents on a rolling basis, as soon as a document is available for production. Production of all documents shall be made by no later than _____ (the "**Outside Date**").

Appendix A

Ontario Hockey League

Current Teams

Barrie Colts,
Erie Otters,
Flint Firebirds
Guelph Storm,
Hamilton Bulldogs,
Kingston Frontenacs,
Kitchener Rangers,
London Knights,
Mississauga Steelheads,
Niagara IceDogs,
Northbay Battalion,
Oshawa Generals,
Ottawa 67's,
Owen Sound Attack,
Peterborough Petes,
Saginaw Spirit,
Sarnia Sting,
Soo Greyhounds,
Sudbury Wolves,
Windsor Spitfires,

Former Teams

Cornwall Royals,
Newmarket Royals,
Niagara Falls Flyers,
North Bay Centennials,
Brantford Alexanders,
Hamilton Steelhawks,
Niagara Falls Thunder,
Guelph Platers,
Toronto Marlboros,
Dukes of Hamilton,
Detroit Junior Red Wings,
Detroit Whalers,
Plymouth Whalers,
Brampton Battalion,
Mississauga IceDogs,
Toronto St. Michael's Majors,
Belleville Bulls,

Western Hockey League

Current Teams

Kamloops Blazers,
Kelowna Rockets,
Prince George Cougars,
Vancouver Giants,
Victoria Royals,
Calgary Hitmen,
Edmonton Oil Kings,
Lethbridge Hurricanes,
Medicine Hat Tigers,
Red Deer Rebels,
Swift Current Broncos,
Brandon Wheat Kings,
Moose Jaw Warriors,
Prince Albert Raiders,
Regina Pats,
Saskatoon Blades,
Winnipeg ICE
Everett Silvertips,
Portland Winterhawks,
Seattle Thunderbirds,
Spokane Chiefs,
Tri-City Americans,

Former Teams

Billings Bighorns
Calgary Centennials
Calgary Wranglers
Chilliwack Bruins
Edmonton Ice
Edmonton Oil Kings
Estevan Bruins
Great Falls Americans
Kamloops Chiefs
Kamloops Junior Oilers
Kelowna Wings
Lethbridge Broncos
Moose Jaw Canucks
Nanaimo Islanders
New Westminster Bruins
Seattle Breakers

Spokane Flyers
Tacoma Rockets
Vancouver Nats
Victoria Cougars
Winnipeg Monarchs
Winnipeg Warriors

Quebec Major Junior Hockey League

Current Teams

Acadie-Bathurst Titan,
Baie-Comeau Drakkar,
Blainville- Boisbrand Armada,
Cape Breton Eagles,
Charlottetown Islanders,
Chicoutimi Saguenéens,
Drummondville Voltigeurs,
Gatineau Olympiques,
Halifax Mooseheads,
Moncton Wildcats,
Quebec Remparts,
Rimouski Oceanic,
Rouyn-Noranda Huskies,
Saint John Sea Dogs,
Shawinigan Cataractes,
Sherbrooke Phoenix,
Val-D'Or Foreurs,
Victoriaville Tigres

Former Teams

Beauport Harfangs
Cape Breton Screaming Eagles
Hull Hawks
Hull Festivals
Hull Olympiques
Laval National
Laval Saints
Laval Voisins
Laval Titan
Laval Titan Collège Français
Longueuil Chevaliers
Montreal Bleu Blanc Rouge
Montreal Junior Canadiens
Montreal Junior Hockey Club

Montreal Juniors
Montreal Rocket
Plattsburgh Pioneers
Rosemount National
Saint-Hyacinthe Laser
Saint-Jean Castors
Saint-Jean Lynx
Saint-Jérôme Alouettes
Shawinigan Bruins
Shawinigan Dynamos
Sherbrooke Castors
Sherbrooke Faucons
Sorel Éperviers
St. John's Fog Devils
Verdun Éperviers
Verdun Juniors
Verdun Junior Canadiens
Granby Bisons
Granby Prédateurs
Trois-Rivières Drapeurs
Trois-Rivières Ducs

Carcillo et al. Canadian Hockey League et al.
Plaintiff and Defendant

Court File No.: CV-20-642705-00CP

**ONTARIO
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at Toronto

Proceeding under the *Class Proceedings Act, 1992*

COMMON DISCOVERY ORDER

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Plaintiffs and Defendants

Court File No.: CV-20-642705-00CP

ONTARIO
SUPERIOR COURT OF JUSTICE

Proceeding commenced at Toronto

Proceeding under the *Class Proceedings Act, 1992*

NOTICE OF MOTION

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Lawyers for the Plaintiffs

Court File No.: CV-20-642705-00CP

**ONTARIO
SUPERIOR COURT OF JUSTICE**

B E T W E E N :

DANIEL CARCILLO, GARRETT TAYLOR and STEPHEN QUIRK

Plaintiffs

- and -

ONTARIO MAJOR JUNIOR HOCKEY LEAGUE, CANADIAN HOCKEY LEAGUE, WESTERN HOCKEY LEAGUE, QUEBEC MAJOR JUNIOR HOCKEY LEAGUE, BARRIE COLTS JUNIOR HOCKEY LTD., GUELPH STORM LTD., HAMILTON BULLDOGS FOUNDATION INC., KINGSTON FRONTENACS HOCKEY LTD., KITCHENER RANGERS JR. A. HOCKEY CLUB, LONDON KNIGHTS HOCKEY INC., MISSISSAUGA STEELHEADS HOCKEY CLUB INC., 2325224 ONTARIO INC. o/a MISSISSAUGA STEELHEADS, NIAGARA ICEDOGS HOCKEY CLUB INC., NORTHBAY BATTALION HOCKEY CLUB LTD., OSHAWA GENERALS HOCKEY ACADEMY LTD., OTTAWA 67'S LIMITED PARTNERSHIP c.o.b. OTTAWA 67's HOCKEY CLUB, THE OWEN SOUND ATTACK INC., PETERBOROUGH PETES LIMITED, 649643 ONTARIO INC. o/a 211 SSHC CANADA ULC o/a SARNIA STING HOCKEY CLUB, SOO GREYHOUNDS INC., SUDBURY WOLVES HOCKEY CLUB LTD., WINDSOR SPITFIRES INC., MCCRIMMON HOLDINGS, LTD., 32155 MANITOBA LTD., A PARTNERSHIP c.o.b. as BRANDON WHEAT KINGS, BRANDON WHEAT KINGS LIMITED PARTNERSHIP, CALGARY FLAMES LIMITED PARTNERSHIP, CALGARY SPORTS AND ENTERTAINMENT CORPORATION, EDMONTON MAJOR JUNIOR HOCKEY CORPORATION, KAMLOOPS BLAZERS HOCKEY CLUB, INC. KAMLOOPS BLAZERS HOLDINGS LTD., KELOWNA ROCKETS HOCKEY ENTERPRISES LTD., PRINCE ALBERT RAIDERS HOCKEY CLUB INC., EDGEPRO SPORTS & ENTERTAINMENT LTD., QUEEN CITY SPORTS & ENTERTAINMENT GROUP LTD., BRAKEN HOLDINGS LTD., REBELS SPORTS LTD., SASKATOON BLADES HOCKEY CLUB LTD., VANCOUVER JUNIOR HOCKEY LIMITED PARTNERSHIP and VANCOUVER JUNIOR HOCKEY PARTNERSHIP, LTD c.o.b. VANCOUVER GIANTS, WEST COAST HOCKEY LLP, WEST COAST HOCKEY ENTERPRISES LTD., o/a VICTORIA ROYALS, MEDICINE HAT TIGERS HOCKEY CLUB LTD., 1091956 ALTA LTD. o/a THE MEDICINE HAT TIGERS, SWIFT CURRENT TIER 1 FRANCHISE INC. and SWIFT CURRENT BRONCOS HOCKEY CLUB INC. o/a THE SWIFT CURRENT, ICE SPORTS & ENTERTAINMENT INC. o/a WINNIPEG ICE, MOOSE JAW TIER 1 HOCKEY INC. D.B.A. MOOSE JAW and MOOSE JAW WARRIORS TIER 1 HOCKEY, INC. WARRIORS o/a

MOOSE JAW WARRIORS, LETHBRIDGE HURRICANES HOCKEY CLUB, 649643 ONTARIO INC. c.o.b. as SARNIA STING, KITCHENER RANGER JR A HOCKEY CLUB and KITCHENER RANGERS JR "A" HOCKEY CLUB, LE TITAN ACADIE BATHURST (2013) INC., CLUB DE HOCKEY JUNIOR MAJEUR DE BAIE-COMEAU INC. o/a DRAKKAR BAIE-COMEAU, CLUB DE HOCKEY DRUMMOND INC. o/a VOLTIGEURS DRUMMONDVILLE, CAPE BRETON MAJOR JUNIOR HOCKEY CLUB LIMITED o/a SCREAMING EAGLES CAPE BRETON, LES OLYMPIQUES DE GATINEAU INC., HALIFAX MOOSEHEADS HOCKEY CLUB INC., CLUB HOCKEY LES REMPARTS DE QUÉBEC INC., LE CLUB DE HOCKEY JUNIOR ARMADA INC., MONCTON WILDCATS HOCKEY CLUB LIMITED, LE CLUB DE HOCKEY L'OCÉANIC DE RIMOUSKI INC., LES HUSKIES DE ROUYN-NORANDA INC., 8515182 CANADA INC. c.o.b. as CHARLOTTETOWN ISLANDERS, LES TIGRES DE VICTORIAVILLE (1991) INC., SAINT JOHN MAJOR JUNIOR HOCKEY CLUB LIMITED, CLUB DE HOCKEY SHAWINIGAN INC. o/a CATARACTES SHAWNIGAN, CLUB DE HOCKEY JUNIOR MAJEUR VAL D'OR INC. o/a VAL D'OR FOREURS, 7759983 CANADA INC. c.o.b. as CLUB DE HOCKEY LE PHOENIX, 9264-8849 QUÉBEC INC. c.o.b. as GROUPE SAGS 7-96 AND LES SAGUENÉENS, JAW HOCKEY ENTERPRISES LP c.o.b. ERIE OTTERS, IMS HOCKEY c.o.b. FLINT FIREBIRDS, SAGINAW HOCKEY CLUB, L.L.C., EHT, INC., WINTERHAWKS JUNIOR HOCKEY LLC, PORTLAND WINTER HAWKS INC., THUNDERBIRDS HOCKEY ENTERPRISES, L.L.C., BRETT SPORTS & ENTERTAINMENT, INC., HAT TRICK, INC., TRI-CITY AMERICANS HOCKEY LLC, and TOP SHELF ENTERTAINMENT, INC.

Defendants

Proceeding under the *Class Proceedings Act, 1992*

**AFFIDAVIT OF CATHERINE MACDONALD
(Sworn June 5, 2023)**

I, Catherine MacDonald, of the city of Kawartha Lakes, in the Province of Ontario
MAKE OATH AND SAY:

1. I am a law clerk with Koskie Minsky LLP, plaintiffs' counsel in the above noted action. As such, I have knowledge of the matters hereinafter deposed. I have been provided information by James Sayce, the lawyer with primary carriage of the action, and Vlad

Calina and Caitlin Leach, lawyers with Koskie Minsky LLP involved in this proceeding, which I believe to be true.

2. On December 30, 2021, James Sayce received a series of screenshots from a former Canadian Hockey League ("**CHL**") player regarding a survey of former CHL players. A copy of the screenshots, redacting the player's name, are attached as **Exhibit A**.

3. On October 13, 2022, Hockey Canada issued a news release titled "Hockey Canada Welcomes Interim Governance Review". A copy of the news release is attached as **Exhibit B**. The news release included a link to a PDF copy of the "interim report from the ongoing independent third-party governance review, led by former Justice of the Supreme Court of Canada, Honourable Thomas Cromwell, C.C. and supported by Ms. Victoria Prince and Ms. Nadia Effendi of Borden Ladner Gervais LLP (BLG)." A copy of the report is attached at **Exhibit C**.

4. On November 4, 2022, Hockey Canada issued a news release titled "Hockey Canada Releases Final Independent Governance Review from Former Supreme Court Justice Thomas Cromwell". A copy of the news release is attached as **Exhibit D**. The news release included a link to a PDF copy of " the final report from the independent third-party governance review, led by former Justice of the Supreme Court of Canada, Honourable Thomas Cromwell, C.C." A copy of the report is attached at **Exhibit E**.

5. On April 3, 2023, La Presse published an article titled "Le rêve brisé de Carl Latulippe". A copy of the article, with English translation, is attached at **Exhibit F**.

6. On April 3, 2023, the Quebec Major Junior Hockey League issued a news release titled "QMJHL statement on article published in La Presse (April 3, 2023)". A copy of the news release, in English and in French, is attached as **Exhibit G**.

SWORN by Catherine MacDonald, via video conference from the city of Kawartha Lakes, in the Province of Ontario, before me in the city of Toronto, in the Province of Ontario, on June 5, 2023, in accordance with *O. Reg. 431/20, Administering Oath or Declaration Remotely*.



CATHERINE MACDONALD



A Commissioner for taking Affidavits (*or as may be*)
CAITLIN LEACH

***THIS IS EXHIBIT "A" REFERRED TO IN THE
AFFIDAVIT OF CATHERINE MACDONALD SWORN VIA VIDEO-LINK
BEFORE ME FROM THE CITY OF KAWARTHA LAKES, IN THE
PROVINCE OF ONTARIO, TO THE CITY OF TORONTO, IN THE
PROVINCE OF ONTARIO, ON JUNE 5TH, 2023, IN ACCORDANCE WITH O.
REG. 431/20, ADMINISTERING OATH OR DECLARATION REMOTELY.***



A COMMISSIONER FOR TAKING AFFIDAVITS, ETC.

CAITLIN LEACH

File Message Help Tell me what you want to do

Mark Unread Find Zoom Check In Mail Item Check In Attachments Share to Teams

Fwd: CHL Past Player Survey / Sondage concernant les anciens joueurs de la LCH

Reply Reply All Forward ...

Tue 12/14/2021 1:26 PM

Environics has been commissioned by the CHL to conduct a survey of past players. The survey is designed to gather the feedback of past players in the WHL, OHL and QMJHL about their experiences in the league.

Anonymity for all respondents will be strictly maintained. The findings report will only present summarized, aggregate survey results in which no individual's answers can be identified.

The value of the survey relies entirely on the participation of past players like you. The survey will take about 10 minutes of your time and you can complete it at your convenience. The survey is voluntary. However you can help us very much by taking a few minutes to share your experiences and opinions.

Please complete the survey by **December 17th, 2021**.

To begin the survey, click on the link below:

https://ca.decipherinc.com/survey/selfserve/540/11321_211103?list=2&source=ihTn65ecAT

If the link above does not work please copy the URL into your browser.

If you have any questions about the survey, please contact us at CHLsurvey@environics.ca. All contacts will be held in confidence.

Thank you very much for helping with this important study.

Tony Coulson

ENVIRONICS

RESEARCH

Please select your preferred language

Veillez cocher la langue de votre choix :

English / Anglais

Français / French

Continue >

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ENVIRONICS RESEARCH

Your views are important!

This survey is designed to gather the feedback of former CHL players about various aspects of their experience in the WHL, OHL and/or QMJHL. Environics Research, a leading Canadian public opinion company, is conducting this survey on behalf of the CHL.

The value of this survey **relies entirely on the candid participation of past players** like yourself. The survey is designed to measure how often certain activities occurred. All results will be reported anonymously in combination with other responses. Individual responses will not be released to anyone.

Your email was included in a database provided to Environics for this survey and will be used only for that purpose.

Your answers will not be associated with your name or any contact information in any deliverables.

The deadline to complete the survey is December 9th.

Your privacy will be respected. The collection of survey information is done in accordance with industry standards and Environics' privacy policy: <https://environics.ca/privacy-policy/>

How to complete the survey

This survey consists of three sections and will take about 10 minutes of your time.

You can complete the survey all at once, or you may do it in sections, as your answers will be saved, and you will be brought to your last screen when you return.

Definitions of terms are provided throughout.

How to contact us

If you have any questions on how to complete the survey or about the survey content (i.e., its purpose, timing, reasons for specific questions), please contact Tony Coulson, Group VP, Environics Research - CHL.survey@Environics.ca

Please click the [Continue] button to begin.

Continue >

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ENVIRONICS RESEARCH

What year did you first play in the CHL?

Please select one.

Select one...

Continue >

Access to support from the Canadian Mental Health Association
Getting help: <https://cmha.ca/indigenous/01-get-help>
If you are in crisis: <https://cmha.ca/indigenous/you-are-in-crisis>

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ENVIRONICS RESEARCH

Which league did you play in during your rookie year in the CHL (the first year you played)?

Please select one.

- Western Hockey League (WHL)
- Ontario Hockey League (OHL)
- Quebec Major Junior Hockey League (QMJHL)

Continue >

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If you are in crisis: <https://cmha.ca/find-help/if-you-are-in-crisis/>

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ENVIRONICS RESEARCH

What was your age during your rookie year in the CHL (the first year you played)?

Please select one.

Select one... -

Continue >

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If you are in crisis: <https://cmha.ca/first-help/first-help-when-in-crisis>

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ENVIRONICS RESEARCH

Are you involved in hockey today?

Please select all that apply.

- As a player (including recreational)
- As a coach (including assistant, etc.)
- As a member of team management or other staff
- Working or volunteering in the sport
- Yes, in another way
- No involvement

Continue >

Access to support from the Canadian Mental Health Association
Getting help: <https://cmha.ca/fr/rd/dep/ha/cj/pe/dep>
If you are in crisis: <https://cmha.ca/fr/rd/dep/ha/cj/pe/dep>

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ENVIRONICS RESEARCH

During your time in the league did you participate in any team building activities that contributed positively to your CHL experience?

Please select one:

- Yes
 No

Continue >

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Getting help: <https://cmha.ca/find-help/how-to-get-help/>
If you are in crisis: <https://cmha.ca/find-help/crisis-support-services/>

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ENVIRONICS RESEARCH

The next set of questions are about specific forms of hazing, which means activity you felt you were required to participate in even though it was humiliating, degrading, abusive, or dangerous to you. The intent is to determine how often they may have occurred in the CHL. Please keep in mind that individual anonymity will be protected, and only combined results will be reported.

Please click the [Continue] to continue.

Continue >

Access to support from the Canadian Mental Health Association
Getting help: <https://cmha.ca/find-help/how-to-get-help>
if you are in crisis: <https://cmha.ca/find-help/you-are-in-crisis/>

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ENVIRONICS RESEARCH

Physical assault is defined as the intentional infliction of unlawful force on another person, e.g., hitting / beating / punching / whipping, forcible participation in fighting, forcible confinement, forcible consumption of alcohol and illicit drugs, forcible shaving of body parts, forcible contact with bodily fluids (i.e., saliva, urine, or feces).

These questions are not intended to refer to the expected physical contact that players may experience while playing the game of hockey.

As a rookie playing in the CHL, did you experience physical assault?

Please select all that apply:

- Hitting / beating / punching / whipping or forcible participation in fighting
- Forcible confinement
- Forcible consumption of alcohol and illicit drugs
- Forcible shaving of body parts
- Forcible contact with bodily fluids (i.e., saliva, urine, or feces)
- Other physical assault
- None / no physical assault

Continue >

Access to support from the Canadian Mental Health Association
Getting help: <https://cmha.ca/traditional/how-to-get-help/>
If you are in crisis: <https://cmha.ca/first-aid-if-you-are-in-crisis/>

Please keep in mind that individual anonymity will be protected, and only aggregated results will be reported.
Environics Privacy Policy: <https://environics.ca/privacy-policy/>

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From whom did you experience physical assault?

Please select all that apply.

- A member of the team's coaching, management, or other staff
- Teammates
- Players on another team
- Someone else

Continue »

Access to support from the Canadian Mental Health Association
Getting help: <https://cmha.ca/ind/help/how-to-get-help>
If you are in crisis: <https://cmha.ca/ind/help/if-you-are-in-crisis>

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When you experienced physical assault, was it:

Please select one.

- An isolated incident.
OR
 Multiple incidents

Continue >

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If you are in crisis: <https://cmha.ca/first-help/you-are-in-crisis/>

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ENVIRONICS RESEARCH

From whom did you experience sexual assault?

Please select all that apply.

- A member of the team's coaching, management, or other staff
- Teammates
- Players on another team
- Someone else

Continue »

Access to support from the Canadian Mental Health Association
Getting help: <https://cmha.ca/ind-help/how-to-get-help/>
If you are in crisis: <https://cmha.ca/ind-help/if-you-are-in-crisis/>

Please keep in mind that individual anonymity will be protected, and only aggregated results will be reported.
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ENVIRONICS RESEARCH

Race-based discrimination is defined as intentional language or behaviour intended to demean another person based on their race, e.g., racist comments or behaviour.

As a rookie playing in the CHL, did you experience race-based discrimination?

Please select one.

- Yes
- No

Continue >

Access to support from the Canadian Mental Health Association
Getting help: <https://cmha.ca/eng/mental-health/get-help/>
If you are in crisis: <https://cmha.ca/eng/mental-health/you-are-in-crisis/>

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Sexual harassment is defined as:

- Inappropriate verbal or non-verbal sexual communication, e.g., sexual jokes, unwanted sexual attention, inappropriate sexual comments, or inappropriate discussions about sex life;
- Unwanted exposure to sexually explicit materials you felt offensive or upsetting, e.g., having sexually explicit materials displayed, showed or sent to you, or the taking and/or posting of inappropriate sexually suggestive photos or videos of you without consent;
- Physical contact or sexual relations, e.g., indecent exposure or inappropriate display of body parts, pressure for dates or sexual relationships, unwelcome physical contact or getting too close, or offering benefits for engaging in sexual activity or being mistreated for not engaging in sexual activity.

As a rookie playing in the CHL, did you experience sexual harassment?

Please select one.

Yes

No

Continue >

Access to support from the Canadian Mental Health Association
Getting help: <https://cmha.ca/find-help/how-to-get-help>
If you are in crisis: <https://cmha.ca/en24/24-7-999-also-in-crisis/>

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ENVIRONICS RESEARCH

From whom did you experience sexual harassment?

Please select all that apply.

- A member of the team's coaching, management, or other staff
- Teammates
- Players on another team
- Someone else

Continue »

Access to support from the Canadian Mental Health Association
Getting help: <https://cmha.ca/ind-help/how-to-get-help/>
If you are in crisis: <https://cmha.ca/ind-help/if-you-are-in-crisis/>

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ENVIRONICS RESEARCH

LGBTQ2+ -based discrimination is defined as intentional language or behaviour intended to demean another person based on their sexual orientation or identity, e.g., homophobic or transphobic comments or behaviour.

As a rookie playing in the CHL, did you experience LGBTQ2+ -based discrimination?

Please select one.

Yes

No

Continue >

Access to support from the Canadian Mental Health Association

Getting help: <https://cmha.ca/training/how-to-get-help/>

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ENVIRONICS RESEARCH

As a rookie playing in the CHL, did you experience any other form of hazing that was not already addressed in this survey? Hazing means an activity that you felt that you were required to participate in even though it was humiliating, degrading, abusive, or dangerous to you.

Please select one:

- Yes
- No

Continue >

Access to support from the Canadian Mental Health Association
Getting help: <https://cmha.ca/first-help/how-to-get-help/>
If you are in crisis: <https://cmha.ca/first-help/first-aid-in-crisis/>

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ENVIRONICS RESEARCH

Please describe your experience.
Please be specific.

Prefer not to say

Continue >

Access to support from the Canadian Mental Health Association
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If you are in crisis: <https://cmha.ca/103-970-1036-you-are-in-crisis/>

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ENVIRONICS RESEARCH

Have you been diagnosed with posttraumatic stress disorder (PTSD) or another mental or physical injury as a direct result of the discrimination, harassment, assault, hazing, or abuse you experienced when you played in the CHL?

Please select one:

- Diagnosed PTSD
- Another diagnosed mental condition
- A diagnosed physical injury
- No

Continue »

Access to support from the Canadian Mental Health Association
Getting help: <https://cmha.ca/find-help/how-to-get-help>
If you are in crisis: <https://cmha.ca/find-help/if-you-are-in-crisis>

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The following questions are for survey analysis purposes only. Thank you for completing these important questions.

Please click the [Continue] to continue.

Continue >

Access to support from the Canadian Mental Health Association
Getting help: <https://cmha.ca/find-help/how-to-get-help/>
If you are in crisis: <https://cmha.ca/find-help/if-you-are-in-crisis/>

[Return to Home Page](#)

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ENVIRONICS RESEARCH

What team did you first play with in the CHL, during your rookie year?

Please select one.

Select one...

Continue >

Access to support from the Canadian Mental Health Association
Getting help: <https://cmha.ca/your-help/how-to-get-help>
If you are in crisis: <https://cmha.ca/your-help/you-are-in-crisis>

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ENVIRONICS RESEARCH

Did you play on more than one team in your rookie year?

Please select one.

- Yes
- No

Continue >

Access to support from the Canadian Mental Health Association
Getting help: <https://cmha.ca/find-help/how-to-get-help>
If you are in crisis: <https://cmha.ca/ehp/ehp-1-800-387-6434>

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ENVIRONICS RESEARCH

A member of a visible minority in Canada may be defined as someone (other than an Indigenous person) who is non-white in colour or race, regardless of place of birth. For example: Black, Chinese, Filipino, Japanese, Korean, South Asian, or East Indian, Southeast Asian, non-white West Asian, North African or Arab, non-white Latin American, person of mixed origin (with one parent in one of the visible minority groups in this list), or other visible minority group.

Are you a member of a visible minority?

Please select one.

- Yes
- No
- Prefer not to say

Continue >

Access to support from the Canadian Mental Health Association
Getting help: <https://cmha.ca/first-help/first-911-903/>
If you are in crisis: <https://cmha.ca/first-help/first-903-903/>

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ENVIRONICS RESEARCH

An **Indigenous person** is a North American Indian or a member of a First Nation, a Métis or Inuit. North American Indians or members of a First Nation include status, treaty or registered Indians, as well as non-status and non-registered Indians.

Are you an Indigenous person?

Please select one

- Yes
- No
- Prefer not to say

Continue >

Access to support from the Canadian Mental Health Association
Getting help: <https://cmha.ca/ind-help/how-to-get-help/>
If you are in crisis: <https://cmha.ca/ind-help/if-you-are-in-crisis/>

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ENVIRONICS RESEARCH

What is your sexual orientation?

Please select one.

Heterosexual (straight)

Gay or lesbian

Bisexual

Other, please specify

Prefer not to say

Continue >

Access to support from the Canadian Mental Health Association
Getting help: <https://cmha.ca/find-help/how-to-get-help/>
If you are in crisis: <https://cmha.ca/find-help/if-you-are-in-crisis/>

Please keep in mind that individual anonymity will be protected, and only combined results will be reported.
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ENVIRONICS RESEARCH

Thank you for participating in this survey. Your individual responses will not be released to anyone. Only summary results will be reported.

Please click the [Continue] to submit your responses.

Continue >

Access to support from the Canadian Mental Health Association
Getting help: <https://cmha.ca/find-help/how-to-get-help/>
If you are in crisis: <https://cmha.ca/find-help/if-you-are-in-crisis/>

Success_Envy_P15x

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ENVIRONICS
RESEARCH

Survey Completed - Thank You

Thank you for taking our survey. Your efforts are greatly appreciated!

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***THIS IS EXHIBIT “B” REFERRED TO IN THE
AFFIDAVIT OF CATHERINE MACDONALD SWORN VIA VIDEO-LINK
BEFORE ME FROM THE CITY OF KAWARTHA LAKES, IN THE
PROVINCE OF ONTARIO, TO THE CITY OF TORONTO, IN THE
PROVINCE OF ONTARIO, ON JUNE 5TH, 2023, IN ACCORDANCE WITH O.
REG. 431/20, ADMINISTERING OATH OR DECLARATION REMOTELY.***



A COMMISSIONER FOR TAKING AFFIDAVITS, ETC.

CAITLIN LEACH



HOCKEY CANADA WELCOMES INTERIM GOVERNANCE REVIEW

NR.058.22 | October 13, 2022 | [Favourite \(0\)](#)

Update: Hockey Canada has received the final governance review, and will be releasing it in full on Friday, November 4th.

RELATED LINKS

[Interim Report](#)

[Memorandum to Board](#)

CALGARY, Alta. – Hockey Canada has heard from many Canadians, including Members, players, parents, and corporate partners, that change is necessary to make hockey a safer environment for all participants. We remain fully committed to making the changes necessary to regain the trust of Canadians and address systemic issues in and around Canada's game.

As an integral piece of this work and our Action Plan, Hockey Canada has received an interim report from the ongoing independent third-party governance review, led by former Justice of the Supreme Court of Canada, Honourable Thomas Cromwell, C.C. and supported by Ms. Victoria Prince and Ms. Nadia Effendi of Borden Ladner Gervais LLP (BLG).

The recommendations outlined in the interim report provide important guidance on initial changes the organization should undertake, in conjunction with the Action Plan.

As part of our commitment to transparency, Hockey Canada is releasing the interim report in full. The report provides detailed analysis and interim recommendations in relation to the first two terms of reference of the review: (1) the use of the National Equity Fund and (2) Hockey Canada By-Laws concerning the constitution and operation of the Board of Directors.

Hockey Canada is also releasing a Memorandum from Mr. Cromwell, pertaining to Term of Reference #5, which focuses on additional steps the organization may take to improve the confidence Canadians have in Hockey Canada, including recent leadership changes at the organization.

On the National Equity Fund, Hockey Canada accepts the report's interim conclusions that while the establishment and use of the Fund is sound, there are significant improvements to be made to the Fund's oversight and transparency. Hockey Canada is reviewing Mr. Cromwell's recommendations, with a view to implementing them as soon as possible.

Also advised by Mr. Cromwell is for Hockey Canada's Members to examine and address a number of By-Law changes. Hockey Canada is strongly encouraging Members to review the report's proposals and to consider accepting them in their entirety.

On an urgent basis, Hockey Canada is recommending that Members pass necessary By-Law amendments to bring the nomination process in-line with best practices, as identified by the interim report (By-Law 27.1, 27.2 and 31.3). These changes will support the election of a new Board of Directors on Dec. 17, 2022, responding to the calls for leadership change at Hockey Canada with all Board positions up for election.

Hockey Canada will continue to provide updates publicly in relation to our progress on addressing Mr. Cromwell's interim recommendations and look forward to the final Governance Review report later this year.

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Interim Report

Hockey Canada Governance Review

The Honourable Thomas Cromwell, C.C.

30 September 2022

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I. INTRODUCTION

I was engaged on August 3, 2022 by Hockey Canada to conduct an independent and impartial review of its governance in accordance with the Terms of Reference that have been made public.¹ Today, I provide my interim report in English and French of my responses to the first two matters in the Terms of Reference as required by my engagement.

The timelines for the review and particularly for this interim report are challenging. However, the prompt and full cooperation of those I have called on for information and assistance and the dedication of the team assisting me have allowed me to prepare this interim report. I can also confirm that I am on track to complete my final report, as required by my engagement, by the end of October.

I gratefully acknowledge the cooperation that I have received from everyone at Hockey Canada and the many other groups and persons who have responded to my requests for information and assistance. The remarkable team at Borden Ladner Gervais LLP that is assisting me, led by Nadia Effendi and Victoria Prince and including Sylvie Lalonde, Melanie Laframboise, Paige Miltenburg, Sandrine Mainville, Mathieu Dompierre, Julie Peacock-Singh and Vincenza Carrera, has risen to the challenges posed by the scope of and timelines for this review and have allowed me to conduct it in a timely and thorough manner.

To give some sense of the scope of this undertaking, the review team and I have so far:

- Interviewed over 65 individuals resulting in over 40 meetings and many follow-up emails, including with current and former Members of Hockey Canada’s Board of Directors and committees, current and former Hockey Canada employees, representatives of the Members of Hockey Canada, representatives of hockey associations and leagues, representatives of comparator National Sport Organizations as well as the Canadian Olympic Committee, the auditors for Hockey Canada, representatives of Sport Canada, experts and other individuals with knowledge of the history of Hockey Canada, hockey generally, and/or sports governance;
- Made six formal requests for information to Hockey Canada and dozens of follow-up requests resulting in approximately 1,155 documents, including minutes of Hockey Canada Board of Directors and Committees meetings, officers meetings and Members meetings (such as annual and semi-annual general meetings and Member forum meetings) as well as financial statements and ledgers related to the National Equity Fund (“NEF”), all of which have been reviewed;
- Reviewed the governance of other comparator National Sport Organizations to determine best practices;
- Researched sport legal and policy framework and best practices regarding governance and reserve funds;

¹ Hockey Canada Governance Review, “Terms of Reference” (4 August 2022) <<https://www.hockeycanada.ca/en-ca/news/thomas-cromwell-to-lead-hockey-canada-governance-review-corp-2022>>.

- Reviewed written submissions from Hockey Canada Members and other stakeholders; and
- Prepared this interim report.

This interim report describes Hockey Canada's purposes and operations, details the legal framework within which it must operate and then turns to a detailed analysis of the first two elements of my Terms of Reference.

Here is a brief summary of my interim conclusions and recommendations in relation to those two matters.

A. Was Hockey Canada's use of the National Equity Fund to fund uninsured liabilities which were met by the Fund appropriate?

Yes. The establishment of reserve funds to address the risk of uninsured and under-insured claims is not only sound, but the failure to do so would be a serious oversight. It is appropriate to use NEF funds to address potential uninsured and underinsured liabilities for Hockey Canada and/or any participant for whose benefit the reserve is maintained. I will not be commenting on particular cases given that my review, under the Terms of Reference, is not an assessment of Hockey Canada's response to any particular incident or issue.

- i. Is there appropriate oversight concerning payments out of the National Equity Fund?*

No. Hockey Canada has no written policy governing the NEF; however, its stated purpose is noted in the annual financial statement. Though the fund forms part of the risk management matrix, questions arise regarding what role the fund actually plays within that matrix. Indeed, some Members have criticized Hockey Canada's lack of oversight of the NEF, particularly regarding the absence of a publicly available policy governing the fund. Additionally, Hockey Canada has adopted an informal procedure for dealing with under and uninsured claims, which begins at the NEF. However, the procedure is not widely known by Members, nor has it received formal Board approval.

- ii. Is the use of the National Equity Fund sufficiently transparent within the organization and in reports to stakeholders?*

No. While Hockey Canada discloses the balance of the NEF and inter-fund transfers on its audited financial statements, Members do not receive adequate information regarding these funds and their use. Hockey Canada maintains that Members discuss and have opportunities to ask questions on the NEF and its funding of under and uninsured claims. However, these discussions have occurred in camera, and our review of the minutes from Member meetings at which settlements, inter-fund transfers and financial statements were discussed provide no clarity on the nature, scope and frequency of such discussions. It also appears that Members and Participants may not have been fully aware of the scope of claims the NEF would fund, namely claims linked to sexual misconduct beyond the named perpetrators specifically excluded from liability insurance coverage. Participants, whose registration fees are the primary source of funding for the NEF, have not been adequately informed about what proportions of fees go to fund under and uninsured claims.

B. Are the organization’s By-Laws concerning the constitution and operation of the Board of Directors in line with current best practices, appropriate or require amendments?

The current By-laws are not significantly misaligned with the points of reference that I examined (i.e. Sports Canada’s Governance Principles for Sport Organizations, the Canadian Sport Governance Code, Athletics Canada, Canada Basketball, Curling Canada, Canada Soccer). However, as set out below and discussed in detail in the body of this report, I recommend several changes.

- i. Recognizing the Board’s current composition, are there recommended changes to the organization’s governance structure that would support and further enhance the diversity of the Board?*

See the recommendations under point “3” (below) in relation to the nominations process.

- ii. Are current terms and term limits aligned with best practices?*

While the current terms and term limits are within the range of what is supported by best practices, I recommend:

- Amending the corporation’s Articles to increase the maximum number of Directors from nine to thirteen;
- Increasing the Directors’ terms to up to three years from two;
- Staggering Directors’ terms so that only about one-third of the Board would be up for re-election in any year;
- Increasing the Directors’ term limit to nine consecutive years from eight; and
- Increasing the term limit of the Board Chair to six consecutive years from four to align with the proposed three-year term for Directors.

- iii. Does the nominating process need to be amended?*

Yes. I recommend:

- Amending the By-laws to provide that no more than 60% of the Directors are of the same gender, to bring Hockey Canada in line with the COC Canadian Sport Governance Code;
- Subject to my final report, updating or replacing the Nominating Committee Terms of Reference to revise the Nominating Committee’s composition and how the members of that committee are appointed, and to better define its role and duties;
- Reviewing and, if required, updating the Board Matrix to ensure it reflects the skills, experience and diversity elements that are needed on the Hockey Canada Board;

- For each election cycle (including the 2022 election), that the Nominating Committee use the Board Matrix as a tool to support the call for nominations and to articulate clearly the specific skills and competencies being sought for the Board positions to be filled;
- Confirming and documenting the Members' undertaking to not put forward any nominations for director candidates for the 2022 election and allow all nominations for Directors and the Chair to be submitted through the Chair of the Nominating Committee process. The Nominating Committee can and should rely on its past practice of reviewing and vetting all nominations so received, and creating a short-list of External Candidates in the same way it did in accordance with the 2020 Call for Nominations. That vetting process should be done having regard to the Board Matrix. I recommend that this approach be implemented for the current election cycle;
- Subject to additional comments in my final report, I am currently of the view that, going forward, this practice should become the Nominating Committee's standard practice and that the committee's authority to short-list candidates (even those proposed by Members) and put forward a final list of nominees for inclusion on the election ballot should be expressly provided for in the Nominating Committee's Terms of Reference and in the By-laws;
- Revising and updating the current "Chair of the Board Terms of Reference" to ensure they reflect the current needs of Hockey Canada and include a list of qualities and minimum competencies required of the Chair;
- Amending and removing all language in the By-laws that states or suggests that all nominations of candidates proposed by the Members shall be included in the final ballot for the election of the Directors and the Chair; and
- Amending the By-laws to provide that the Board may appoint additional Directors within the legal limits imposed by the *Canada Not-for-profit Corporations Act*, SC 2009, c 23, rather than limiting the option to only one additional Director.

C. Is the structure of the various standing committees and task teams, including their Terms of Reference/mandates and reporting mechanism to the Board, appropriate?

Hockey Canada's approach to its standing committee structure generally aligns with best practices, subject to a few exceptions that I will consider further in my final report. I have not completed my study of the appropriateness of the standing committees' and task teams' terms of reference, which again, will be given more detailed consideration in my final report.

It is, of course, for Hockey Canada and its Members to decide how to proceed in light of this interim report. My review is ongoing and, as indicated above, I will deliver at the end of October my final report, which will address the remaining issues in the Terms of Reference of my engagement and include any additional recommendations/observations on the above two matters. Therefore, my governance recommendations will be best considered in the light of the entire suite of recommendations in my final report. However, I recommend that the organization move forward with the 2022 election of Directors and Chair of the Board in accordance with the nominating

process changes specifically described below at page 73, to which I understand Members have agreed and which I support. I further recommend that Hockey Canada and its Members receive my final report at the end of October before considering any further governance changes, including amendments to By-laws.

II. HOCKEY CANADA BACKGROUND

A. Introduction

Hockey Canada (formerly, Canadian Hockey Association and Canadian Amateur Hockey Association) is a not-for-profit corporation continued under and governed by the *Canada Not-for-profit Corporations Act*, SC 2009, c 23 (“CNCA”). Hockey Canada is also a Registered Canadian Amateur Athletic Association (“RCAAA”), a designation under the *Income Tax Act*, RSC 1985, c 1 (5th Supp).²

Hockey Canada is the national, self-governing body for amateur hockey, including men, women, and men’s para hockey, across the country.³ The not-for-profit corporation “oversees the management of programs in Canada from entry-level to high-performance teams and competitions, including world championships and the Olympic Winter Games.”⁴ Hockey Canada also represents Canada internationally within the International Ice Hockey Federation (“IIHF”).⁵

Not-for-profit corporations like Hockey Canada have members, directors and officers. The various roles of these persons is discussed in more detail in Chapter IV. Hockey Canada has only one class of Members.⁶ The Members of Hockey Canada are the different provincial, regional or territorial associations/federations who are “empowered to manage and foster amateur hockey within their geographic region and have the responsibility to represent their constituents.”⁷ The Members of Hockey Canada are often referred to as “branches”. They are the following: BC Hockey, Hockey Alberta, Hockey Saskatchewan, Hockey Manitoba, Hockey Northwestern Ontario, Ontario Hockey Federation, Hockey Eastern Ontario, Hockey Québec, Hockey New Brunswick, Hockey PEI, Hockey Nova Scotia, Hockey Newfoundland and Labrador, and Hockey North.

² Hockey Canada’s status as an RCAAA will be further explained in Chapter III.

³ “Hockey Canada 2020-21 Annual Report” (last visited 21 August 2022) at 5, online (pdf): *Hockey Canada* <<https://cdn.hockeycanada.ca/hockey-canada/Corporate/About/Downloads/2020-21-annual-report-e.pdf>>; “Hockey Canada By-Laws, Regulations and History” (May 2022), s 2.2, online (pdf): *Hockey Canada* <<https://cdn.hockeycanada.ca/hockey-canada/Corporate/About/Downloads/2022-23-bylaws-e.pdf>>.

⁴ “Hockey Canada 2020-21 Annual Report” (last visited 21 August 2022) at 5, online (pdf): *Hockey Canada* <<https://cdn.hockeycanada.ca/hockey-canada/Corporate/About/Downloads/2020-21-annual-report-e.pdf>>.

⁵ “Hockey Canada 2020-21 Annual Report” (last visited 21 August 2022) at 5, online (pdf): *Hockey Canada* <<https://cdn.hockeycanada.ca/hockey-canada/Corporate/About/Downloads/2020-21-annual-report-e.pdf>>; “Hockey Canada By-Laws, Regulations and History” (May 2022), s 2.3, online (pdf): *Hockey Canada* <<https://cdn.hockeycanada.ca/hockey-canada/Corporate/About/Downloads/2022-23-bylaws-e.pdf>>.

⁶ “Hockey Canada By-Laws, Regulations and History” (May 2022), s 9.1, online (pdf): *Hockey Canada* <<https://cdn.hockeycanada.ca/hockey-canada/Corporate/About/Downloads/2022-23-bylaws-e.pdf>>.

⁷ “Hockey Canada 2020-21 Annual Report” (last visited 21 August 2022) at 5, online (pdf): *Hockey Canada* <<https://cdn.hockeycanada.ca/hockey-canada/Corporate/About/Downloads/2020-21-annual-report-e.pdf>>; “Hockey Canada By-Laws, Regulations and History” (May 2022), s 2.3, online (pdf): *Hockey Canada* <<https://cdn.hockeycanada.ca/hockey-canada/Corporate/About/Downloads/2022-23-bylaws-e.pdf>>.

Hockey Canada’s Board of Directors is composed of nine Directors, including the Chair of the Board, who are elected by the Members and up to one Director appointed by the elected Directors. Directors serve without remuneration.⁸

Finally, Hockey Canada’s Corporate Officers include the Chief Executive Officer (“CEO”), President and Chief Operating Officer (“COO”), Chief Financial Officer (“CFO”), and Chief Business Development Officer (“CBDO”). The by-laws also permit the CEO, with the approval of the Board, to appoint other Officers.⁹

B. History

One can get a general sense of the evolution of Hockey Canada’s organization by looking at some key dates in its history.

1914	On December 4, 1914, the Canadian Amateur Hockey Association was “formed to oversee the amateur [hockey] game at the national level.” ¹⁰ From 1914 through to 1997, local hockey associations became Members of the national association. ¹¹
1969	In 1969, the Hockey Canada organization was created by the federal government following a recommendation made in the <i>Report of the Task Force on Sports for Canadians</i> . Its responsibility was to organize and develop Canada’s representation in international competition. ¹²
1981	On May 1, 1981, an application to incorporate under the name Canadian Amateur Hockey Association was made under part 2 of the <i>Canada Corporations Act</i> . Letters Patent were accordingly issued. ¹³
1995	On February 1, 1995, Supplementary Letters Patent were issued to the Canadian Amateur Hockey Association. This changed the organization’s name to Canadian Hockey Association. ¹⁴

⁸ “Hockey Canada By-Laws, Regulations and History” (May 2022), s 39.1, online (pdf): *Hockey Canada* <<https://cdn.hockeycanada.ca/hockey-canada/Corporate/About/Downloads/2022-23-bylaws-e.pdf>>.

⁹ “Hockey Canada By-Laws, Regulations and History” (May 2022), s 40.11, online (pdf): *Hockey Canada* <<https://cdn.hockeycanada.ca/hockey-canada/Corporate/About/Downloads/2022-23-bylaws-e.pdf>>.

¹⁰ “Hockey Canada By-Laws, Regulations and History” (May 2022) at 177, online (pdf): *Hockey Canada* <<https://cdn.hockeycanada.ca/hockey-canada/Corporate/About/Downloads/2022-23-bylaws-e.pdf>>; “Learn about the history of Hockey Canada” (last visited 21 August 2022), online: *Hockey Canada* <www.hockeycanada.ca/en-ca/corporate/history>.

¹¹ “Hockey Canada By-Laws, Regulations and History” (May 2022) at 180, online (pdf): *Hockey Canada* <<https://cdn.hockeycanada.ca/hockey-canada/Corporate/About/Downloads/2022-23-bylaws-e.pdf>>.

¹² John Barnes, *Sports and The Law in Canada*, 2nd ed (Toronto and Vancouver: Butterworths Canada Ltd, 1987) at 34.

¹³ Consumer and Corporate Affairs Canada, “Canadian Amateur Hockey Association Letters Patent” (1 May 1981).

¹⁴ Industry Canada, “Canadian Amateur Hockey Association Supplementary Letters Patent” (1 February 1995).

1998	In 1998, the Canadian Amateur Hockey Association and Hockey Canada merged into one organization, “bringing every aspect of Canadian hockey under one umbrella.” ¹⁵
2014	On June 10, 2014 and further to the coming into force of the <i>Canada Not-for-profit Corporations Act</i> , Hockey Canada was continued under that Act, by way of Articles of Continuance. ¹⁶

C. Mission, Vision and Values

Hockey Canada’s mission statement is to: “Lead, Develop and Promote Positive Hockey Experiences.”¹⁷ Its vision is to be “World Sport Leaders”.¹⁸ Hockey Canada’s values include “making hockey more than scoring goals and winning games.”¹⁹ More specifically, Hockey Canada states that it believes:

- In a positive hockey experience for all participants, in a safe, sportsmanlike environment.
- In the development of life skills which will benefit participants throughout their lives.
- In the values of fair play and sportsmanship, including the development of respect for all people by all participants.
- In hockey opportunities for all people regardless of age, gender, colour, race, ethnic origin, religion, sexual orientation, or socio-economic status and in both official languages.
- In the importance for participants to develop dignity and self-esteem.
- To instill the values of honesty and integrity in participants at all times.
- In the promotion of teamwork, and the belief that what groups and society can achieve as a whole is greater than that which can be achieved by individuals.
- In the country of Canada, its tradition in the game of hockey, and the proud and successful representation of this tradition around the world.
- In the value of hard work, determination, the pursuit of excellence and success in all activities.

¹⁵ “Learn about the history of Hockey Canada” (last visited 21 August 2022), online: *Hockey Canada* <www.hockeycanada.ca/en-ca/corporate/history>.

¹⁶ Industry Canada, “Hockey Canada Association Articles of Continuance” (10 June 2014).

¹⁷ “Mandate & Mission – Who is Hockey Canada?” (last visited 21 August 2022), online: *Hockey Canada* <www.hockeycanada.ca/en-ca/corporate/about/mandate-mission>.

¹⁸ “Mandate & Mission – Who is Hockey Canada?” (last visited 21 August 2022), online: *Hockey Canada* <www.hockeycanada.ca/en-ca/corporate/about/mandate-mission>.

¹⁹ “Hockey Canada 2020-21 Annual Report” (last visited 21 August 2022) at 8, online (pdf): *Hockey Canada* <<https://cdn.hockeycanada.ca/hockey-canada/Corporate/About/Downloads/2020-21-annual-report-e.pdf>>

- In the benefits of personal and physical well-being.²⁰

D. Purposes

Hockey Canada’s purposes have remained consistent throughout its history. Although Hockey Canada’s current purposes are formulated differently than the objects set out in the 1981 Letters Patent, the substance of the purposes has not changed significantly. As listed in Hockey Canada’s 2014 Articles of Continuance, and its 2022-2023 By-Laws, the purposes of Hockey Canada are to:

- (a) Regulate amateur hockey in Canada and establish uniform playing rules;
- (b) Promote the sport of amateur hockey in Canada, on a nationwide basis;
- (c) Oversee a structure of Branches (“**Members**”), Clubs, Associations, Leagues and Teams involved in amateur hockey;
- (d) Deliver a training program that brings promising athletes from the grassroots level to national and international levels through various qualifying competitions;
- (e) Manage national teams to participate in international competitions;
- (f) Stage and sanction regional, national, and international competitions and sanction local and Member competitions;
- (g) Act as Canadian representative on the IIHF Ice Hockey Federation;
- (h) Provide a training and certification program for coaches and officials, and provide training programs for other hockey development programs; and
- (i) Carry out fundraising activities and redistribute funds for local Clubs and Member organizations.²¹

E. Main Operations and Business

Hockey Canada’s operations essentially deal with all aspects of “organized hockey”.²² Based on Hockey Canada’s mission, vision, values and purposes, its current by-laws, and its recent budget and annual reports, we understand Hockey Canada’s main operations and business lines to be composed of four categories: regulating amateur hockey in Canada, growing and developing the game, representing Canada on the world stage, and business development.

²⁰ “Mandate & Mission – Who is Hockey Canada?” (last visited 21 August 2022), online: *Hockey Canada* <www.hockeycanada.ca/en-ca/corporate/about/mandate-mission>.

²¹ Industry Canada, “Hockey Canada Association Articles of Continuance” (10 June 2014); “Hockey Canada By-Laws, Regulations and History” (May 2022), s 4.1, online (pdf): *Hockey Canada* <<https://cdn.hockeycanada.ca/hockey-canada/Corporate/About/Downloads/2022-23-bylaws-e.pdf>>.

²² “Hockey Canada 2020-21 Annual Report” (last visited 21 August 2022) at 3, online (pdf): *Hockey Canada* <<https://cdn.hockeycanada.ca/hockey-canada/Corporate/About/Downloads/2020-21-annual-report-e.pdf>>.

i. *Regulating amateur hockey in Canada*

Hockey Canada oversees hockey in Canada at all levels: it oversees a complex vertical and horizontal structure of Members, clubs, associations, leagues and teams, all involved in amateur hockey across the country.

Hockey Canada's role is to establish uniform playing rules and set standards for its Members and all stakeholders under its umbrella. Hockey Canada accomplishes this through the requirement in its by-laws that its Members must adhere to and observe Hockey Canada's by-laws, regulations, playing rules, policies and related decisions. Failure to do so could result in termination of membership.²³ Hockey Canada also requires its Members to conduct and control hockey within their own geographical region in the same manner.²⁴ In addition, all registered participants of Hockey Canada or any of its Members, which includes but is not limited to any players, coaches, trainers, clubs, teams, associations, leagues and parents, must also adhere to and observe the playing rules and standards set by Hockey Canada and Hockey Canada's Members.²⁵

As discussed below, while Hockey Canada's By-laws clearly lay out its powers to regulate and enforce principles, standards and rules, some representatives of the Board and membership to whom we have spoken have indicated that enforcement often does not occur and that this is due, in part, to the practical difficulties associated with enforcement. It has been stated in some interviews that the Directors do not want to exert undue control, in part because it is the Members who elect them and also because the sanctions for non-compliance are limited and severe (e.g. suspension and expulsion). Some Members have expressed the view that Hockey Canada is just one layer in a complex structure, where each Member and association are their own entity, which makes it difficult for Hockey Canada to have a high degree of influence and control at every level. These issues are creating inconsistencies across the country in the way the game of hockey is delivered.

ii. *Growing and developing the game*

Hockey Canada coordinates a vast array of development programs, aimed at recruiting and retaining new players, shaping the next generation, and developing talent. Hockey Canada hopes to bring promising athletes from the grassroots level to national and international levels.

Hockey Canada offers programs, camps and resources in relation to kids and youth hockey, female hockey, men's para hockey, coaching, and officiating. It also offers mentorship, school and safety programs, as well as adult recreational hockey. More specifically, Hockey Canada coordinates players skills camps, player development and regional centres, the National Coach Certification Program, the Hockey Canada Officiating Program, the Hockey Canada Safety Program, Hockey

²³ "Hockey Canada By-Laws, Regulations and History" (May 2022), ss 7.1, 9.2, 18.1, online (pdf): *Hockey Canada* <<https://cdn.hockeycanada.ca/hockey-canada/Corporate/About/Downloads/2022-23-bylaws-e.pdf>>.

²⁴ "Hockey Canada By-Laws, Regulations and History" (May 2022), s 11.1, online (pdf): *Hockey Canada* <<https://cdn.hockeycanada.ca/hockey-canada/Corporate/About/Downloads/2022-23-bylaws-e.pdf>>.

²⁵ "Hockey Canada By-Laws, Regulations and History" (May 2022), ss 14.1, 14.2, online (pdf): *Hockey Canada* <<https://cdn.hockeycanada.ca/hockey-canada/Corporate/About/Downloads/2022-23-bylaws-e.pdf>>.

University, Dreams Come True, Esso Fun Days and The First Shift, which all “serve as a catalyst for growing the game.”²⁶

In addition, Hockey Canada organizes domestic championships, including the Allan Cup, the Centennial Cup, the Esso Cup, the Telus Cup and the National Women’s Under-18 Championship, as well as high performance championships and events, such as the World Junior A Challenge, the Para Hockey Cup, the Rivalry Series and the World Under-17 Hockey Challenge. When awarded by the IIHF, Hockey Canada also delivers the IIHF World Junior Championship, the IIHF Women’s World Championship and the IIHF U18 Women’s World Championship.

From what we have observed, some Members’ understanding of how the roles under the Hockey Canada umbrella are divided appears to differ from its legal mandate. According to them, Hockey Canada’s main focus and mandate remain on high performance athletes, while the Members focus on developing young players with the aim of the player reaching the next level and to instill a lifelong love of the game. We also heard from many of the individuals we interviewed that Hockey Canada needs to get more involved with grassroots hockey. There was also a recognition that Hockey Canada’s focus on high performance responds to external constraints (such as government funding requirements) and that high performance hockey is what funds grassroots hockey.

iii. Representing Canada on the world stage

Hockey Canada is responsible for Canada’s national teams, competing at international levels. Hockey Canada organizes international competitions held in Canada and serves as the Canadian representative in the IIHF.

iv. Business development

Through sponsorship and licensing partnerships, Hockey Canada promotes the sport of hockey in Canada and raises a significant amount of money to finance Hockey Canada’s operations. Some corporate brands sponsor Hockey Canada to gain the right to use some of Hockey Canada’s intellectual property. Through these sponsorship agreements, Hockey Canada receives a financial investment, while the corporate brands receive the benefit of having their product linked to hockey, a sport to which many Canadians have an emotional connection. In addition, Hockey Canada monetizes its intellectual property through licensing agreements. Some corporate brands receive the right to use Hockey Canada’s intellectual property on their products, sell these products to consumers, and then pay royalties to Hockey Canada. For example, a company produces replicas of official team jerseys, and other companies use Hockey Canada’s logo on mugs, hockey pucks, hockey nets, and so on.

Hockey Canada also raises money through its organization of various events and competitions, as well as through the sale of merchandise.

²⁶ “Hockey Canada 2020-21 Annual Report” (last visited 21 August 2022) at 21, online (pdf): *Hockey Canada* <<https://cdn.hockeycanada.ca/hockey-canada/Corporate/About/Downloads/2020-21-annual-report-e.pdf>>.

Hockey Canada’s marketing efforts are also focused on recruitment and retention of players: campaigns are created with the aim of bringing kids into the game of hockey, as well as inspiring young players by creating the feeling that they are “part of something bigger.”²⁷

Hockey Canada operates hand-in-hand with the Hockey Canada Foundation, a registered charity, “to provide secure, sustainable, long-term funding to support the future development of the game.”²⁸ This Review will not address the role or operation of the Hockey Canada Foundation.

For the year ending on June 30, 2021, Hockey Canada had total revenues of \$64.285 million dollars, with operating revenues of \$33.669 million. These operating revenues derive mainly from marketing (\$20.138 million), government grants (\$5.653 million) and revenue from national events and camps and national teams (\$3.4 million). Hockey Canada receives \$23.80 per player from its Members: \$3 is a registration fee which is allocated exclusively to Hockey Canada’s general operations (programming, facilities and staff) and \$20.80 is an insurance fee which we discuss further below. As a result of the pandemic, the registration fee was reduced to \$1.50 during the 2020-2021 season and to \$0 during the 2021-2022 season.

Hockey Canada operates a number of segregated funds, including the National Equity Fund, the Health and Benefit Trust and the various Pillar funds. The total value of these funds as of June 30, 2021 was \$109.819 million. We will discuss this in more detail later.

Hockey Canada has offices in Calgary, Toronto and Ottawa and employs approximately 120 full-time equivalent employees.

F. The Organization of Hockey in Canada

As will be discussed in Chapter III, the regulation of sport and physical activity falls under the shared jurisdiction of the federal and provincial governments. The federal jurisdiction generally concerns matters of national and international affairs, such as national and international level sport. The provinces and territories have exclusive jurisdiction within their territory over significant aspects of sport, and each of them has the power to adopt its own policies and programs as it sees fit, as long as it does not infringe on the exclusive jurisdiction of the federal government.²⁹

This means that, in addition to Hockey Canada’s regulation at the national level, hockey is also regulated by Provincial/Territorial Sport Organizations (“**P/TSOs**”). These P/TSOs are self-governing, non-for-profit organizations that are recognized by their provincial/territorial governments as the governing body for their sport in the province. For example, the Government of Ontario, through the Ministry of Tourism, Culture and Sport, recognizes the following P/TSOs for hockey: Ontario Hockey Federation (“**OHF**”), Hockey Eastern Ontario (“**HEO**”), Hockey Northwestern Ontario (“**HNO**”) and Ontario Women’s Hockey Association (“**OWHA**”). The first three P/TSOs are Members of Hockey Canada, while OWHA is one of OHF’s seven members.

²⁷ Interview of Brian Cairo (August 30, 2022); Interview of Dana Gladstone (September 7, 2022).

²⁸ “Hockey Canada 2020-21 Annual Report” (last visited 21 August 2022) at 26, online (pdf): *Hockey Canada* <<https://cdn.hockeycanada.ca/hockey-canada/Corporate/About/Downloads/2020-21-annual-report-e.pdf>>.

²⁹ Lucie Thibault & Jean Harvey, *Sport Policy in Canada* (University of Ottawa Press, 2013) at 46.

In addition to Hockey Canada and the 13 P/TSOs (or Members), thousands of Minor Hockey Associations (“**MHA**”) have been created from coast to coast.³⁰ These associations are composed of various teams, which teams are themselves composed of players, coaches, and support staff. Hockey in Canada is also divided into various levels, including Junior hockey, Minor hockey and Senior hockey. Junior Hockey is itself divided into four tiers: Major Junior, which is governed by the Canadian Hockey League (“**CHL**”), Junior A, Junior B and Junior C. Minor hockey is divided into age categories, going from U7 to U21.

The following statistics highlight the number of stakeholders involved under the Hockey Canada umbrella.³¹ For the 2020-2021 season, there were 1,645 MHAs across the country (which include Minor Hockey Associations, Female Hockey Associations, and Para Hockey organizations), for a total of 413,891 players. For the same year, for all the other categories that are not considered “associations” from an organization standpoint (e.g. Major Junior, Junior A, Senior Hockey, etc.) there were 1,217 teams and clubs for a total of 105,354 players. In addition, there are thousands of other participants, including coaches, trainers, officials and other volunteers.

This myriad of organizations, associations, leagues, teams, and participants, of varying sizes, with different resources and in different regions, results in a variety of ways of operating, but it also means that the responsibility for developing the sport of hockey in accordance with good governance principles lies with multiple parties. Moreover, a lack of clarity around organizational structure and authority can result in uncertainty.

³⁰ “Hockey Canada 2020-21 Annual Report” (last visited 25 August 2022) at 19, online (pdf): *Hockey Canada* <<https://cdn.hockeycanada.ca/hockey-canada/Corporate/About/Downloads/2020-21-annual-report-e.pdf>>.

³¹ These statistics were provided by Hockey Canada on August 31, 2022 and were generated by the Hockey Canada registration platform. It was however mentioned that “the quality of HCR data is not yet perfect and there are inconsistencies with data provided by [the] Members across Canada”. It should also be mentioned that these statistics were affected by the COVID-19 pandemic, and that while the number of MHAs has not changed materially, the number of participants was higher for the 2018-2019 season.

III. HOCKEY CANADA’S REGULATORY FRAMEWORK

There is a legal framework that applies to Hockey Canada because it is a not-for-profit corporation as well as a Registered Canadian Amateur Athletic Association (“RCAAA”). The first section of this Chapter will briefly outline this legal framework (A), which is also discussed in more detail in Chapter IV. In addition, there is a legal and policy framework that applies to Hockey Canada because it is a national sports organization (“NSO”) that receives government funding, which is detailed in the second section of this Chapter (B).

A. The legal framework from a governance perspective

i. *Introduction*

The key elements of the legal framework for Hockey Canada governance are found in federal legislation, in the corporation’s articles, in its by-laws and in legal principles developed by the courts over the years. We will provide a brief overview of these key elements of the legal framework for governance.

ii. *Registered Canadian Amateur Athletic Association under the Income Tax Act*

Hockey Canada is an RCAAA. An RCAAA is a “Canadian amateur athletic association” that has applied to the Canadian Revenue Agency for registration, has been registered and whose registration has not been revoked.³² Under the *Income Tax Act*, RSC 1985, c 1 (5th Supp), a “Canadian amateur athletic association” is defined as an association that:

- (a) was created under any law in force in Canada,
- (b) is resident in Canada,
- (c) has no part of its income payable to, or otherwise available for the personal benefit of, any proprietor, member or shareholder of the association unless the proprietor, member or shareholder was a club, society or association the primary purpose and primary function of which was the promotion of amateur athletics in Canada,
- (d) has the promotion of amateur athletics in Canada on a nation-wide basis as its exclusive purpose and exclusive function, and
- (e) devotes all of its resources to that purpose and function.³³

Under paragraph 149(1)(g) of the *Income Tax Act*, an RCAAA is exempt from income tax under Part I. RCAAAs can also issue official donation receipts for income tax purposes for gifts they receive from corporations or individuals.

³² *Income Tax Act*, RSC 1985, c 1 (5th Supp), s 248(1) “registered Canadian amateur athletic association”.

³³ *Income Tax Act*, RSC 1985, c 1 (5th Supp), s 149.1(1) “Canadian athletic amateur association”.

While an RCAA is effectively treated the same as a registered charity from a tax perspective, it remains a not-for-profit corporation from a corporate perspective.

iii. Not-for-profit corporation under the Canada Not-for-profit Corporations Act

The *Canada Not-for-profit Corporations Act*, SC 2009, c 23 (“CNCA”) provides the foundation of the legal framework for Hockey Canada’s governance. Among other things it establishes key duties for directors. The CNCA provides that directors are to “manage or supervise the management of the activities and affairs” of the corporation.³⁴ The CNCA also sets out the duties and rights of members. All of these duties and rights are discussed further in Chapter IV.

Hockey Canada is also a soliciting corporation within the meaning of the CNCA. In brief, a corporation is designated as a soliciting corporation when it has received more than \$10,000 in income from public sources in a single financial year.³⁵ Since soliciting corporations receive public funds, they must meet additional CNCA requirements to ensure sufficient transparency and accountability for that income, such as complying with specific requirements for public accountants and financial review, and sending financial statements and the report of the public accountant to the Director appointed by the Minister of Innovation, Science and Industry in accordance with the CNCA.³⁶

B. Specific legal and policy framework for National Sport Organizations

i. Introduction

Since Hockey Canada is the NSO for the sport of hockey, it has to abide by certain requirements to be recognized as such. NSOs – sometimes referred to as National Sport Federations (“NSFs”) – are the national governing bodies for certain sports in Canada. These organizations serve many important functions, including:

- “governing all aspects of a sport within Canada;
- managing their high performance programs;
- selecting and managing their national teams;
- implementing national initiatives to develop and promote their sport;
- sanctioning national level competitions and tournaments;
- providing professional development for coaches and officials in their sport; and,
- proposing and supporting bids for international competitions in Canada.”³⁷

³⁴ *Canada Not-for-profit Corporations Act*, SC 2009, c 23, s 124.

³⁵ *Canada Not-for-profit Corporations Act*, SC 2009, c 23, s 2(5.1); [SOR/2011-223](#), s 16(d).

³⁶ See e.g. *Canada Not-for-profit Corporations Act*, SC 2009, c 23, ss 125, 170(1), 176(1), 179; “Requirements for soliciting corporations under the Canada Not-for-profit Corporations Act (NFP Act)” (last visited 13 September 2022), online: *Government of Canada* <<https://www.ic.gc.ca/eic/site/cd-dgc.nsf/eng/cs05011.html>>.

³⁷ “National Sport Organizations” (last visited 13 September 2022), online: *Government of Canada* <<https://www.canada.ca/en/canadian-heritage/services/sport-organizations/national.html>>.

An NSO has no particular status unless it is recognized by Sport Canada³⁸ under a contribution agreement.³⁹ To be eligible to apply for such a contribution agreement, an organization must first meet certain criteria, such as being a federally or provincially incorporated not-for-profit organization and in good standing, and being affiliated with the International Federation (“IF”) for its sport and recognized by the IF as the governing body for the sport or discipline in Canada.⁴⁰ This means that Sport Canada will only enter into a contribution agreement with one NSO per sport. Details of funding under the contribution agreement with Hockey Canada are discussed below.

As Marianne Saroli and Patrice Brunet have said in their book, *Le Droit du Sport au Québec et au Canada*, as there is only one NSO per sport, it is particularly important that the by-laws provide for an open democratic process that allows for a smooth and transparent exchange of ideas and change of directors.⁴¹ In addition, because of the exclusive role that the NSO has within its sport, it plays a significant role in the lives of the athletes, who will be impacted by the decisions the NSO makes. Good governance practices thus become especially important.⁴²

ii. Legislation

Although Canada is constituted as a confederation that divides law-making power between the provincial legislatures and the federal Parliament, the *Constitution Act, 1867*⁴³ does not specifically refer to sports. This has led each level of government to enact legislation reflective of its constitutional authority.⁴⁴ Primary responsibility for the development and participatory aspects of sport are governed by private and community agencies which fall under the jurisdiction of the provinces under sections 92 (property and civil rights) and 93 (education) of the *Constitution Act, 1867*.⁴⁵ Provincial legislation may fund sports programs and projects from the general tax base or through revenues generated from approved lotteries and similar gambling operations.⁴⁶ The federal Parliament may supplement this support, provided that it does not interfere with matters under

³⁸ Sport Canada, a branch in the federal Department of Canadian Heritage (“PCH”), is the agency through which the Government of Canada is involved in high performance sport.

³⁹ Marianne Saroli & Patrice Brunet, *Le Droit du Sport au Québec et au Canada* (Montréal: Éditions Yvon Blais, 2018) at 30.

⁴⁰ “Sport Funding Framework” (last modified 14 July 2022), online: *Government of Canada* <<https://www.canada.ca/en/canadian-heritage/services/funding/sport-support/accountability-framework.html>>.

⁴¹ Marianne Saroli & Patrice Brunet, *Le Droit du Sport au Québec et au Canada* (Montréal: Éditions Yvon Blais, 2018) at 31.

⁴² Marianne Saroli & Patrice Brunet, *Le Droit du Sport au Québec et au Canada* (Montréal: Éditions Yvon Blais, 2018) at 31.

⁴³ (UK), 30 & 31 Vict, c 3, s 91, reprinted in RSC 1985, Appendix II, No 5.

⁴⁴ John Barnes, *The Law of Hockey* (Markham: LexisNexis Canada, 2010) at 24.

⁴⁵ John Barnes, *The Law of Hockey* (Markham: LexisNexis Canada, 2010) at 24.

⁴⁶ John Barnes, *The Law of Hockey* (Markham: LexisNexis Canada, 2010) at 30; see also *Ontario Lottery and Gaming Corporation Act, 1999*, SC 2003, c 2, ss 9-35 which provides dedicated allocations from lottery tickets to be applied by the province for sporting, cultural and charitable purposes.

provincial jurisdiction. More generally, whenever a matter has the potential to be of national or international interest, such as national sport programs, federal authorities may claim jurisdiction.⁴⁷

The sporting objectives of the Government of Canada are declared in the *Physical Activity and Sport Act*, RSC 2003, c 2 (“**PASA**”). This legislation also established the Sport Dispute Resolution Centre of Canada (“**SDRCC**”), whose mission is to provide the Canadian sport community with information, expertise and assistance regarding the prevention and resolution of sports-related disputes. The purpose of PASA is “to modernize the legislative framework that supports [sports] programs and to give formal expression to general policies adopted in 2002.”⁴⁸

The legislation also provides that the objectives of the Government of Canada’s policy regarding sport are:

- (a) to increase participation in the practice of sport and support the pursuit of excellence in sport; and
- (b) to build capacity in the Canadian sport system.⁴⁹

The role of Sport Canada is based on these two objectives.⁵⁰

iii. *Applicable Policies*

This section outlines the various policies, codes and agreements that Hockey Canada must abide by as an NSO.

1. The Canadian Sport Policy

The Government of Canada, through Sport Canada, created the Canadian Sport Policy, which was initially developed in 2002 (the “**CSP 2002**”), and renewed/expanded in 2012 (the “**CSP 2012**”). This CSP 2012 was officially endorsed by federal, provincial and territorial ministers responsible for sport, physical activity and recreation on June 27, 2012.⁵¹ The CSP 2012 sets direction for the period of 2012-2022 and is presently set to be renewed in February 2023.⁵²

As briefly mentioned above, because of the multi-level governance in sport, the CSP 2012 was designed to provide a framework for intergovernmental cooperation in sport in Canada.⁵³ More

⁴⁷ John Barnes, *The Law of Hockey* (Markham: LexisNexis Canada, 2010) at 25, citing *Constitution Act, 1867* (UK), 30 & 31 Vict, c 3, reprinted in RSC 1985, Appendix II, No 5, s. 91.

⁴⁸ John Barnes, *The Law of Hockey* (Markham: LexisNexis Canada, 2010) at 23.

⁴⁹ *Physical Activity and Sport Act*, RSC 2003, c 2, s 4(1); see also John Barnes, *The Law of Hockey* (Markham: LexisNexis Canada, 2010) at 23.

⁵⁰ Interview with Sport Canada (September 15, 2022).

⁵¹ “Canadian Sport Policy 2012” (27 June 2012), online (pdf): *Sport Information Resource Centre* <https://sirc.ca/wp-content/uploads/files/content/docs/Document/csp2012_en.pdf>.

⁵² “Canadian Sport Policy Renewal (2023-2033),” online: *Sport Information Resource Centre* <<https://sirc.ca/canadian-sport-policies/>>.

⁵³ Canada, Parliamentary Information and Research Service, *Sport Canada and the Public Policy Framework for Participation and Excellence in Sport*, Publication No 2020-12-E (23 January 2020) at 2.

specifically, the CSP 2012 is a “roadmap that gives general direction to the major stakeholders in the Canadian sport system while providing the necessary flexibility for governments and non-governmental organizations to fulfill their individual mandates and responsibilities”.⁵⁴

The CSP 2012 has five overall goals (introduction to sport, recreational sport, competitive sport, high performance sport, and sport for development), each of which has different objectives. By way of example, for high performance sport and competitive sport, these objectives notably include:

- All participants in Canadian competitive sport adhere to a code of ethics and code of conduct; and
- Key stakeholders have the organizational capacity, i.e. governance, human and financial resources, to achieve system objectives.⁵⁵

The monitoring of the organizations’ compliance with the objectives set out in the 2012 CSP is done through the conditions attached to funding from Sport Canada, as detailed below.

2. The Sport Funding and Accountability Framework

Sport Canada has established several funding programs as part of its mission.⁵⁶ One of these programs is the Sport Support Program (“**SSP**”), which “distributes funding to national sport organizations [such as Hockey Canada], national multisport service organizations [such as Own the Podium and the Canadian Olympic Committee], Canadian sport centres and other non-governmental organizations that provide direct services and programs for athletes, coaches and other sport participants.”⁵⁷

The tool used to identify which organizations are eligible to receive Sport Canada contributions under the SSP is the Sport Funding and Accountability Framework (“**SFAF**”). The SFAF is used by the federal government to allocate funding to “organizations that have demonstrated through specific program objectives that they are contributing to the federal government’s policy priorities”.⁵⁸ In other words, it is through the SFAF that the federal government is able to steer organizations towards achieving its policy priorities, such as the ones established in the CSP 2012.

Prior to being considered for funding through the SSP, organizations must proceed through the SFAF process. As part of this process, NSOs are asked to develop a multi-year needs-based funding application according to the Contribution Guidelines for National Sport Organizations.⁵⁹

⁵⁴ Canada, Parliamentary Information and Research Service, *Sport Canada and the Public Policy Framework for Participation and Excellence in Sport*, Publication No 2020-12-E (23 January 2020) at 2.

⁵⁵ “Canadian Sport Policy 2012” (27 June 2012) at 11-13, online (pdf): *Sport Information Resource Centre* <https://sirc.ca/wp-content/uploads/files/content/docs/Document/csp2012_en.pdf>.

⁵⁶ They are the Athlete Assistance Program, the Hosting Program and the Sport Support Program.

⁵⁷ Canada, Parliamentary Information and Research Service, *Sport Canada and the Public Policy Framework for Participation and Excellence in Sport*, Publication No 2020-12-E (23 January 2020) at 5.

⁵⁸ Lucie Thibault & Jean Harvey, *Sport Policy in Canada* (Ottawa: University of Ottawa Press, 2013) at 109.

⁵⁹ “Sport Funding Framework” (last modified 14 July 2022), online: *Government of Canada* <<https://www.canada.ca/en/canadian-heritage/services/funding/sport-support/accountability-framework.html>>.

Sport Canada then proceeds with the assessment of the data collected to ensure the funding model can be applied fairly and consistently across all eligible organizations. Different factors are used to differentiate organizations for the purposes of allocation funding, such as the complexity and scope of the sport. After completing this funding application and the assessment stage, organizations are provided with their assessment score, which determines their Reference-level.⁶⁰

Before an NSO starts receiving funding from Sport Canada, it is required to sign a contribution agreement which defines the roles and responsibilities of each party. Once an NSO is able to receive funding, it remains accountable to Sport Canada and must abide to its standards on governance, safety in sport and other areas. This is supervised by Sport Canada through a monitoring process, which includes notably the Sport Canada Governance Report Card system.⁶¹ We understand that this monitoring process is currently being modernized, with the intent of having a continuous, proactive and systematic approach to managing risk from a Sport Canada perspective.⁶²

Pending these changes, it is interesting to note the conclusions in the article “*An Assessment of Sport Canada’s Sport Funding and Accountability Framework, 1995–2004*” referred to by the authors Lucie Thibault and Jean Harvey in their book, *Sport Policy in Canada*, where it was suggested that there were no consequences or penalties for not meeting accountability standards. As well, they found that, if NSOs did not meet the standards, Sport Canada would provide additional funding to assist them in achieving their goal.⁶³

3. Contribution Agreement

The contribution agreement (or funding agreement) is the contract entered into between Sport Canada and the funded NSO that specifies the terms and conditions pursuant to which the NSO receives funding from the government of Canada, which terms and conditions are linked to the goals of the CSP 2012. The contribution agreements are used by Sport Canada to ensure that organizations are attuned to the expectations of society and the government of Canada.⁶⁴

This agreement (which can include various amendments) also lays out the different sources of funding received by an NSO. In fact, the Reference-Level funding allocated through the SFAF is not the only source of funding an NSO can receive from the Government of Canada. Other sources of funding include the Enhanced Excellence and Next Gen funding (which are based on

⁶⁰ “Sport Funding Framework” (last modified 14 July 2022), online: *Government of Canada* <<https://www.canada.ca/en/canadian-heritage/services/funding/sport-support/accountability-framework.html>>.

⁶¹ The Sport Canada’s Governance Report Card is a tool that Sport Canada developed to monitor how sport organizations contribute to key Sport Canada and Government of Canada priorities.

⁶² “Sport Funding Framework” (last modified 14 July 2022), online: *Government of Canada* <<https://www.canada.ca/en/canadian-heritage/services/funding/sport-support/accountability-framework.html>>.

⁶³ Lucie Thibault & Jean Harvey, *Sport Policy in Canada*, (Ottawa: University of Ottawa Press, 2013) at 114. The Review team is in the process of confirming this information with Sport Canada and expects to receive additional information on any enforcement mechanism they use. However, it does appear based on the preliminary information received that there are no other tools that can be used by Sport Canada other than conditions in the contribution agreements and the Sport Canada Report Card system.

⁶⁴ Interview with Sport Canada (September 15, 2022).

recommendations received from Own the Podium, as detailed below), the funding to support gender equity and safety in sport initiatives, the hosting of international tournaments, etc.

For the 2020-2021 season, Hockey Canada received the following funding from the Government of Canada:⁶⁵

PCH Funding - Reference-Level	\$1,831,100
PCH Funding - Enhanced Excellence (Own the Podium)	\$1,911,000
PCH Funding - Next Generation Initiative (50%)	\$275,000
PCH-Funding - Gender Equity and Safety in Sport	\$143,000
PCH Funding - COVID-19 Emergency Support Fund	\$993,541
Canadian Heritage (Hosting Program) (IIHF Women’s World Championship 2021)	\$500,000
Canadian Heritage (Hosting Program) (2021 IIHF Ice Hockey U20 World Championship)	\$200,000

It is understood that, although the level of funding received by each NSO differs according to a variety of factors (such as the number of participants in the sport), the core requirements in the contribution agreement are the same for all NSOs,⁶⁶ including:

- To include the *Universal Code of Conduct to Prevent and Address Maltreatment in Sport* (“UCCMS”) into their organizational policies and procedures;
- To provide the individuals affiliated with the organization with access to an independent third party to address harassment and abuse allegations;
- To have discipline and appeal procedures in place that include access to an independent dispute resolution through the SDRCC (Sport Dispute Resolution Centre of Canada);
- To take measures conducive to creating a workplace free from harassment, abuse and discrimination; and
- To disclose any incident of harassment, abuse or discrimination that could compromise the programming’s chances of success or the NSO’s ability to carry out any of the terms and conditions of the agreement.

⁶⁵ See Hockey Canada, “Contribution Agreement and related amendments” (2020-2021).

⁶⁶ House of Commons, Standing Committee on Canadian Heritage, *Evidence*, 44-1, No 38 (20 June 2022) at 18:55 (Hon Pascale St-Onge); Interview with Sport Canada (September 15, 2022).

This last requirement, which has applied to every NSO since 2018,⁶⁷ has two purposes: first, to ensure that the NSO has established and enforces policies on maltreatment and, second, to verify that the complainants have access to an independent third party to review complaints and conduct investigations or that they are directed to the competent authorities.⁶⁸

NSOs are also required to submit two types of reports during the term of their contribution agreement:

- **Interim reports** are submitted during the project and provide the results of the activities the NSO has undertaken for a specific period. In addition, they include a status report on the work to be accomplished and updated revenue and expense reports; and
- A **final report** is submitted at the end of the project and provides the results of the activities the NSO has undertaken for the duration of the project.⁶⁹

According to recent announcements made by the Minister of Sport, Sport Canada will make changes to contribution agreements with organizations that will meet the new eligibility requirements of the SFAF by April 1, 2023. The goal of this modernization is to ensure that sport organizations receiving federal funding meet specific governance, accountability and safe sport standards.⁷⁰

More specifically, during her appearance before the Canadian Heritage Standing Committee on June 20, 2022, the Minister of Sport mentioned that she intends to make sure that all sport organizations become signatories of the Office of the Sport Integrity Commissioner (“**OSIC**”), which is the new independent safe sport mechanism which is responsible for administering the UCCMS.⁷¹

If NSOs do not meet the requirements set out in the contribution agreement, Sport Canada may provide enhanced monitoring or, in certain circumstances, freeze the funding until the conditions imposed have been met.⁷² Sport Canada has done so a number of times in the past, including for Hockey Canada in June 2022.

⁶⁷ Janyce McGregor, “Hockey Canada clarifies incidents reported to Sport Canada after discrepancy at committee” (8 August 2022), online: *CBC News* <<https://www.cbc.ca/news/politics/hockey-canada-reported-incidents-discrepancy-1.6544543>>.

⁶⁸ House of Commons, Standing Committee on Canadian Heritage, *Evidence*, 44-1, No 38 (20 June 2022) at 18:20 (Hon Pascale St-Onge).

⁶⁹ “Application Guidelines – National Sport Organization” (last modified 12 July 2022), online: *Government of Canada* <<https://www.canada.ca/en/canadian-heritage/services/funding/sport-support/national-organization/application-guidelines.html>>; see also “Reporting Requirements” in Hockey Canada, “Contribution Agreement” (March 30, 2020) at Annex D.

⁷⁰ Canadian Heritage, News Release, “Government of Canada provides update and announces action on safe sport” (12 June 2022), online: *Government of Canada* <<https://www.canada.ca/en/canadian-heritage/news/2022/06/government-of-canada-provides-update-and-announces-action-on-safe-sport.html>>.

⁷¹ House of Commons, Standing Committee on Canadian Heritage, *Evidence*, 44-1, No 38 (20 June 2022) at 18:35 (Hon Pascale St-Onge).

⁷² Interview with Sport Canada, written responses received by Review team on September 16, 2022.

On June 16, 2022, Hockey Canada was advised by Sport Canada that the Department of Canadian Heritage would initiate a recipient compliance audit to confirm that no public funds were used in any part of the proceedings related to the alleged incident involving the 2018 Canadian men’s junior hockey team, and more specifically, to the settlement paid. Sport Canada also mentioned that all funding decisions would be held until Hockey Canada discloses the recommendations of improvement provided by a third-party law firm hired to investigate the alleged incident in 2018. Furthermore, decisions for certain categories of funding related to the Men’s National Team (which does not include the Reference-Level funding) would be held until the reception of the compliance audit results.⁷³

Finally, on June 22, 2022, two days after Hockey Canada appeared before the Canadian Heritage Standing Committee, it was announced that the Minister of Sport decided to freeze all federal funding until the organization was able to meet two conditions: not only would Hockey Canada have to disclose the recommendations of improvement as mentioned above, they would also have to become signatories to the OSIC.⁷⁴

4. The Canadian Sport Governance Code

In 2019, the Canadian High Performance Sport Strategy identified the importance of a governance code for the sports system.⁷⁵ For this reason, the Canadian Olympic Committee (“COC”) convened a working group with the sport community to support and accelerate development of this fundamental part of the Canadian sport system.⁷⁶

The Canadian Sport Governance Code (the “COC Code”) was introduced to the national community in November 2020 with consultation taking part through the first half of 2021. It is intended for all NSOs representing sports on the Olympic Program. Its purpose is to “improve organizational performance by encouraging NSOs to upgrade governance practices through the adoption of revisions to by-laws and other structural mechanisms.”⁷⁷ These governance best practices pertain notably to board composition (including athlete representation), independence of directors, proper orientation for board members, committees, risk management and transparency.

Section G of the COC Code (Implementation) provides that “to make this a success for the sport system, each NSO will be encouraged and supported if needed to make necessary changes to its

⁷³ Letter from Vicky Walker (Director General, Sport Canada) to Tom Renney (Chief Executive Officer, Hockey Canada) (June 16, 2022).

⁷⁴ Rick Westhead, “Federal government freezing Hockey Canada’s funding” (22 June 2022), online: *TSN* <<https://www.tsn.ca/federal-government-freezing-hockey-canada-s-funding-1.1816169>>.

⁷⁵ “2019 Canadian High Performance Sport Strategy” (last modified 27 May 2019) at 18, online (pdf): *Government of Canada* <<https://www.canada.ca/content/dam/pch/documents/services/sport-policies-acts-regulations/HighPerSportStrat-eng.pdf>>.

⁷⁶ “Canadian Sport Governance Code” (1 September 2021), online: *Canadian Olympic Committee – NSO Sharing Centre* <<https://nso.olympic.ca/canadian-sport-governance-code/>>.

⁷⁷ “Canadian Sport Governance Code” (1 September 2021), online: *Canadian Olympic Committee – NSO Sharing Centre* <<https://nso.olympic.ca/canadian-sport-governance-code/>>.

by-laws and take such other steps as may be required so that the NSO is in compliance with the [COC Code] on or before December 31, 2022.”⁷⁸

Despite this language, we have been advised by Hockey Canada and COC representatives that the COC Code is not intended to be mandatory, but is rather a guide concerning best governance practices for NSOs.⁷⁹ This clarification was communicated to the NSOs during two calls that the COC hosted in December 2020 and January 2021. However, the COC also advised the NSOs that they were encouraged to adopt it nonetheless, as compliance could eventually become mandatory.

Hockey Canada’s position regarding the implementation of the COC Code within their organization is that, while having some changes imposed on them may be convenient, they favoured a more organic approach in order to achieve the underlying objectives of the COC Code without being mandated by by-laws (for example, as it relates to equal gender representation on the Board). It also took issue with matters related to the election of the Chair of the Board as well as athlete representation on the Board. Further, Hockey Canada expressed that some other changes were just not well suited for their organization, such as making the financial statements and minutes of Member meetings available to the public. Although Hockey Canada has achieved considerable financial success over the years, Hockey Canada is concerned that being seen as an organization with “deep pockets” could create some negative implications. For example, this could have an effect on their bargaining power with respect to the settlement of lawsuits, and this could also influence the amount of money that sponsors would be willing to offer in the future. This is not to mention the fact that the media could use this information to depict a negative image of the organization. According to Hockey Canada, providing minutes of Member meetings to the general public potentially raises similar concerns. We do note however that three of the four Comparator Associations discussed further below in this report⁸⁰, namely Canada Basketball, Curling Canada and Canada Soccer, publish their financial statements on their website. This is also true for the COC.

5. *The Universal Code of Conduct to Prevent and Address Maltreatment in Sport*

The UCCMS, which was developed by the Canadian Centre for Ethics in Sport in consultation with Sport Canada in 2019, is “the core document that sets harmonized rules to be adopted by sport organizations that receive funding from the Government of Canada to advance a respectful sport culture that delivers quality, inclusive, accessible, welcoming and safe sport experiences”.⁸¹ In fact, Sport Canada has made the inclusion of the UCCMS into organizational policies and procedures of federally funded sport organizations by April 1, 2021, a condition of funding.

⁷⁸ “Canadian Sport Governance Code” (1 September 2021) at 9, section G.2, online: *Canadian Olympic Committee – NSO Sharing Centre* <<https://nso.olympic.ca/canadian-sport-governance-code/>>.

⁷⁹ Hockey Canada, Board of Directors, *Minutes of Meeting* (held on 25-27 March 2021); see also Hockey Canada, Board of Directors, *Minutes of Meeting* (held on 4 May 2021).

⁸⁰ As further discussed below, the Comparator Associations are the NSOs that were selected by Hockey Canada because they have a mandate and membership structure that are comparable to that of Hockey Canada.

⁸¹ “The UCCMS,” online: *Office of the Sport Integrity Commissioner* <<https://sportintegritycommissioner.ca/uccms>>.

In response to this, Hockey Canada has built the UCCMS into their own *Maltreatment, Bullying and Harassment Protection and Prevention Policy*, which took effect in October 15, 2020.

Following a review process led by the SDRCC, version 6.0 of the UCCMS was published by the SDRCC on May 31, 2022 and is effective no later than November 30, 2022.⁸² It is the intention of Hockey Canada to adopt this new version of the UCCMS.⁸³

The UCCMS applies to all *participants* as determined by the *adopting organization*.⁸⁴ The UCCMS defines “adopting organization” as an organization that has adopted the current version of the UCCMS, as amended.⁸⁵ As for “participants”, those can include, without limitation, athletes, coaches, officials, volunteers, administrators, directors, employees, trainers, parents/guardians, etc., according to the policies of the adopting organization.⁸⁶

Much of the UCCMS is directed to protection of participants in a sport and does not deal with governance or requirements for sports organizations themselves. Section 5.5 of the UCCMS deals with sexual maltreatment by a participant, including sexual assault. There is also a duty for the participant to report the maltreatment (see s. 5.11). The UCCMS provides a variety of sanctions including apologies, warnings, education, probation, suspension, eligibility restrictions, permanent ineligibility, and other discretionary sanctions (see s. 7.2).

As for public disclosure, the UCCMS provides the following at section 8:

8.1 In order to uphold the purpose and principles of the UCCMS, a searchable database or registry of *Respondents* whose eligibility to participate in sport has in some way been restricted shall be maintained and shall be publicly available, subject to applicable laws. The database or registry shall include sufficient information to provide context to the applicable sanction pursuant to the provisions contained in the UCCMS. *Adopting Organizations* are responsible to collaborate with one or more organizations maintaining such a registry.

8.2 Further details of the results of a UCCMS enforcement process, for example a summary or redacted decision or summary or redacted investigation report, may also be publicized in a

⁸² “The UCCMS,” online: *Office of the Sport Integrity Commissioner* <<https://sportintegritycommissioner.ca/uccms>>.

⁸³ “Action Plan to Improve Canada’s Game,” online: *Hockey Canada* <<https://www.hockeycanada.ca/en-ca/corporate/about/action-plan>>.

⁸⁴ “Universal Code of Conduct to Prevent and Address Maltreatment in Sport, Version 2022 (6.0)” (31 May 2022) at s 4.1, online (pdf): *Office of the Sport Integrity Commissioner* <<https://sportintegritycommissioner.ca/files/UCCMS-v6.0-20220531.pdf>>.

⁸⁵ “Universal Code of Conduct to Prevent and Address Maltreatment in Sport, Version 2022 (6.0)” (31 May 2022) at Appendix I, online (pdf): *Office of the Sport Integrity Commissioner* <<https://sportintegritycommissioner.ca/files/UCCMS-v6.0-20220531.pdf>>.

⁸⁶ “Universal Code of Conduct to Prevent and Address Maltreatment in Sport, Version 2022 (6.0)” (31 May 2022) at Appendix I, online (pdf): *Office of the Sport Integrity Commissioner* <<https://sportintegritycommissioner.ca/files/UCCMS-v6.0-20220531.pdf>>.

manner consistent with the purpose and principles of the UCCMS, as well as applicable law.

iv. Own the Podium

Own the Podium (“**OTP**”) was originally created in 2010 to prepare Canadian athletes to reach medal finishes at the 2010 Olympic Winter Games in Vancouver. Its purpose is not to develop governance related policies, but rather to provide “the technical analysis required to determine Canadian podium targets for Olympic and Paralympic Games and for making investment recommendations for the allocation of excellence dollars provided by the national funding parties.”⁸⁷ In other words, OTP provides expert recommendations to Sport Canada⁸⁸ and other system funders, to support the needs of sport programs and athletes demonstrating podium potential at Olympic and Paralympic Games.⁸⁹

The funding assessment is primarily focused on High Performance strategies. Each year, the NSOs are asked to provide submission documents according to OTP’s Review Submission Expectations. For example, the 2021 Winter Sport Review Submission Expectations required NSOs to provide, notably, a High Performance Plan, performance objectives for the 2022 Olympic Games, a medal prospects list for 2022, a podium gap assessment, and an outline of the 2026 High Performance Plan framework.

In 2020–2021, following a recommendation by OTP to Sport Canada, Hockey Canada received Enhanced Excellence and Next Generation Initiative support (\$1,911,000 and \$275,000 respectively) from the federal government to support its national team for the 2022 and 2026 Olympic and Paralympic Games. The terms and conditions of this funding are provided in Hockey Canada’s 2020–2021 contribution agreement and related amendments. For a better understanding of what these documents provide in terms of requirements, we refer the reader to the Contribution Agreement section above.

⁸⁷ “Funding,” online: *Own the Podium* <<https://www.ownthepodium.org/en-CA/Funding>>.

⁸⁸ In the contribution agreements between NSOs and Sport Canada, the funding resulting from the OTP recommendation is called “Enhanced Excellence”.

⁸⁹ “Advancing the Sport System” (last modified 20 April 2021), online: *Government of Canada* <<https://www.canada.ca/en/canadian-heritage/services/role-sport-canada/advancing-sport-system.html>>.

IV. THE GOVERNANCE OF NOT FOR PROFIT CORPORATIONS

A. What is “Governance”?

The term “governance” has countless definitions. The word generally describes the practices and procedures used by the leaders of an organization to allocate authority and oversight responsibility for decision-making and operational activities.⁹⁰ A number of factors, such as the organization’s mission and purposes, applicable legislative and regulatory requirements, and industry-wide policies and standards, influence the organization’s governance practices and structure.

The board of directors of a not-for-profit corporation is ultimately and legally responsible for governing the corporation. The board’s duty to govern is described generally in the *Canada Not-for-profit Corporations Act*, SC 2009, c 23 (“CNCA”) as the duty to “manage or supervise the management of the activities and affairs of a corporation.”⁹¹ A board of directors who understands that duty (as well as the functions and responsibilities that flow from it) and ensures that the board and corporation have the tools and resources necessary to effectively carry it out, will usually be said to exercise good governance. “Good governance is also about achieving desired results in a manner consistent with organizational values and accepted social norms.”⁹² In the context of a national sport community, those values and norms are intrinsically linked to the people who form that community. “Sport governance must meld the passion and dedication of volunteers into a focused governance team, operating with integrity and striving to enhance the experiences of the participants, and the performance and reputation of the sport.”⁹³

B. A Framework for Good Governance

Although not-for-profit organizations are subject to different legislative and regulatory requirements that affect the manner in which they are governed, the general governance principles that apply from one sector to another are fundamentally the same. The paragraphs that follow discuss three key principles of a solid framework for good governance that the board of directors of every not-for-profit organization should ensure are entrenched in their governance practices and procedures. Those principles are the following:⁹⁴

- (i) **Board’s role**: the organization clearly defines and communicates what the board’s role, duties and functions are as the governing body;⁹⁵
- (ii) **Board quality**: the organization has a robust recruitment, nominations and elections process for director candidates that includes selection criteria based on skills, experience, diversity and qualities, and offers board orientation and continuing

⁹⁰ C Sorokin et al, *Nonprofit Governance and Management*, 3rd ed (Chicago: American Bar Association, 2011).

⁹¹ *Canada Not-for-profit Corporations Act*, SC 2009, c 23, s 124.

⁹² Sport Canada, *Pursuing Effective Governance in Canada’s National Sport Organizations* (November 2011) at 1.

⁹³ Sport Canada, *Pursuing Effective Governance in Canada’s National Sport Organizations* (November 2011) at 1.

⁹⁴ Anne Corbett & James M Mackay, *Guide to Good Governance: Not-for-Profit and Charitable Organizations*, 2nd ed (September 2013) at 2-3.

⁹⁵ Anne Corbett & James M Mackay, *Guide to Good Governance: Not-for-Profit and Charitable Organizations*, 2nd ed (September 2013) at 2-3.

education programs to enhance the board’s collective knowledge and effectiveness;⁹⁶ and

- (iii) **Board structure and processes**: the organization has well-established structures and processes that inform how the organization expects the board to conduct its work, including the role of officers, the role of committees, and processes for calling and holding meetings.⁹⁷

i. Principle 1 – Board Role, Duties and Functions

The directors will not properly exercise their governance role and duties unless they know what the board’s role is as the governing body of the organization and understand what their individual duties are as a director serving on the board. In addition, the directors must understand how their role differs from the role of the CEO and other management staff. These roles are explored within the paragraphs that follow.

1. Statutory duty to manage or supervise the management of the corporation and other statutory duties in general

Pursuant to section 124 of the CNCA, the directors of a not-for-profit corporation shall “manage or supervise the management of the activities and affairs” of the corporation. The term “activities” includes “any conduct of a corporation to further its purpose and any business carried on by a body corporate”, and affairs “means the relationships among a corporation, its affiliates and the directors, officers, shareholders or members of those bodies corporate.”⁹⁸

The terms “manage or supervise” encompass “a broad spectrum of duties including: ensuring the organization adheres to and carries out the goals of the corporation; setting long-term objectives in accordance with these goals; ensuring financial stability; assessing the corporation’s performance; establishing policies; and being the public face of the corporation.”⁹⁹ Other board duties under the CNCA include electing and appointing officers, approving financial statements, reporting to members by calling and holding annual meetings, and passing by-laws subject to approval of members.

Directors have the option to supervise the management, rather than manage on their own, because “many corporations are too large and intricate for directors to manage the day-to-day activities of the corporation.”¹⁰⁰ The extent directors will delegate often depends on the governance model they prefer and the specific organizational structure of the corporation. A board’s authority to delegate is also limited by restrictions set out in the CNCA. For example, pursuant to subsection 138(2), a

⁹⁶ Anne Corbett & James M Mackay, *Guide to Good Governance: Not-for-Profit and Charitable Organizations*, 2nd ed (September 2013) at 2-3.

⁹⁷ Anne Corbett & James M Mackay, *Guide to Good Governance: Not-for-Profit and Charitable Organizations*, 2nd ed (September 2013) at 2-3.

⁹⁸ *Canada Not-for-profit Corporations Act*, SC 2009, c 23, s 2(1).

⁹⁹ Burke-Robertson, Carter & Man, *Corporate and Practice Manual for Charities and Not-for-Profit Corporations*, (Toronto: Thomson Reuters Canada, 2022) at § 9:10 (Proview).

¹⁰⁰ Donald J Bourgeois, *The Law of Charitable and Not-for-Profit Organizations*, 5th ed (Toronto: LexisNexis Canada, 2016) at 32.

director cannot delegate its power to: submit to the members any question or matter requiring the approval of members, fill a vacancy among the directors or in the office of public accountant or appoint additional directors, issue debt obligations, approve financial statements, adopt, amend or repeal by-laws, nor its power to establish contributions to be made, or dues to be paid, by members.

2. Board takes responsibility for its own governance

The board's underlying governance purpose is to "guide the corporation in meeting its objects."¹⁰¹ The directors are therefore responsible for determining how they will govern and how they are going to manage/supervise the management of the not-for-profit corporation. In doing so, they must decide what is the appropriate governance model for their corporation with consideration of its purposes, goals, resources, stakeholders' needs, etc.

To properly establish and implement its governance model, directors should articulate the role and functions of the board, clarify the relationship between the board and management, establish policies and practices used to promote a quality board, define the structure and processes for how the board conducts its business, and establish a mechanism for evaluating effectiveness.¹⁰²

There are many different governance styles that a board can adopt. For instance, a "working board" is one where the board often assists staff and work on the day-to-day activities of the organization; as such, there is not much distinction between staff and the board. This model is most common at the start-up stage of a not-for-profit corporation.¹⁰³ Another model is one where the directors function as a "policy board" and focus mainly on "broader issues that affect the organization's future success and sustainability",¹⁰⁴ while staff manages the operations. A policy board will determine the "goals of the organization (vision, mission and values), set broad policy directions and strategic plans,"¹⁰⁵ and monitor performance. This model is often referred to as a Carver policy governance model. Typically, for larger not-for-profit corporations, the policy governance model is preferred, since the model contemplates "highly developed policies and operating performance reporting with specialized and professional staff".¹⁰⁶ As a result, the board's focus is on "important issues in a way that least intrudes on the chief executive officer's role of managing the operations."¹⁰⁷

¹⁰¹ Anne Corbett & James M Mackay, *Guide to Good Governance: Not-for-Profit and Charitable Organizations*, 2nd ed (September 2013) at 70.

¹⁰² Anne Corbett & James M Mackay, *Guide to Good Governance: Not-for-Profit and Charitable Organizations*, 2nd ed (September 2013) at 70.

¹⁰³ Anne Corbett & James M Mackay, *Guide to Good Governance: Not-for-Profit and Charitable Organizations*, 2nd ed (September 2013) at 33.

¹⁰⁴ Anne Corbett & James M Mackay, *Guide to Good Governance: Not-for-Profit and Charitable Organizations*, 2nd ed (September 2013) at 33.

¹⁰⁵ Anne Corbett & James M Mackay, *Guide to Good Governance: Not-for-Profit and Charitable Organizations*, 2nd ed (September 2013) at 34.

¹⁰⁶ Anne Corbett & James M Mackay, *Guide to Good Governance: Not-for-Profit and Charitable Organizations*, 2nd ed (September 2013) at 34.

¹⁰⁷ Anne Corbett & James M Mackay, *Guide to Good Governance: Not-for-Profit and Charitable Organizations*, 2nd ed (September 2013) at 34.

3. Board responsibilities and functions

From the statutory duties described above flow a number of board responsibilities and functions. Although each board's responsibilities and functions may slightly vary in practice according to their preferred governance model, some responsibilities and functions form the core of the board's contribution to the management of the corporation. These are briefly described below.

Approving a strategic plan

Every not-for-profit corporation has a different purpose, mission, vision and values. To achieve the corporation's purpose, the directors, officers and staff need to clearly understand what the corporation wishes to become and how it intends to get there.¹⁰⁸ This is why it is important for boards to develop and approve a strategic plan: "the foundation document that provides direction to the organization"¹⁰⁹ to reach specific goals within a specific time frame.¹¹⁰

Overseeing operational performance

Directors must oversee operational performance as part of their fiduciary duty to the corporation. "Determining how the organization will measure its success is a key component of effective governance."¹¹¹ In order to govern while not becoming too involved in operations, a board should create an integrated overall performance reporting system.¹¹² This should be a "simple and clear performance reporting system to monitor overall organizational performance" and key performance areas, such as quality of services/outcomes, financial condition and performance, community engagement, organizational development, and so on.¹¹³

The performance reporting system should establish "measures and indicators that quantify the performance objectives as a basis for planning targets and monitoring actual results."¹¹⁴ Based on the performance reporting system, staff provide regular performance reports to the board, which

¹⁰⁸ Sport Canada, *Pursuing Effective Governance in Canada's National Sport Organizations* (November 2011) at 4.

¹⁰⁹ Anne Corbett & James M Mackay, *Guide to Good Governance: Not-for-Profit and Charitable Organizations*, 2nd ed (September 2013) at 38.

¹¹⁰ Anne Corbett & James M Mackay, *Guide to Good Governance: Not-for-Profit and Charitable Organizations*, 2nd ed (September 2013) at 39; see also Business Roundtable, "Principles of Corporate Governance" (8 September 2016), online: *Harvard Law School Forum on Corporate Governance* <<https://corpgov.law.harvard.edu/2016/09/08/principles-of-corporate-governance/>>.

¹¹¹ Sport Canada, *Pursuing Effective Governance in Canada's National Sport Organizations* (November 2011) at 2.

¹¹² Anne Corbett & James M Mackay, *Guide to Good Governance: Not-for-Profit and Charitable Organizations*, 2nd ed (September 2013) at 47.

¹¹³ Anne Corbett & James M Mackay, *Guide to Good Governance: Not-for-Profit and Charitable Organizations*, 2nd ed (September 2013) at 47-48.

¹¹⁴ Anne Corbett & James M Mackay, *Guide to Good Governance: Not-for-Profit and Charitable Organizations*, 2nd ed (September 2013) at 47; see also Sport Canada, *Pursuing Effective Governance in Canada's National Sport Organizations* (November 2011) at 2.

allows the board to oversee how well the corporation is accomplishing its objectives and to determine areas that need attention.¹¹⁵

Although directors should not become experts in program effectiveness and quality, directors do need to be able to understand the complexities of the operations of the corporation to ensure proper evaluation.¹¹⁶

Overseeing financial assets and resources

Another role of the board is to protect the sustained success of the not-for-profit corporation by ensuring the ongoing viability of the corporation, including the provision of funds and resources needed to carry out its mission, and protecting its assets from risks.¹¹⁷ To accomplish this, directors should oversee the financial performance and viability of the not-for-profit corporation, ensure the resources and assets are available and effectively used, and oversee risk.¹¹⁸

In overseeing the corporation's financial assets and resources, the board should not become excessively involved in operational decision-making, but should take certain actions to fulfill its role. For instance, boards should approve operating and capital budgets, monitor financial performance, ensure the sufficiency and integrity of information,¹¹⁹ and ensure that the financial management is undertaken according to generally accepted accounting principles.¹²⁰ Additionally, a board "should assure itself that insurance programs are adequate [...] and maintained at appropriate levels".¹²¹ Finally, boards "should be satisfied that there is an effective policy framework for managing the procurement of goods and services," for managing contracts, and for managing investment programs.¹²²

¹¹⁵ Anne Corbett & James M Mackay, *Guide to Good Governance: Not-for-Profit and Charitable Organizations*, 2nd ed (September 2013) at 47-48.

¹¹⁶ Anne Corbett & James M Mackay, *Guide to Good Governance: Not-for-Profit and Charitable Organizations*, 2nd ed (September 2013) at 51.

¹¹⁷ Anne Corbett & James M Mackay, *Guide to Good Governance: Not-for-Profit and Charitable Organizations*, 2nd ed (September 2013) at 53; see also Sport Canada, *Pursuing Effective Governance in Canada's National Sport Organizations* (November 2011) at 8.

¹¹⁸ Anne Corbett & James M Mackay, *Guide to Good Governance: Not-for-Profit and Charitable Organizations*, 2nd ed (September 2013) at 53.

¹¹⁹ Anne Corbett & James M Mackay, *Guide to Good Governance: Not-for-Profit and Charitable Organizations*, 2nd ed (September 2013) at 54-55; see also Business Roundtable, "Principles of Corporate Governance" (8 September 2016), online: *Harvard Law School Forum on Corporate Governance* <<https://corpgov.law.harvard.edu/2016/09/08/principles-of-corporate-governance/>>.

¹²⁰ Sport Canada, *Pursuing Effective Governance in Canada's National Sport Organizations* (November 2011) at 8.

¹²¹ Anne Corbett & James M Mackay, *Guide to Good Governance: Not-for-Profit and Charitable Organizations*, 2nd ed (September 2013) at 55.

¹²² Anne Corbett & James M Mackay, *Guide to Good Governance: Not-for-Profit and Charitable Organizations*, 2nd ed (September 2013) at 55-56.

In order to properly fulfill its role in overseeing financial assets and resources, directors should “obtain support from one or more committees”,¹²³ such as a Finance Committee. This also ensures an appropriate level of scrutiny.¹²⁴

It is important to note that while many directors “do not have the expertise to provide meaningful oversight to the financial area [...] [e]ach [d]irector has a legal and moral responsibility to oversee the finances.”¹²⁵ Consequently, orientation for directors “should include training in financial literacy [...] and the] financial reporting should be done in a clear and simple manner.”¹²⁶

Establishing the organization’s tolerance for risk and supervising the risk management process

Assessing and managing risk involves a broad view of risk, and incorporates organizational risks related to liabilities and losses, business viability risks, and reputational risks.¹²⁷ A board should be involved in “identifying and assessing potential risks, as well as determining how to respond to each risk.”¹²⁸ A board should also establish the corporation’s appetite or tolerance for risk.¹²⁹ A board should ensure that the organization is taking a number of steps to mitigate the effects of risks, for example by purchasing insurance, establishing contractual protections against contingencies and risks, and/or establishing contingency plans.¹³⁰ The board also “needs to assure itself that management has put in place the appropriate policies, processes and programs to prepare for, prevent, and protect the corporation from foreseeable and material risks.”¹³¹

Since “risks tend to relate to other disciplines, it may make sense for existing standing committees to address the pertinent aspects of risk within their other responsibilities.”¹³² However, some boards may prefer to “establish a Risk Management Committee to work with management to identify and address the risks to the corporation broadly.”¹³³

¹²³ Anne Corbett & James M Mackay, *Guide to Good Governance: Not-for-Profit and Charitable Organizations*, 2nd ed (September 2013) at 56.

¹²⁴ Sport Canada, *Pursuing Effective Governance in Canada’s National Sport Organizations* (November 2011) at 8.

¹²⁵ Sport Canada, *Pursuing Effective Governance in Canada’s National Sport Organizations* (November 2011) at 8.

¹²⁶ Sport Canada, *Pursuing Effective Governance in Canada’s National Sport Organizations* (November 2011) at 8.

¹²⁷ Anne Corbett & James M Mackay, *Guide to Good Governance: Not-for-Profit and Charitable Organizations*, 2nd ed (September 2013) at 57.

¹²⁸ Anne Corbett & James M Mackay, *Guide to Good Governance: Not-for-Profit and Charitable Organizations*, 2nd ed (September 2013) at 59.

¹²⁹ Business Roundtable, “Principles of Corporate Governance” (8 September 2016), online: *Harvard Law School Forum on Corporate Governance* <<https://corpgov.law.harvard.edu/2016/09/08/principles-of-corporate-governance/>>.

¹³⁰ Anne Corbett & James M Mackay, *Guide to Good Governance: Not-for-Profit and Charitable Organizations*, 2nd ed (September 2013) at 59.

¹³¹ Anne Corbett & James M Mackay, *Guide to Good Governance: Not-for-Profit and Charitable Organizations*, 2nd ed (September 2013) at 59.

¹³² Anne Corbett & James M Mackay, *Guide to Good Governance: Not-for-Profit and Charitable Organizations*, 2nd ed (September 2013) at 60.

¹³³ Anne Corbett & James M Mackay, *Guide to Good Governance: Not-for-Profit and Charitable Organizations*, 2nd ed (September 2013) at 61.

Hiring and overseeing the performance of the CEO

The CEO is the senior manager responsible to the board. The board is responsible for hiring and overseeing the performance of the CEO to “ensure there is effective leadership in place to manage the organization.”¹³⁴ To accomplish this, the board should clearly define the CEO’s role and the board’s expectations, oversee the CEO’s annual evaluation based on established criteria, and approve a succession plan for the CEO.¹³⁵ It is important for the board to develop and nurture “a productive working relationship with the CEO.”¹³⁶

4. Fiduciary and other duties of individual directors

As described above, the board assumes certain collective roles. Directors should also be mindful of their individual duties and responsibilities that flow simply from being a director for any not-for-profit corporation. These are detailed below.

Fiduciary duty

It is entrenched in common law principles that directors stand in a fiduciary relationship to the corporation they serve.¹³⁷ As such, directors are ultimately responsible for the operations of the corporation. As mentioned above, the directors’ primary duty is to manage or supervise the management of the activities and affairs of the corporation, which is now codified in most modern not-for-profit legislation, including the CNCA. A fiduciary duty implies that the fiduciary (in this instance, the director) must act with absolute loyalty toward the other party (in this instance, the corporation) in managing the latter’s affairs. That duty encompasses not only a wide range of board responsibilities and functions, but also a number of individual duties that the directors are required to abide by.

Standard of care

Pursuant to paragraph 148(1)(b) of the CNCA, in exercising their powers and discharging their duties, a director shall “exercise the care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances.” This standard of care is an objective one,¹³⁸ which results in the same exposure to liability for the same actions, despite different levels of knowledge and experience. If a director or officer does not meet the appropriate standard of care when exercising their legal duties, then they are exposed to personal liability. The diligence requirement

¹³⁴ Anne Corbett & James M Mackay, *Guide to Good Governance: Not-for-Profit and Charitable Organizations*, 2nd ed (September 2013) at 61; see also Business Roundtable, “Principles of Corporate Governance” (8 September 2016), online: *Harvard Law School Forum on Corporate Governance* <<https://corpgov.law.harvard.edu/2016/09/08/principles-of-corporate-governance/>>.

¹³⁵ Anne Corbett & James M Mackay, *Guide to Good Governance: Not-for-Profit and Charitable Organizations*, 2nd ed (September 2013) at 61; see also Business Roundtable, “Principles of Corporate Governance” (8 September 2016), online: *Harvard Law School Forum on Corporate Governance* <<https://corpgov.law.harvard.edu/2016/09/08/principles-of-corporate-governance/>>.

¹³⁶ Sport Canada, *Pursuing Effective Governance in Canada’s National Sport Organizations* (November 2011) at 6.

¹³⁷ *Canadian Aero Service Ltd. v. O’Malley*, [1974] S.C.R. 592; *London Humane Society (Re)*, 2010 ONSC 5775.

¹³⁸ Burke-Robertson, Carter & Man, *Corporate and Practice Manual for Charities and Not-for-Profit Corporations* (Toronto: Thomson Reuters Canada, 2022) at § 9:3 (Proview).

of directors requires them to take the time to be “familiar with all aspects of the corporation’s operations through attending board meetings and reviewing the minutes of missed board meetings.”¹³⁹

On a related note, the business judgment rule was developed in the context of for-profit corporations, but it has been applied in the context of not-for-profit corporations.¹⁴⁰ “The business judgment rule has developed as a type of lens by which the applicable standard of care will be examined by courts”.¹⁴¹ In brief, “the business judgment rule states that a director will not be held liable for mistakes made after an honest and good faith evaluation of the decision.”¹⁴² A director’s evaluation may include reliance on financial statements of the corporation or a report of a person whose profession lends credibility to a statement made by that person.¹⁴³ The Supreme Court of Canada commented as follows: “Directors may find themselves in a situation where it is impossible to please all stakeholders. [...] There is no principle that one set of interests – for example the interests of shareholders – should prevail over another set of interests. Everything depends on the particular situation faced by the directors and whether, having regard to that situation, they exercised business judgment in a responsible way.”¹⁴⁴

Duty to avoid conflicts of interest

The general legal duty to avoid conflicts of interest is reflected in the statute’s provisions setting a high bar for directors with respect to avoidance of and disclosure of conflicts of interest. Directors are required to avoid situations where their private interests conflict with those of the corporation,¹⁴⁵ except where the corporation has knowledge of this conflict of interest and has provided their consent to allow this conflict of interest, pursuant to section 141 of the CNCA.¹⁴⁶

Duty to act honestly and in good faith

Directors must act in good faith at all times.¹⁴⁷ To ensure honest dealings with the corporation, “a director must disclose to the corporation the entire truth in his or her dealings as a director.”¹⁴⁸ The

¹³⁹ Burke-Robertson, Carter & Man, [Corporate and Practice Manual for Charities and Not-for-Profit Corporations](#) (Toronto: Thomson Reuters Canada, 2022) at § 9:15 (Proview).

¹⁴⁰ Burke-Robertson, Carter & Man, [Corporate and Practice Manual for Charities and Not-for-Profit Corporations](#) (Toronto: Thomson Reuters Canada, 2022) at § 9:9 (Proview); *Goertz v Condominium Plan No. 98SA12401*, 2018 SKCA 41 at paras 57, 58; *Ottawa Humane Society v Ontario Society for the Prevention of Cruelty to Animals*, 2017 ONSC 5409 at paras 6, 37–39.

¹⁴¹ Burke-Robertson, Carter & Man, [Corporate and Practice Manual for Charities and Not-for-Profit Corporations](#) (Toronto: Thomson Reuters Canada, 2022) at § 9:9 (Proview).

¹⁴² Burke-Robertson, Carter & Man, [Corporate and Practice Manual for Charities and Not-for-Profit Corporations](#) (Toronto: Thomson Reuters Canada, 2022) at § 9:9 (Proview).

¹⁴³ *Canada Not-for-profit Corporations Act*, SC 2009, c 23, s 149(1).

¹⁴⁴ *BCE Inc v 1976 Debentureholders*, 2008 SCC 69 at paras 83–84.

¹⁴⁵ *London Humane Society (Re)*, 2010 ONSC 5775 at para 20.

¹⁴⁶ Burke-Robertson, Carter & Man, [Corporate and Practice Manual for Charities and Not-for-Profit Corporations](#) (Toronto: Thomson Reuters Canada, 2022) at § 9:10 (Proview).

¹⁴⁷ *London Humane Society (Re)*, 2010 ONSC 5775 at para 18.

¹⁴⁸ Burke-Robertson, Carter & Man, [Corporate and Practice Manual for Charities and Not-for-Profit Corporations](#) (Toronto: Thomson Reuters Canada, 2022) at § 9:13 (Proview).

duty to act in good faith also “requires that the directors consider the best interests of the corporation as a whole rather than allowing one sectional interest of the corporation to prevail over others”¹⁴⁹, “and, in doing so, must take into account all relevant factors.”¹⁵⁰

Duty to act in the best interests of the corporation

The “best interests in a not-for-profit corporation are linked to the mission, vision, values and accountabilities of the corporation. Therefore, acting in the best interests of a mission-based not-for-profit corporation, means fulfilling the mission, moving towards the vision, adhering to core values, and discharging accountabilities.”¹⁵¹

Although the members elect the directors of a not-for-profit organization, the directors must act primarily in the best interests of the corporation as a whole. The organization exists for its purposes, mission and vision and occasionally that may mean that “the best interests of the corporation will not always be consistent with the best interests of the members.”¹⁵² Similarly, the interests of the members may also differ from the interests of other stakeholders and the public. As an example, there may be circumstances where a corporation requires that additional funds be collected from members in order to pursue the corporation’s purpose. Evidently, members may not wish to pay additional membership fees to the corporation because this reduces their own financial resources. “The challenge for the board is to resolve conflicts in a manner that reflects the best interests of the corporation and at the same time maintains the support of the [stakeholders]”, which must be done in a way that “each party can be said to have been fairly treated. [...] A decision on how to achieve this balance is made on a case-by-case basis as current circumstances and exigencies require but should always be done in the best interests of the organization over the longer term.”¹⁵³

Case law confirms that in considering what is in the best interests of the corporation, directors may (and should) “look to the interests of, inter alia, shareholders, employees, creditors, consumers,

¹⁴⁹ Burke-Robertson, Carter & Man, *Corporate and Practice Manual for Charities and Not-for-Profit Corporations* (Toronto: Thomson Reuters Canada, 2022) at § 9:13 (Proview).

¹⁵⁰ Anne Corbett & James M Mackay, *Guide to Good Governance: Not-for-Profit and Charitable Organizations*, 2nd ed (September 2013) at 91.

¹⁵¹ Anne Corbett & James M Mackay, *Guide to Good Governance: Not-for-Profit and Charitable Organizations*, 2nd ed (September 2013) at 10.

¹⁵² Anne Corbett & James M Mackay, *Guide to Good Governance: Not-for-Profit and Charitable Organizations*, 2nd ed (September 2013) at 10; see also Peter Dey & Sarah Kaplan, “360° Governance: Where are the Directors in a World in Crisis?” (2021) at 30, online (pdf): [Rotman School of Management University of Toronto <https://www.rotman.utoronto.ca/FacultyAndResearch/ResearchCentres/LeeChinInstitute/Sustainability-Research-Resources/360-Governance-Report>](https://www.rotman.utoronto.ca/FacultyAndResearch/ResearchCentres/LeeChinInstitute/Sustainability-Research-Resources/360-Governance-Report).

¹⁵³ Peter Dey & Sarah Kaplan, “360° Governance: Where are the Directors in a World in Crisis?” (2021) at 30, online (pdf): [Rotman School of Management University of Toronto <https://www.rotman.utoronto.ca/FacultyAndResearch/ResearchCentres/LeeChinInstitute/Sustainability-Research-Resources/360-Governance-Report>](https://www.rotman.utoronto.ca/FacultyAndResearch/ResearchCentres/LeeChinInstitute/Sustainability-Research-Resources/360-Governance-Report); see also *BCE Inc v 1976 Debentureholders*, 2008 SCC 69 at para 84.

governments and the environment to inform their decisions.”¹⁵⁴ Fostering healthy and trustworthy relationships with stakeholders is arguably in the best interests of a corporation.¹⁵⁵

That said, directors do have “a responsibility to ensure that the corporation fulfills its [...] purposes and, in this regard, [have] a responsibility to ensure that the membership does not impose its own priorities over the stated purposes of the corporation or restrict the provision of services to a narrow segment of the community served by the corporation.”¹⁵⁶

Duty of confidentiality

The general rule of confidentiality means “all matters and discussions in a boardroom are confidential.”¹⁵⁷ Some not-for-profit corporations, primarily those that are publicly funded, operate in an open and transparent manner. In this case, directors “must respect the confidentiality of matters that are not, or will not be, disclosed to the public.”¹⁵⁸

Duty of obedience and solidarity

Under subsection 148(2) of the CNCA, a director has a duty to comply with all applicable acts and regulations, and the corporation’s governing documents such as articles and by-laws. A director must also assist in implementing valid corporate decisions.¹⁵⁹ Furthermore, subsection 148(3) of the CNCA states that directors of not-for-profit corporations must verify the lawfulness of the articles and the purpose of the corporation.

The duty of obedience also includes the duty of solidarity. A director “who is opposed to a decision of the Corporation that has been validly taken has a duty to respect and adhere to that decision.”¹⁶⁰ Directors who speak publicly against a decision validly taken by the board are, in effect, violating their fiduciary duty to the corporation.

¹⁵⁴ *BCE Inc v 1976 Debentureholders*, 2008 SCC 69 at para 40; also cited in *Pruner v Ottawa Hunt and Golf Club, Limited*, 2014 ONSC 6272 at para 40.

¹⁵⁵ See e.g. Peter Dey & Sarah Kaplan, “360° Governance: Where are the Directors in a World in Crisis?” (2021) at 11, online (pdf): *Rotman School of Management University of Toronto* <<https://www.rotman.utoronto.ca/FacultyAndResearch/ResearchCentres/LeeChinInstitute/Sustainability-Research-Resources/360-Governance-Report>>.

¹⁵⁶ *The Campaign for the Inclusion of People who are Deaf and Hard of Hearing v Canadian Hearing Society*, 2018 ONSC 5445 at para 34.

¹⁵⁷ Anne Corbett & James M Mackay, *Guide to Good Governance: Not-for-Profit and Charitable Organizations*, 2nd ed (September 2013) at 91.

¹⁵⁸ Anne Corbett & James M Mackay, *Guide to Good Governance: Not-for-Profit and Charitable Organizations*, 2nd ed (September 2013) at 91.

¹⁵⁹ Burke-Robertson, Carter & Man, *Corporate and Practice Manual for Charities and Not-for-Profit Corporations* (Toronto: Thomson Reuters Canada, 2022) at § 9:16 (Proview).

¹⁶⁰ Anne Corbett & James M Mackay, *Guide to Good Governance: Not-for-Profit and Charitable Organizations*, 2nd ed (September 2013) at 92.

5. Directors may rely on information provided by management, professionals and others

As mentioned above, the standard of care applicable to the actions of directors is one of reasonable diligence. A director will be considered to have acted with reasonable diligence if they rely on “financial statements of the corporation represented to the director by an officer of the corporation or in a written report of the public accountant of the corporation fairly to reflect the financial condition of the corporation” or “a report of a person whose profession lends credibility to a statement made by that person.”¹⁶¹ The reliance on these resources must be done in good faith.¹⁶² In other words, directors “are entitled to assume that those on whom they rely, particularly officers and senior management, have performed their duties honestly.”¹⁶³

6. The respective roles of the board and management

Normally, a board will delegate the “day-to-day supervision of the affairs of the organization” to the CEO and staff, although the board must always “ensure that delegated acts are properly fulfilled.”¹⁶⁴ Regardless of how a board chooses to govern, a board should ensure that it “draw[s] the line between the board’s role and management’s role”¹⁶⁵ by way of written statements. The board and management should both have clear knowledge of their role, as well as the governance structures and processes in place.¹⁶⁶ The “line between governance and managing operations” will often be blurred, especially because “[d]irectors do need to question and probe operational matters to some degree”¹⁶⁷ in fulfilling their oversight obligations. Directors should “be diligent to avoid giving operational advice in areas where they have no expertise.”¹⁶⁸ Nevertheless, some flexibility and judgment is appropriate.¹⁶⁹

Most importantly, the chair and CEO “need to work closely to maintain an effective differentiation between the roles of management and the board.”¹⁷⁰

¹⁶¹ [Canada Not-for-profit Corporations Act](#), SC 2009, c 23, s 149(1).

¹⁶² [Canada Not-for-profit Corporations Act](#), SC 2009, c 23, s 149(2).

¹⁶³ Anne Corbett & James M Mackay, *Guide to Good Governance: Not-for-Profit and Charitable Organizations*, 2nd ed (September 2013) at at 93.

¹⁶⁴ Anne Corbett & James M Mackay, *Guide to Good Governance: Not-for-Profit and Charitable Organizations*, 2nd ed (September 2013) at 34.

¹⁶⁵ Anne Corbett & James M Mackay, *Guide to Good Governance: Not-for-Profit and Charitable Organizations*, 2nd ed (September 2013) at 34.

¹⁶⁶ Anne Corbett & James M Mackay, *Guide to Good Governance: Not-for-Profit and Charitable Organizations*, 2nd ed (September 2013) at 70.

¹⁶⁷ Anne Corbett & James M Mackay, *Guide to Good Governance: Not-for-Profit and Charitable Organizations*, 2nd ed (September 2013) at 35.

¹⁶⁸ Anne Corbett & James M Mackay, *Guide to Good Governance: Not-for-Profit and Charitable Organizations*, 2nd ed (September 2013) at 35.

¹⁶⁹ Anne Corbett & James M Mackay, *Guide to Good Governance: Not-for-Profit and Charitable Organizations*, 2nd ed (September 2013) at 35.

¹⁷⁰ Anne Corbett & James M Mackay, *Guide to Good Governance: Not-for-Profit and Charitable Organizations*, 2nd ed (September 2013) at 36.

7. The respective roles of the board and members

Members may play a more limited role¹⁷¹ than directors and officers within a not-for-profit corporation, but their role is nevertheless meaningful and powerful.¹⁷² For example, subsections 128(3) and 130(1) of the CNCA provide that members elect and may remove the directors of a not-for-profit corporation. Pursuant to subsection 197(1), members approve any fundamental change to the corporation. Similarly, section 152 provides that members are responsible for confirming, amending or rejecting any proposal by directors to make, amend, or repeal any by-law that regulates the activities or affairs of the corporation. Members are also entitled to receive the annual financial statements pursuant to subsection 172(1) of the CNCA and appoint the public accountant pursuant to subsection 181(1).

Although members have important duties, they “do not have a formal consultative function or authority in relation to proposed policies of the corporation. Any consultative role depends entirely on a discretionary decision of the board of directors of the corporation to invite such consultation.”¹⁷³

Members also have important rights. Pursuant to subsection 162(1) of the CNCA, members are entitled to notice of, and to attend, the annual meeting. Section 163 also allows for a member who is eligible to vote at an annual meeting of members to make a proposal. Members may also, pursuant to subsection 152(6), propose to make, amend or repeal a by-law.

Members have significant rights to information. Members have rights to copies of financial statements under sections 172 and 175 of the CNCA and to access the statements under subsection 174(2) for examination purposes. Additionally, section 22 sets out provisions for access to the corporate records by a member, a member’s personal representative and a creditor of the corporation.

More generally, practitioners in the field of not-for-profit corporations have commented that “one of the most fundamental rights of members is their right to rely on the integrity of the by-laws and charter or articles of the corporation and to expect that the corporation and its directors will similarly respect the requirements of those documents.”¹⁷⁴ This stems from the fact that the relationship between the directors of a not-for-profit corporation and its members is “contractual in nature.”¹⁷⁵ The contractual relationship is established and governed by the corporation’s

¹⁷¹ [The Campaign for the Inclusion of People who are Deaf and Hard of Hearing v Canadian Hearing Society](#), 2018 ONSC 5445 at para 34: “the role of a member of a not-for-profit corporation is limited to approving the annual financial statements and the auditor”.

¹⁷² Anne Corbett & James M Mackay, *Guide to Good Governance: Not-for-Profit and Charitable Organizations*, 2nd ed (September 2013) at 10.

¹⁷³ [The Campaign for the Inclusion of People who are Deaf and Hard of Hearing v Canadian Hearing Society](#), 2018 ONSC 5445 at para 35.

¹⁷⁴ Burke-Robertson, Carter & Man, [Corporate and Practice Manual for Charities and Not-for-Profit Corporations](#) (Toronto: Thomson Reuters Canada, 2022) at § 7:16 (Proview).

¹⁷⁵ Donald J Bourgeois, [The Law of Charitable and Not-for-Profit Organizations](#), 5th ed (Toronto: LexisNexis Canada, 2016) at 232; [Senez v Montreal Real Estate Board](#), [1980] SCJ No 89, [1980] 2 SCR 555 at 566.

constating documents.¹⁷⁶ As such, the terms of the contract will vary from one corporation to another. At a minimum, the contractual relationship between the corporation and the members places an obligation on directors and members to “comply with the terms of the contract,”¹⁷⁷ in other words, to comply with all incorporation documents and by-laws.¹⁷⁸

ii. *Principle 2 – Board Quality*

1. Board size

The appropriate size for a board of directors depends on a number of factors, such as the amount of work to be done, which varies according to the projects in progress and issues facing the organization. Similarly, the need to have directors who possess specific skills and expertise can also affect the number of directors required. The CNCA requires that a corporation have at least one director, while soliciting corporations (such as Hockey Canada) must have a minimum of three, at least two of whom are not officers or employees of the corporation or its affiliates.¹⁷⁹ However, the board should be sufficiently large to enable the directors to get the work done well, but not so large that meaningful discussion becomes difficult.¹⁸⁰

While organizations must determine the board size that best suits their particular needs, the effectiveness of a board is not a function of its size. Much more crucial to board success are the dedication and skill of its individual members.¹⁸¹

2. Board composition – skills, experience, diversity (equity seeking groups) and personal qualities

Directors have both a duty to manage the organization and a duty to operate it by ensuring that it has activities that carry out its objects.¹⁸² Inherently, one of the critical functions of the board of directors is to ensure that it works in an effective and efficient manner while recognizing and accounting for different backgrounds, cultural and personal experiences, interests and personalities.¹⁸³

¹⁷⁶ Donald J Bourgeois, *The Law of Charitable and Not-for-Profit Organizations*, 5th ed (Toronto: LexisNexis Canada, 2016) at 234.

¹⁷⁷ Donald J Bourgeois, *The Law of Charitable and Not-for-Profit Organizations*, 5th ed (Toronto: LexisNexis Canada, 2016) at 251.

¹⁷⁸ *Canada Not-for-profit Corporations Act*, SC 2009, c 23, s 148(2).

¹⁷⁹ *Canada Not-for-profit Corporations Act*, SC 2009, c 23, s 125.

¹⁸⁰ Anne Corbett & James M Mackay, *Guide to Good Governance: Not-for-Profit and Charitable Organizations*, 2nd ed (September 2013) at 118.

¹⁸¹ Burke-Robertson, Carter & Man, *Corporate and Practice Manual for Charities and Not-for-Profit Corporations*, (Toronto: Thomson Reuters Canada, 2022) at § 8:13 (Proview).

¹⁸² Donald J Bourgeois, *The Law of Charitable and Not-for-Profit Organizations*, 5th ed (Toronto: LexisNexis Canada, 2016) at 163.

¹⁸³ Donald J Bourgeois, *The Law of Charitable and Not-for-Profit Organizations*, 5th ed (Toronto: LexisNexis Canada, 2016) at 163.

Certain fundamental skills, such as financial literacy, legal and governance experience, are vital to a board of directors.¹⁸⁴ Other skills may become relevant, or even required, depending on the particular situation unique to each entity.

Specialized skills are not the only way boards can acquire desired or required qualities; experience and knowledge in which the board requires assistance or performs a governance role are equally important.¹⁸⁵

Further, boards should comprise individuals who possess qualities desirable from board members. At a minimum, a director's fiduciary duties require them to show integrity, loyalty, honesty and good faith.¹⁸⁶ Still, other qualities may also be desirable for an efficient and effective board of directors; these may include:

- The ability to work in a team;
- A commitment to the workload required;
- The absence of apparent conflicts;
- Leadership potential; and
- The ability to think strategically and communicate effectively.¹⁸⁷

In the recent past, much emphasis has been placed on ensuring the board reflects the diversity of the community it serves, including demographic, cultural, linguistic, economic, geographic, gender, and ethnic factors.¹⁸⁸ Research “often shows that more diversity on boards brings value to firms by increasing the diversity of experience and improving board monitoring.”¹⁸⁹ Moreover, it is beneficial for a board to consider both social and professional diversity, which can involve looking beyond the typical CEO or CFO pool for board candidates.¹⁹⁰ Equally important to the notion of diversity is cognitive diversity, which refers to the differences in individuals’ “knowledge, views and perspectives, as well as in how they approach problems and perceive

¹⁸⁴ Anne Corbett & James M Mackay, *Guide to Good Governance: Not-for-Profit and Charitable Organizations*, 3d ed (September 2013) at 137.

¹⁸⁵ Anne Corbett & James M Mackay, *Guide to Good Governance: Not-for-Profit and Charitable Organizations*, 3d ed (September 2013) at 137.

¹⁸⁶ Anne Corbett & James M Mackay, *Guide to Good Governance: Not-for-Profit and Charitable Organizations*, 3d ed (September 2013) at 137.

¹⁸⁷ Anne Corbett & James M Mackay, *Guide to Good Governance: Not-for-Profit and Charitable Organizations*, 3d ed (September 2013) at 137.

¹⁸⁸ Anne Corbett & James M Mackay, *Guide to Good Governance: Not-for-Profit and Charitable Organizations*, 3d ed (September 2013) at 137.

¹⁸⁹ Peter Dey & Sarah Kaplan, “360° Governance: Where are the Directors in a World in Crisis?” (2021) at 35, online (pdf): *Rotman School of Management University of Toronto* <<https://www.rotman.utoronto.ca/FacultyAndResearch/ResearchCentres/LeeChinInstitute/Sustainability-Research-Resources/360-Governance-Report>>.

¹⁹⁰ Stephanie J Creary, et al, “When and Why Diversity Improves Your Board’s Performance” (27 March 2019), online: *Harvard Business Review* <<https://hbr.org/2019/03/when-and-why-diversity-improves-your-boards-performance>>.

process and interpret information”.¹⁹¹ Yet, diversity alone is no guarantee of board success; board culture is the key factor that can compliment diversity to help the board meet its objectives.¹⁹²

3. Recruitment, nominations and election processes

Board success begins with its recruitment and nominations. These processes are the means by which the organization identifies individuals that can best complement the required skills, qualities and traits of its leading figures. Indeed, recruitment, nomination and election best practices for directors should be consistent with recruiting a skilled, independent and qualified board.¹⁹³

Every organization must determine the method to appoint or elect its directors. Typically, members will elect new directors at the annual general meeting, and incumbent directors retire at the meeting where the election takes place.¹⁹⁴ Yet, the particular processes by which directors are appointed can vary greatly. It is therefore important to remain vigilant of the rules in the incorporating legislation to ensure that the desired method of election and/or appointment of directors complies with statutory rules.¹⁹⁵ For example, the CNCA requires that members elect directors by ordinary resolution.¹⁹⁶ Additionally, an organization’s articles may permit its directors to appoint one or more additional directors until the close of the next annual general meeting, so long as the total number of directors so appointed does not exceed one third of the number of directors elected at the previous annual general meeting.¹⁹⁷ Moreover, a director cannot hold office unless they were present at the meeting when the election or appointment took place and did not refuse the position, or they consented to hold office as director in writing before the election or within the prescribed time or has acted as director since the election or appointment.¹⁹⁸

Whatever the electoral or appointment process the organization chooses for its board members, it should outline the process clearly in its by-laws and board policies. The court may order a new

¹⁹¹ Jared Landaw, “Maximizing the Benefits of Board Diversity: Lessons Learned From Activist Investing” (2020): online: *Harvard Law School Forum on Corporate Governance* <<https://corpgov.law.harvard.edu/>>.

¹⁹² Stephanie J Creary, et al, “When and Why Diversity Improves Your Board’s Performance” (27 March 2019), online: *Harvard Business Review* <<https://hbr.org/2019/03/when-and-why-diversity-improves-your-boards-performance>>; Jared Landaw, “Maximizing the Benefits of Board Diversity: Lessons Learned From Activist Investing” (2020): online: *Harvard Law School Forum on Corporate Governance* <<https://corpgov.law.harvard.edu/>>.

¹⁹³ Anne Corbett & James M Mackay, *Guide to Good Governance: Not-for-Profit and Charitable Organizations*, 3d ed (September 2013) at 140.

¹⁹⁴ Burke-Robertson, Carter & Man, *Corporate and Practice Manual for Charities and Not-for-Profit Corporations* (Toronto: Thomson Reuters Canada, 2022) at § 8:16 (Proview).

¹⁹⁵ Burke-Robertson, Carter & Man, *Corporate and Practice Manual for Charities and Not-for-Profit Corporations* (Toronto: Thomson Reuters Canada, 2022) at § 8:16 (Proview).

¹⁹⁶ *Canada Not-for-profit Corporations Act*, SC 2009, c 23, s 128(3).

¹⁹⁷ *Canada Not-for-profit Corporations Act*, SC 2009, c 23, s 128(8).

¹⁹⁸ *Canada Not-for-profit Corporations Act*, SC 2009, c 23, s 128(9).

election of the directors where the election process is not followed. This new election would proceed unless it was shown that doing so would cause irreparable harm.¹⁹⁹

Given the importance of skills and qualities of a board, best practices for board recruitment require that the board play an appropriate role in its succession and the director recruitment process.²⁰⁰ The board must understand its responsibility in assuring the quality of board succession, and should establish a committee to oversee the process on its behalf.²⁰¹ Moreover, establishing eligibility criteria and developing a matrix of skills/experience/diversity with reference to board needs and stakeholder accountability should remain a priority. To do so, key steps would include maintaining an inventory of current board members' skills and experience, surveying current members' intentions with respect to term renewals, and considering board and individual director evaluation results.²⁰²

Other steps may include: determining an appropriate recruitment strategy and considering a variety of means to identify board candidates; requiring prospective candidates to complete an application form; conducting personal background and criminal reference checks; ensuring candidates know what is expected of a director; ensuring that only board-recommended candidates are presented at the annual general meeting for election (subject to members' statutory rights); disclosing candidate information to members in advance of the annual meeting; and disclosing the recruitment, nomination and election process to members.²⁰³

Organizations should also ensure that the minimum statutory qualifications for directors set out in the applicable legislation are met.²⁰⁴ Under the CNCA, directors must be individuals who are not less than 18 years of age, have not been found unable to manage their property or declared incapable by a court in Canada or in another country, and are not undischarged bankrupts.²⁰⁵

4. Director term, renewal and limits

The CNCA provides that a director may hold office for a term of not more than four years,²⁰⁶ but it does not prescribe any limit on the number of terms that a director may serve, either consecutively or otherwise. Nevertheless, an organization's By-laws and policies should include

¹⁹⁹ Burke-Robertson, Carter & Man, *Corporate and Practice Manual for Charities and Not-for-Profit Corporations* (Toronto: Thomson Reuters Canada, 2022) at § 8:16 (Proview); see e.g. *Bose v. Bangiya Parishad Toronto*, 2019 ONSC 5625 (Ont Div Ct).

²⁰⁰ Anne Corbett & James M Mackay, *Guide to Good Governance: Not-for-Profit and Charitable Organizations*, 3d ed (September 2013) at 140-141.

²⁰¹ Anne Corbett & James M Mackay, *Guide to Good Governance: Not-for-Profit and Charitable Organizations*, 3d ed (September 2013) at 141.

²⁰² Anne Corbett & James M Mackay, *Guide to Good Governance: Not-for-Profit and Charitable Organizations*, 3d ed (September 2013) at 141.

²⁰³ Anne Corbett & James M Mackay, *Guide to Good Governance: Not-for-Profit and Charitable Organizations*, 3d ed (September 2013) at 141.

²⁰⁴ Burke-Robertson, Carter & Man, *Corporate and Practice Manual for Charities and Not-for-Profit Corporations* (Toronto: Thomson Reuters Canada, 2022) at § 8:8 (Proview).

²⁰⁵ *Canada Not-for-profit Corporations Act*, SC 2009, c 23, s 126(1).

²⁰⁶ *Canada Not-for-profit Corporations Act*, SC 2009, c 23, s 128(3); *Canada Not-for-profit Corporations Regulations* SOR/2011-223, s 28(1).

Board renewal strategies, such as limits on the number of terms that a Director can serve on the Board, which ensures that fresh perspectives and different ideas are considered and debated.²⁰⁷ At the same time, the organization must plan carefully and stagger the directors' terms to ensure that the term of all the directors will not all end at the same time. Such a practice, along with other continuity strategies are vital to sustaining organizational memory and stability.²⁰⁸

5. Board education

The quality of a board depends in part on the orientation processes in place for new directors as well as ongoing education for the full board.²⁰⁹ Directors must not only know the affairs of the organization they serve; they must also know the board's governance processes and their individual rights, duties and obligations as board members.²¹⁰ Boards must conduct mandatory orientation sessions and provide their directors with access to continuous education, which may include encouraging directors to attend education programs relevant to their roles.²¹¹ Attendance and participation in education sessions should form part of director evaluations and consideration with respect to term renewal.

6. Board evaluation

Evaluations form an important part of continuous maintenance and improvement of the governance process, and as such, should be undertaken at a point in the board's year at which the information distilled from the evaluation may be acted upon.²¹² Boards should first determine which areas would be subject to evaluation, such as individual director performance, collective board performance, chair performance and committee evaluations. In doing so, it should consider the purpose of the evaluation, who completes the evaluation, whether the process is anonymous, how results will be shared and what processes exist to ensure the results can be acted upon.²¹³

iii. Principle 3 – Board Structure and Processes

1. Board leadership/Officers

The officers of a not-for-profit corporation form its leadership. The CNCA gives directors broad power “to designate the officers of the corporation, appoint officers, specify duties and delegate to

²⁰⁷ Sport Canada, *Pursuing Effective Governance in Canada's National Sport Organizations* (November 2011) at 10.

²⁰⁸ Sport Canada, *Pursuing Effective Governance in Canada's National Sport Organizations* (November 2011) at 10.

²⁰⁹ Anne Corbett & James M Mackay, *Guide to Good Governance: Not-for-Profit and Charitable Organizations*, 3d ed (September 2013) at 142.

²¹⁰ Anne Corbett & James M Mackay, *Guide to Good Governance: Not-for-Profit and Charitable Organizations*, 3d ed (September 2013) at 142.

²¹¹ Anne Corbett & James M Mackay, *Guide to Good Governance: Not-for-Profit and Charitable Organizations*, 3d ed (September 2013) at 142.

²¹² Anne Corbett & James M Mackay, *Guide to Good Governance: Not-for-Profit and Charitable Organizations*, 3d ed (September 2013) at 144.

²¹³ Anne Corbett & James M Mackay, *Guide to Good Governance: Not-for-Profit and Charitable Organizations*, 3d ed (September 2013) at 144.

them powers to manage the activities and affairs of the corporation” (with certain exceptions).²¹⁴ In order to ensure effective board leadership, a board should put in place a “process for determining board officer recruitment and selection, terms of office and succession planning.”²¹⁵

It is also important to ensure a separation between the role of the CEO and the role of the chair of the board.²¹⁶ The board’s chair is responsible for the board’s governance, represents the board within the organization and is the public spokesperson for the board.²¹⁷ The chair’s role and the qualities required of the board chair should be clearly described, and their term renewals should not be automatic.²¹⁸

2. Board Committees

Board committees are typically established to provide assistance to the board and to help the board “in the fulfillment of its governance role”. In other words, “committees support and supplement the board, but do not supplant the work of the board.” Committees are particularly helpful because they allow for “greater discussion and more in-depth analysis than would be allowed during a board meeting.”²¹⁹

With the exception of audit committees,²²⁰ the CNCA does not set out any requirements with respect to committees. Accordingly, the number of committees, their terms of reference and their mandates depend on the discretion of the board.²²¹ However, there are some exceptions to the duties that the board can delegate to a committee. For instance, a board cannot ask a committee to submit to the members any question or matter requiring the approval of the members, to approve financial statements, nor to adopt, amend or repeal by-laws.²²²

²¹⁴ Anne Corbett & James M Mackay, *Guide to Good Governance: Not-for-Profit and Charitable Organizations*, 2nd ed (September 2013) at 156.

²¹⁵ Anne Corbett & James M Mackay, *Guide to Good Governance: Not-for-Profit and Charitable Organizations*, 2nd ed (September 2013) at 156.

²¹⁶ Anne Corbett & James M Mackay, *Guide to Good Governance: Not-for-Profit and Charitable Organizations*, 2nd ed (September 2013) at 157.

²¹⁷ Anne Corbett & James M Mackay, *Guide to Good Governance: Not-for-Profit and Charitable Organizations*, 2nd ed (September 2013) at 158.

²¹⁸ Anne Corbett & James M Mackay, *Guide to Good Governance: Not-for-Profit and Charitable Organizations*, 2nd ed (September 2013) at 157.

²¹⁹ Anne Corbett & James M Mackay, *Guide to Good Governance: Not-for-Profit and Charitable Organizations*, 2nd ed (September 2013) at 161; see also Business Roundtable, “Principles of Corporate Governance” (8 September 2016), online: *Harvard Law School Forum on Corporate Governance* <<https://corpgov.law.harvard.edu/2016/09/08/principles-of-corporate-governance/>>.

²²⁰ *Canada Not-for-profit Corporations Act*, SC 2009, c 23, s 194.

²²¹ Anne Corbett & James M Mackay, *Guide to Good Governance: Not-for-Profit and Charitable Organizations*, 2nd ed (September 2013) at 160.

²²² Anne Corbett & James M Mackay, *Guide to Good Governance: Not-for-Profit and Charitable Organizations*, 2nd ed (September 2013) at 160.

3. Board Meeting Processes and Procedures

The “frequency of [board] meetings, process to establish agendas, order in which matters are dealt with on agendas, availability of supporting materials, quality of minutes, conduct of the meeting by the board chair and processes for open and *in camera* meetings” are all elements that can promote effective governance.²²³ Accordingly, they should all be clearly established and understood. Additional elements that contribute to an effective meeting, and thus the discharge of the board’s governance role, include the board’s clear understanding of its governance role and appropriate behaviour in the boardroom.²²⁴

Leading Canadian and American authorities have suggested that the average number of meetings held by volunteer not-for-profit boards will range from seven to ten meetings a year.²²⁵

C. Relationships and Accountabilities

i. *Sources of accountability and transparency*

While the CNCA does not expressly use the terms “accountable” and “transparent”, when considering generally the legislation and commentary on not-for-profit corporations, it is apparent that a not-for-profit corporation should strive to attain a high degree of transparency and accountability to its members and other stakeholders. In fact, when Minister Ablonczy introduced the CNCA to the House of Commons at second reading, she explained that the CNCA “would ensure that federally incorporated not-for-profit enterprises are governed by an up-to-date legislative framework that is flexible enough to meet the needs of both small and large organizations while providing the accountability and transparency necessary to meet the expectations of the Canadian public.”²²⁶ At the time, she recognized that the need for not-for-profit corporations to be transparent and financially accountable had increased “because they must establish and maintain a high level of public confidence in order to succeed.”²²⁷ The Minister

²²³ Anne Corbett & James M Mackay, *Guide to Good Governance: Not-for-Profit and Charitable Organizations*, 2nd ed (September 2013) at 162.

²²⁴ Anne Corbett & James M Mackay, *Guide to Good Governance: Not-for-Profit and Charitable Organizations*, 2nd ed (September 2013) at 162.

²²⁵ Grace Bugg & Sue Dallhoff, “National Study of Board Governance Practices in the Non-Profit and Voluntary Sector in Canada” (2006) at 26, online (pdf): *Strategic Leverage Partners Inc., & Centre for Voluntary Sector Research and Development* <http://www.strategicleveragepartners.com/bhg768kjmhgvyxyxzwq/National_Study_of_Board_Governance_Practices_in_the_Non-Profit_and_Voluntary_Sector_in_Canada.PDF>; “Leading with Intent: BoardSource Index of Nonprofit Board Practices” (2021) at 33, online (pdf): *BoardSource* <<https://leadingwithintent.org/wp-content/uploads/2021/06/2021-Leading-with-Intent-Report.pdf?hsCtaTracking=60281ff7-cadf-4b2f-b5a0-94ebff5a2c25%7C428c6485-37ba-40f0-a939-aeda82c02f38>>; Bohse & Associates Inc, “Bohse Tips: Board of Directors Series: Non-Profit Board Statistics” (2007) at 1, online (pdf): *Bhose & Associates Inc* <http://bohse.com/images/file/Board_of_Director_Series/Non-Profit_Board_Statistics.pdf>.

²²⁶ “Bill C-4, An Act respecting not-for-profit corporations and certain other corporations”, 2nd reading, *House of Commons Debates*, 40-2, No 8 (4 February 2009) at 1810 (Hon Diane Ablonczy).

²²⁷ “Bill C-4, An Act respecting not-for-profit corporations and certain other corporations”, 2nd reading, *House of Commons Debates*, 40-2, No 8 (4 February 2009) at 1815 (Hon Diane Ablonczy).

added that “Canadians expect that corporations that benefit from government grants or public generosity should be more transparent.”²²⁸

Traces of accountability and transparency within the CNCA include members’ right to approve any by-law changes, to elect directors, and to receive the annual financial statements. Fundamental changes cannot be made without member approval.²²⁹ The CNCA also provides for oppression remedies²³⁰ and derivative actions.²³¹ If directors were exempt from being accountable to members and were free to act as they see fit, these member rights would not exist. Similarly, the value of transparency is highlighted in the CNCA by members’ right to abundant information, such as copies of financial statements, access to the corporate records, and copies of the articles, by-laws and any amendments. As noted above in Chapter III, the CNCA also imposes additional requirements on soliciting corporations to ensure sufficient transparency and accountability for that income.²³²

Furthermore, members are responsible for appointing the public accountant. Section 180 of the CNCA prescribes the qualifications for a public accountant. In addition to these qualifications, the individual must be independent.²³³ The public accountant also has many participation rights at meetings of members. Our legislators drafted the CNCA in that manner because it is “necessary to ensure that the public accountant has the ability to carry out his or her duties and to meet the requirements under the [CNCA] – all of which are essential for financial accountability and transparency that underlie governance in the 21st century.”²³⁴

Many leaders in the not-for-profit sector have acknowledged and commented on the importance of accountability and transparency of not-for-profit corporations. Authors have said that “[c]orporations may be accountable to a number of stakeholders depending on the purposes or objects of the corporation. Each stakeholder relationship has the potential to give rise to some measure of accountability on behalf of the corporation.”²³⁵ In the 21st century, there have been

²²⁸ “Bill C-4, An Act respecting not-for-profit corporations and certain other corporations”, 2nd reading, [House of Commons Debates](#), 40-2, No 8 (4 February 2009) at 1815 (Hon Diane Ablonczy).

²²⁹ The CNCA deals with Fundamental Changes in Part 13. Pursuant to section 197(1), Fundamental Changes include matters such as changing the name of the corporation, amending articles and by-laws, alternating the corporation’s activities, or changing its statement of purpose, changing conditions of membership, or the rights of any class or group of members, and changing the means of giving notice of a members’ meeting to voting members.

²³⁰ *Canada Not-for-profit Corporations Act*, SC 2009, c 23, s 253(1).

²³¹ *Canada Not-for-profit Corporations Act*, SC 2009, c 23, s 251(1).

²³² See e.g. *Canada Not-for-profit Corporations Act*, SC 2009, c 23, ss 125, 170(1), 176(1), 179;

“Requirements for soliciting corporations under the Canada Not-for-profit Corporations Act (NFP Act)” (last modified 08 November 2012), online: *Government of Canada* <www.ic.gc.ca/eic/site/cd-dgc.nsf/eng/cs05011.html>.

²³³ Donald J Bourgeois, [The Law of Charitable and Not-for-Profit Organizations](#), 5th ed (Toronto: LexisNexis Canada, 2016) at 41.

²³⁴ Donald J Bourgeois, [The Law of Charitable and Not-for-Profit Organizations](#), 5th ed (Toronto: LexisNexis Canada, 2016) at 41.

²³⁵ Anne Corbett & James M Mackay, *Guide to Good Governance: Not-for-Profit and Charitable Organizations*, 2nd ed (September 2013) at 10; see also Keith Steel, *Management of Nonprofit and Charitable Organizations in Canada*, 4th ed (Toronto: LexisNexis Canada, 2018) at p 686, online: <<https://lexisdl.com/library/blgllp/title/6059949>>.

“[g]reater demands for accountability by governments, funders and the general public. Accountability is defined not only in terms of proper use of funds but in the effectiveness and efficiency of the organization and in meeting the needs of the community.”²³⁶ In addition, mission and strategic planning (which involves the definition of the fundamental goals and strategy of the organization) is one of the most important tasks for a board “because it establishe[s] the basis for accountability – the basis on which to determine the appropriateness of the board’s actions”, performance and success.²³⁷ Among other principles, openness and accountability from directors is often perceived as one of the main principles in providing good governance and leadership.²³⁸

ii. *Importance of healthy relationships*

Relationships with members, stakeholders and the public are very important to the viability and the sustainability of a not-for-profit corporation. A board of directors should ensure that the corporation develops effective relationships so that it has support for its objectives.²³⁹ Members, stakeholders and the public have “the potential to positively or negatively influence the corporation’s well-being.”²⁴⁰ In fact, a not-for-profit’s risk management often includes stakeholder relations as they affect reputational risks.²⁴¹

“In considering the quality of stakeholder relations, boards need to consider the concepts of accountability, transparency and engagement that provide a foundation for this function.”²⁴² An effective way of fostering healthy relationships is indeed to be accountable, transparent, open and engaged.

²³⁶ Donald J Bourgeois, *The Law of Charitable and Not-for-Profit Organizations*, 5th ed (Toronto: LexisNexis Canada, 2016) at 152; see also Peter Dey & Sarah Kaplan, “360° Governance: Where are the Directors in a World in Crisis?” (2021) at 21, online (pdf): *Rotman School of Management University of Toronto* <<https://www.rotman.utoronto.ca/FacultyAndResearch/ResearchCentres/LeeChinInstitute/Sustainability-Research-Resources/360-Governance-Report>>; see also Keith Steel, *Management of Nonprofit and Charitable Organizations in Canada*, 4th ed (Toronto: LexisNexis Canada, 2018) at p 686, online: <<https://lexisdl.com/library/blgllp/title/6059949>>.

²³⁷ Donald J Bourgeois, *The Law of Charitable and Not-for-Profit Organizations*, 5th ed (Toronto: LexisNexis Canada, 2016) at 157; see also “Good Governance: A Code for the Voluntary and Community Sector” (October 2010) at 22, online (pdf): *Leading Governance* <https://leadinggovernance.com/wp-content/uploads/2020/08/Code-of-Governance-Full1.pdf>.

²³⁸ Donald J Bourgeois, *The Law of Charitable and Not-for-Profit Organizations*, 5th ed (Toronto: LexisNexis Canada, 2016) at 162.

²³⁹ Anne Corbett & James M Mackay, *Guide to Good Governance: Not-for-Profit and Charitable Organizations*, 2nd ed (September 2013) at 67.

²⁴⁰ Anne Corbett & James M Mackay, *Guide to Good Governance: Not-for-Profit and Charitable Organizations*, 2nd ed (September 2013) at 67.

²⁴¹ Anne Corbett & James M Mackay, *Guide to Good Governance: Not-for-Profit and Charitable Organizations*, 2nd ed (September 2013) at 58.

²⁴² Anne Corbett & James M Mackay, *Guide to Good Governance: Not-for-Profit and Charitable Organizations*, 2nd ed (September 2013) at 67.

Good and successful relationships mean that members, stakeholders and/or the public “understand the goals of the corporation and appreciate the rationale the board used in making a contentious decision.”²⁴³

The board is responsible for maintaining and overseeing relationships with members, stakeholders and the public, in addition to ensuring proper accountability and transparency. To do so, boards should identify a list of actors relevant to the organization, examine why and for what purpose the corporation is relating with each actor, and define principles of how the organization should relate with them.²⁴⁴ Some basic requirements for managing relations include developing a framework and a plan, using multiple tools.²⁴⁵ In other words, a board “needs to approve an overall policy direction for discharging its accountability, engagement and communications efforts.”²⁴⁶ The board should consider multiple ways of connecting with members, stakeholders and the public depending on the audience and the objective of the relationship.²⁴⁷ Finally, a board should monitor the status of its relationships, perhaps through reports from staff.

²⁴³ Anne Corbett & James M Mackay, *Guide to Good Governance: Not-for-Profit and Charitable Organizations*, 2nd ed (September 2013) at 68.

²⁴⁴ Anne Corbett & James M Mackay, *Guide to Good Governance: Not-for-Profit and Charitable Organizations*, 2nd ed (September 2013) at 68.

²⁴⁵ Anne Corbett & James M Mackay, *Guide to Good Governance: Not-for-Profit and Charitable Organizations*, 2nd ed (September 2013) at 68.

²⁴⁶ Anne Corbett & James M Mackay, *Guide to Good Governance: Not-for-Profit and Charitable Organizations*, 2nd ed (September 2013) at 68.

²⁴⁷ Anne Corbett & James M Mackay, *Guide to Good Governance: Not-for-Profit and Charitable Organizations*, 2nd ed (September 2013) at 68.

V. GOVERNANCE IN THE WORLD OF SPORT AND HOCKEY CANADA

A. Defining “best practices” for National Sport Organizations

In accordance with the Terms of Reference, the general objective of this exercise is to review Hockey Canada’s governance structure, systems, personnel, and processes, “including the extent to which they meet contemporary best practices for national sport organizations of similar size in Canada.”²⁴⁸ To inform our analysis of whether Hockey Canada’s governance, systems, personnel and processes meet contemporary best practices for national sport organization of similar size in Canada we compared Hockey Canada with:

- (i) Sport Canada’s Governance Principles for Sport Organizations;²⁴⁹
- (ii) the Canadian Sport Governance Code; and
- (iii) the governance structure of select comparable NSOs.

Although we have not compared Hockey Canada’s practices with those of not-for-profit organizations in general, our knowledge and experience of best practices in not-for-profit governance have informed our analysis. We will briefly describe these points of reference before turning to our analysis of how Hockey Canada compares with them.

In our final report, we will also consider Sport Canada’s Governance Report Card system as a source of best practices.

i. Pursuing Effective Governance in Canada’s National Sport Community

In 2011, Sport Canada published a resource entitled “Pursuing Effective Governance in Canada’s National Sport Organizations” (the “**2011 Governance Tool**”) intended for funded sport organizations.²⁵⁰ The document sets out a number of principles and practical tips in relation to achieving “effective governance” in the national sport context.

The 2011 Governance Tool identifies five principles of effective governance, namely:

1. Commitment to Vision, Mission, Values and Guided by a Strategic Plan
2. Clarity of Roles and Responsibilities
3. Effective Financial Control
4. Focused on Human Resources
5. Transparent and Accountable for Outcomes and Results

²⁴⁸ Hockey Canada Governance Review, “Terms of Reference” (4 August 2022).

²⁴⁹ Sport Canada, *Pursuing Effective Governance in Canada’s National Sport Organizations* (November 2011).

²⁵⁰ Sport Canada, *Pursuing Effective Governance in Canada’s National Sport Organizations* (November 2011).

For each principle, the document includes definitions and ideas on how to implement them in the national sport context. Central to those governance principles is the expectation that directors will model the highest standards of ethical behaviour, acting honestly and in good faith, and in the best interests of their organization.²⁵¹

ii. *The COC Canadian Sport Governance Code*

In November 2020, the Canadian Olympic Committee (“**COC**”) introduced the Canadian Sport Governance Code (the “**COC Code**”) to the Canadian sport community. It is intended for all NSOs representing sports on the Olympic Program.²⁵²

The COC Code’s purpose is to “improve organizational performance by encouraging NSOs to upgrade governance practices through the adoption of revisions to by-laws and other structural mechanisms”.²⁵³ The “Purpose” section of the COC Code provides as follows:

[...] The Code articulates best practices to be met, thereby providing an objective standard that funding sources and other stakeholders can measure against. It is anticipated that various funders wishing to protect and maximize their investment in sport will expect that any NSO who seeks funding will be required to confirm it is in compliance with the Code.

The COC has also developed a number of supporting governance resources and templates (such as template by-law provisions, board mandate, diversity policy, board skills matrix, committee terms of reference, etc.) to accompany the COC Code and to assist NSOs with their initiatives to comply with the COC Code.²⁵⁴ In addition, the COC published the *Good Governance Framework – A Guide for Implementing the Canadian Code of Governance* (the “**Framework**”) to supplement and support the implementation of the COC Code. The document provides commentary to enhance “understanding of good governance practices,” offers additional context to the COC Code’s provisions and is “intended to illustrate how implementation will lead to improved organization decision making.”²⁵⁵

Although compliance with the COC Code is not mandatory, the COC views it as a framework for governance best practices for NSOs and strongly encourages NSOs to adopt it as a model for their own organizations. During our discussions with representatives of the COC, they emphasized that the COC’s approach to the COC Code is intended to be collaborative and recognizes that full compliance with the COC Code may not be possible or desirable for all NSOs. They are also of

²⁵¹ Sport Canada, *Pursuing Effective Governance in Canada’s National Sport Organizations* (November 2011) at 2.

²⁵² “Canadian Sport Governance Code” (1 September 2021) at 1, online: *Canadian Olympic Committee – NSO Sharing Centre* <<https://nso.olympic.ca/canadian-sport-governance-code/>>.

²⁵³ “Canadian Sport Governance Code” (1 September 2021), at 1, online: *Canadian Olympic Committee – NSO Sharing Centre* <<https://nso.olympic.ca/canadian-sport-governance-code/>>.

²⁵⁴ Goodmans LLP, “Nominating Committee Terms of Reference” in *Canadian Sport Governance Code: Supporting Resources* (27 April 2021).

²⁵⁵ “Good Governance Framework: A Guide for Implementing the Canadian Code of Governance” (23 September 2021) at 1, online (pdf): *Canadian Olympic Committee* <<https://nso.olympic.ca/wp-content/uploads/2021/10/Good-Governance-Framework-Sept-2021-1.pdf>>.

the view that the COC Code and supporting resources²⁵⁶ that accompany it are “living” documents that will and should evolve over time and be adapted to the specific needs and organizational structure of each NSO. Two of the four comparable NSOs that we interviewed adapted their governance models to generally align with the COC Code. A representative of one of those associations that we interviewed indicated that they consider the COC Code to be mandatory.

iii. Comparator Associations

Hockey Canada identified the following comparator associations, consisting of four NSOs (the “**Comparator Associations**”) that promote and regulate an amateur sport in Canada on a nation-wide basis:

1. Athletics Canada Athlétisme Canada (“**Athletics Canada**”) – is the national governing body for track and field, para athletics, cross-country running and road running in Canada.
2. Canada Basketball (“**Canada Basketball**”) – is the national governing body for basketball in Canada.
3. Canadian Curling Association (“**Curling Canada**”) – is the national governing body for curling in Canada.
4. The Canadian Soccer Association Incorporated L’Association canadienne de soccer incorporée (“**Canada Soccer**”) - is the national governing body for soccer in Canada.

We understand that Hockey Canada selected the Comparator Associations because they have a mandate and membership structure that are comparable to that of Hockey Canada. For the purpose of our final report, we may consider additional NSOs as comparators.

We reviewed publicly available information regarding the history, mission, membership base and organizational and governance structure of each Comparator Association. We also reviewed the articles and by-laws, board and committee mandates, and policies and annual reports of the Comparator Associations to the extent such information was publicly available and/or provided to us by the Comparator Associations. In addition, we conducted interviews with representatives from the COC and the four Comparator Associations.

²⁵⁶ Goodmans LLP, “Nominating Committee Terms of Reference” in *Canadian Sport Governance Code: Supporting Resources* (27 April 2021).

B. Assessment of Hockey Canada – Are Hockey Canada’s By-laws concerning the constitution and operation of the Board of Directors in line with current best practices?

i. Composition of Hockey Canada’s current Board (skills, experience, and diversity) and observations about their alignment with best practices;

1. Why Diversity Matters

The key functions of a board of directors are to articulate and ensure adherence to the vision, mission and values of the corporation, to approve a strategic plan, to oversee operational performance, to oversee financial assets and resources, to identify and manage risk, and to hire and provide appropriate oversight of the CEO. The board of directors must be comprised of a diverse group of individuals who collectively have the knowledge, skills, experience and capacity to allow it to carry out these key functions effectively. In addition to the required range of skills and expertise, the board ought to reflect the “demographic characteristics that exist across Canadian society including, but not limited to, sex, gender identity, race, ethnicity, sexual orientation, class, economic means, ability, age, official language of Canada spoken, religion and education.”²⁵⁷ Several studies conclude that diversity on boards is associated with better decision-making and governance because “diversity - whether through representation of different strengths, consideration of different concerns, or questions based on varying life experiences - will counteract groupthink.”²⁵⁸ Put another way, diversity in the boardroom enhances decision-making because the directors will deliberate from a range of perspectives, each with varying insight.²⁵⁹

Thus, having the right mix of people around the board table will enable the directors to accomplish their supervisory functions more effectively. To that end, an organization must recruit and select director candidates thoughtfully to ensure that the board’s composition is appropriate having regard to its current environment and anticipated circumstances.

The Articles and By-laws of Hockey Canada mandate some basic requirements in respect of the Board’s composition. The Articles provide that there shall be a minimum of five and a maximum of nine Directors on the Board.²⁶⁰ The By-Laws stipulate that the Board is composed of nine Directors who are elected by the Members, of whom at least two must be male and two female, and up to one Director appointed by the elected Directors.²⁶¹ As at the date of this report, the Board was comprised of eight elected Directors. There was one vacancy for an elected Director position and no appointed Director was serving on the Board.

²⁵⁷ “Canadian Sport Governance Code” (1 September 2021) at 4, section B.5, online: *Canadian Olympic Committee – NSO Sharing Centre* <<https://nso.olympic.ca/canadian-sport-governance-code/>>.

²⁵⁸ Yaron Nili, “Beyond the Numbers: Substantive Gender Diversity in Boardrooms” (2019) 94 *Ind LJ* 145 at 162-3.

²⁵⁹ “Good Governance Framework: A Guide for Implementing the Canadian Code of Governance” (23 September 2021) at 3, online (pdf): *Canadian Olympic Committee* <<https://nso.olympic.ca/wp-content/uploads/2021/10/Good-Governance-Framework-Sept-2021-1.pdf>>.

²⁶⁰ Industry Canada, “Hockey Canada Association Articles of Continuance” (10 June 2014).

²⁶¹ “Hockey Canada By-Laws, Regulations and History” (May 2022), s 26.1, online (pdf): *Hockey Canada* <<https://cdn.hockeycanada.ca/hockey-canada/Corporate/About/Downloads/2022-23-bylaws-e.pdf>>.

2. Hockey Canada Board Size

For the purpose of assessing the composition of Hockey Canada's Board, we considered the Board's size. When compared to the size of the board at the Comparator Associations, Hockey Canada's Board falls within the ranges we observed and the best practices supported by the governance sources consulted for our Review. The number of Directors on the Board is fixed by the By-laws at the maximum number permitted by the Articles, nine elected Directors, but provides for the option of an additional Board-appointed Director. Hockey Canada has informed us that the Board has never exercised its right to appoint an additional Director. The limitation in the Articles means that Hockey Canada cannot have nine elected Directors plus an additional appointed Director on the Board. Any increase to the number of Directors above nine would require Members' approval of an amendment to the Articles.

We observed that one other Comparator Association, Athletics Canada, has a similar range of number of Directors as Hockey Canada with a minimum of seven and maximum of nine. Canada Basketball's range is between six and eleven, and the Curling Canada's is between eight and twelve. Canada Soccer has the largest board of all the Comparator Associations, with a fixed number of 14 directors. The COC Code states that "[b]oards should be functional in size with a minimum of five board members and a maximum of fifteen board members. It is expected that a typical board would have seven to eleven members."²⁶²

The board size for Hockey Canada generally aligns with the COC Code and the Comparator Associations, although we are of the view that, given the scope and complexity of Hockey Canada's mandate, the size of its Board should be closer to the upper end of the ranges stipulated in those points of reference. The addition of some positions on the Board would create the opportunity to include Directors with a greater range of skills, experience and background. In addition, given the heavy workload of the Board and the number of standing committees that support it, an increase in the number of Directors would allow the Board to allocate tasks and committee work among a larger group of people.

In light of these considerations, we recommend that Hockey Canada amend its Articles to increase the maximum number of Directors from nine to 13 (we do not think it is necessary to amend the minimum number of Directors). We are also of the view that the By-laws should not prescribe a fixed number of Directors, but rather they should be amended to provide that the Board will consist of a number of Directors between the minimum and maximum number of Directors specified in the Articles. If the Articles allow for a range of Directors, and the Members have delegated to the Board the authority to fix the number of Directors, the Board can then easily adjust the number within that range by ordinary resolution of the Directors, with no need for further Member approval. Such a feature is attractive since it provides the Board with more governance flexibility by allowing it to periodically adjust the size of the Board as needed.

Having a larger Board could also provide the Directors with greater opportunity to use their authority to appoint additional Directors by fixing the number of elected Directors at a number below the allowed maximum (e.g. 13 directors), therefore leaving room for a Board appointed

²⁶² "Canadian Sport Governance Code" (1 September 2021) at 3, para 1, online: *Canadian Olympic Committee – NSO Sharing Centre* <<https://nso.olympic.ca/canadian-sport-governance-code/>>.

director. In that regard, we are of the view that Hockey Canada ought to amend its By-laws to provide that the Board may appoint additional Directors within the legal limits imposed by the *Canada Not-for-profit Corporations Act*, SC 2009, c 23 (“CNCA”), rather than limiting that right to only one additional Director. The limits imposed by the CNCA are such that the number of appointed directors on the board (if any) cannot ever exceed one third of the number of directors elected at the previous annual meeting of members.

For example, in order for the Board to be able to appoint two Directors, a minimum of six Directors would need to be elected at the last annual meeting of Members. The practice of allowing Directors to appoint a limited number of Directors to fill a specific need or gap on the Board also aligns with the principle of the Board being responsible for its own governance (which we discussed earlier in our report) as it affords the Board an opportunity to participate in the Board’s formation in a meaningful way. While the removal of the limitation might not necessarily result in the Board being able to appoint more than one Director in any given year (as it will depend on the total number of Directors elected at the last annual meeting) we are of the view that maintaining a limit on appointing only one Director is unnecessarily restrictive since the CNCA has already built-in limitations that prevent the Board from misusing their right to appoint additional Directors and the limitation may fetter the Board’s ability to manage its own governance.

3. Hockey Canada Board Diversity

Our assessment of the Hockey Canada Board’s current composition also included an examination of the Directors’ skills, expertise, experience and other diversity elements. The presence of a suitable mix of skills, expertise and experience is vital to ensure that the Board as a collective is equipped to supervise the activities and affairs of the organization and carry out its strategic vision.²⁶³ As mentioned above, diversity should include diversity of thought, as well as representation on the Board of demographic diversity characteristics such as gender, cultural, racial, sexual orientation, religion, disability and age.²⁶⁴

The COC Code provides some guidance for NSOs in respect of diversity standards: “Within an independent board staffed with directors who possess the necessary skills for the successful stewardship of the NSO and of whom not more than 60% of the directors are of the same gender, it is recognized that diverse perspectives, experiences and backgrounds provide for optimal board performance.”²⁶⁵ The COC Code goes on to say that NSOs should develop a policy for diversity at the board level. Diversity is defined as “the broad range of demographic characteristics that exists across Canadian society including, but not limited to, sex, gender identity, race, ethnicity, sexual orientation, class, economic means, ability, age, official language of Canada spoken, religion and education.”²⁶⁶

²⁶³ Deloitte, “Diversity in the Boardroom, Practices and Perspectives” (2015) at 3, online: *Deloitte* <https://www2.deloitte.com/za/en/pages/governance-risk-and-compliance/articles/diversity_in_the_boardroom.html>.

²⁶⁴ Yaron Nili, “Beyond the Numbers: Substantive Gender Diversity in Boardrooms” (2019) 94 Ind LJ 145 at 162-3.

²⁶⁵ “Canadian Sport Governance Code” (1 September 2021) at 4, section B.5, online: *Canadian Olympic Committee – NSO Sharing Centre* <<https://nso.olympic.ca/canadian-sport-governance-code/>>.

²⁶⁶ “Canadian Sport Governance Code” (1 September 2021) at 4, section B.5, online: *Canadian Olympic Committee – NSO Sharing Centre* <<https://nso.olympic.ca/canadian-sport-governance-code/>>.

What follows is a summary of our observations on the current make-up of the Hockey Canada Board. Further to our review of the current Directors' biographies, our interviews with each of them, and the Hockey Canada Board Matrix, we note that the following skills, experience, and diversity characteristics found on the current Board include the following:

- two (or 25%) of the current Directors are female, and six (or 75%) are male; immediately prior to the resignation of the former Board Chair (when all nine Board positions were filled), two (or 22.2%) of the Directors were female and seven (or 77.8%) were male;
- seven (or 87.5%) of the eight Directors are White;
- the age of the current Directors falls within the following age groups:
 - 35-44: 3
 - 45-54: 0
 - 55-64: 2
 - 65-74: 3
 - 75+: 0
- five (62.5%) of the eight Directors are 55 years of age or over;
- none of the eight Directors is fluently bilingual in English and French, although one Director is fluent in Punjabi and Hindi
- one of the Directors identifies as a member of LGBTQ+ community
- one of the Directors is of South Asian descent (2nd generation Canadian)
- seven of the eight Directors have a significant hockey background, each serving in a variety of roles (including former players, coaches, referees, trainers, event volunteer, task team or committee members) and at various levels of hockey
- four of the eight Directors have served on the Board of Directors or as chair/president of a Hockey Canada Member Association or a hockey league
- three of the eight Directors have played hockey at the university level
- two of the eight Directors are lawyers
- two of the eight Directors have experience in municipal politics or employment experience within a municipality;
- one of the eight Directors is a former registered nurse

- two of the eight Directors have backgrounds in business and/or economics
- at least five of the eight Directors have not-for-profit volunteer experience (including board and governance experience)
- at least two of the Directors have employment or volunteer experience developing, executing and/or managing diversity, inclusion and/or multicultural initiatives

To further inform our assessment of the Board’s composition and diversity, we also reviewed a number of Hockey Canada’s governance documents, including the By-laws, the Policy on Equity, Diversity and Inclusion, and committee terms of reference. As previously mentioned, the Hockey Canada By-laws provide that the nine elected Directors shall include a minimum of two male and two female Directors. The By-laws also provide that the Nominating Committee is responsible for ensuring that the Board “is composed of qualified and skilled persons capable of, and committed to, providing effective governance leadership to Hockey Canada.”²⁶⁷

While the By-laws provide no other guidance or criteria in respect of board composition and diversity, Hockey Canada’s Equity, Diversity and Inclusion Policy provides that the Board shall have the following responsibilities in respect of the diversity of the Board:²⁶⁸

- The Board will strive for a governance structure that encourages and promotes full and equal participation by all individuals, including under-represented populations.
- The Board will encourage the removal of barriers to achieve balanced gender representation on its Board and on all committees.
- The Board will incorporate diversity and inclusion into their annual education/professional development plan.
- The Board recognizes that diverse perspectives linked in common purpose contribute to innovation and growth for Hockey Canada. Accordingly the Board of Directors will review the skills, expertise, experience, independence and background of the Directors to identify the skills and competencies that could be targeted during the nomination process.

Furthermore, the Terms of Reference for the Nominating Committee of Hockey Canada set out some additional considerations. For example, the duties to be performed by the Nominating Committee include the obligations to:²⁶⁹

- Promote a regional balance in the composition of the Board by recruiting candidates from different regions of the country.

²⁶⁷ “Hockey Canada By-Laws, Regulations and History” (May 2022), s 48.1, online (pdf): *Hockey Canada* <<https://cdn.hockeycanada.ca/hockey-canada/Corporate/About/Downloads/2022-23-bylaws-e.pdf>>.

²⁶⁸ Hockey Canada, “Equity, Diversity and Inclusion Policy” (approved by Board May 2019) at 1.

²⁶⁹ “Nominations” in *Hockey Canada Terms of Reference* (updated to 18 November 2021) at 35, s 5.4.

- Promote diversity of the Board in relation to gender, age, language, ethnicity, professional backgrounds and personal experiences.
- Have regard to the specific and desired competencies required on the Board as a whole in soliciting nominations.

The Governance Committee of Hockey Canada also has diversity-related duties, namely to “make recommendations to the Board to assist the Nominating Committee in identifying ideal candidate profile(s), skills matrix and diversity needs.”²⁷⁰ We note that there is some overlap between or duplication of the duties of the Governance Committee and Nominating Committee, which will be examined in more detail in our final report.

4. Board Skills and Expertise Matrix

In accordance with the policies referred to above, the Nominating Committee has developed a Board skills-expertise matrix (the “**Matrix**”).²⁷¹ The Matrix serves as an inventory of the skills, expertise and characteristics that are desired on the Board. As such, the Matrix should enable the Nominating Committee to identify, for each Director of the Board, which of the below-listed skills, expertise and characteristics the Director possesses, as well as any gaps in respect of them. Those skills, expertise and characteristics are as follows:

Board Skills-Expertise Matrix	
Core Board Competencies	Functional Expertise
Enterprise Leadership	HR Transformation
Entrepreneurship	IT/Cyber/AI
Board Governance Experience	Government Relations
Financial Acumen	Legal/Regulatory
Government Relations	M&A/Integration
Industry/Sector Experience	Marketing/Sales
Strategic Growth/Value Creation Capability	Operations
Risk Identification, Assessment and Management	Manufacturing
Stakeholder Management	Sustainability
Behaviour Attributes	Other
Capacity to Challenge	Appointed by:
Collaboration	Gender (Female)
Communication	Tenure
Independent Judgement	Diversity – Ethnicity
Influencing Skills	Geography

²⁷⁰ “Governance” in *Hockey Canada Terms of Reference* (updated to 18 November 2021) at 37, s 5.5.

²⁷¹ “Hockey Canada Board Matrix” provided by Michael Bruni, Chair of the Nominating Committee (18 August 2022).

Innovative/Conceptual Thinking	Generation Representation <40
Integrity	Generation Representation >80
Organizational Commitment	Aging related illness
Willingness to Act	

In addition to the Matrix, Hockey Canada maintains a separate document (also referred to by Hockey Canada as a “Board matrix”), which sets out in the form of a chart more detailed information in respect of the Directors’ specific skills, competencies and diversity. We were informed by Hockey Canada’s General Counsel that such information is provided to Hockey Canada by the Directors themselves. The version of the document we reviewed was dated August 4, 2022 (the “**Matrix Supplement**”).²⁷²

We note that the use of a matrix by Hockey Canada’s Nominating Committee is a practice that aligns with best practices, including the COC Code, which provides that each “NSO must maintain a skills matrix and board membership shall be competency-based ensuring that the board members possess as many of the skills necessary for optimal board functioning as possible.”²⁷³ All of the Comparator Associations also have a skills Matrix.

When the Matrix is compared to the matrix characteristics set out in the COC Code, we observe some minor differences. The COC Code expects that for most NSOs, a matrix’s skills would be “financial, governance, legal and sports” and for larger NSOs, the skills might also include “marketing, digital, HR, fundraising, sponsorship and international relations.”²⁷⁴ We note that from these, very few are not included in the Hockey Canada Matrix: digital (although the Matrix does list IT/Cyber/AI), sponsorship (but see Marketing/Sales) and international relations. We also note that the Matrix Supplement sets out the language competencies for each Director and includes a space where the diversity elements that the Director possesses are described.

Although the 2022 Matrix does not have a regional breakdown for the desired geographical representation of Directors, the Board has, until the resignation of the former Board Chair, included representation from the Maritimes, Québec, Ontario and the Western provinces since the By-laws were amended in 2014 to remove mandatory geographic representation on the Board.²⁷⁵ This aligns with the Nominating Committee’s duty to “Promote a regional balance in the composition of the Board by recruiting candidates from different regions of the country.”²⁷⁶

To further inform our assessment of Hockey Canada’s current Board composition, we took a closer look at certain characteristics that are emphasized in the COC Code as best practice, such as gender

²⁷² “Hockey Canada Board Matrix” (last updated 4 August 2022).

²⁷³ “Canadian Sport Governance Code” (1 September 2021) at 5, section B.7, online: *Canadian Olympic Committee – NSO Sharing Centre* <<https://nso.olympic.ca/canadian-sport-governance-code/>>.

²⁷⁴ “Canadian Sport Governance Code” (1 September 2021) at 5, section B.7, online: *Canadian Olympic Committee – NSO Sharing Centre* <<https://nso.olympic.ca/canadian-sport-governance-code/>>.

²⁷⁵ Sean Kelly, “Email to Victoria Prince” (13 September 2022, 5:35 PM).

²⁷⁶ “Nominations” in *Hockey Canada Terms of Reference* (updated to 18 November 2021) at 35, s 5.4.

identity and athlete representation. Approaches to these characteristics vary among the Comparator Associations.

5. Gender Identity

The Hockey Canada By-laws provide that the nine elected Directors shall include a minimum of two male and two female Directors, meaning that no gender may represent more than 77.8% or less than 22.2% of Directors. We note that two other Comparator Associations have director gender requirements set out in their By-laws. Curling Canada’s By-laws provide “advancement for gender balance for women and men on the Board of Governors, while ensuring the prevailing criterion for election is eligibility, ability and professional performance,” no gender may represent more than 60% or less than 40% of governors.²⁷⁷ Canada Soccer’s By-laws state that not more than 60% of the Directors shall be of the same gender,²⁷⁸ meaning that with a board of 14 directors, no more than 8 of them can be of the same gender. Athletics Canada’s By-laws provide that its board shall include “three Athlete Directors, a minimum of one of each gender.”²⁷⁹ Athletics Canada’s Diversity, Equity and Inclusion policy goes on to say that it “will work toward achieving gender parity on its Board of Directors”²⁸⁰ and that “the athlete group who nominates the three Athlete Directors [must] nominate at least one athlete from each gender identity and at least one athlete who is a para-athlete.”²⁸¹

While Canada Basketball does not have director gender requirements in its By-laws, it does have an organizational policy relating to diversity, equity and inclusion that contains aspirational statements regarding diversity objectives for its board. Notably, each of Canada Basketball’s policy and Athletics Canada’s policy provides that the NSO “will encourage balanced representation by Under-Represented Groups on its [Board] and on all committees.”²⁸² Each of them uses the same definition of “Under-Represented Group”: “Under-Represented Groups include women, children in low income families, Indigenous people, seniors, people with disabilities, newcomers to Canada, and members of the LGBTQ2 community.” As mentioned earlier in this section of our report, the COC Code also provides some guidance for NSOs in respect of gender representation on the board. Pursuant to the COC Code, not more than 60% of the directors can be of the same gender.²⁸³

When compared to the COC Code and the NSO Comparator Associations that have gender requirements in their By-laws (i.e. Curling Canada and Canada Soccer), Hockey Canada’s

²⁷⁷ Curling Canada, “By-laws of Canadian Curling Association” (5 December 2018) at Part VIII, s 3.

²⁷⁸ Canada Soccer, “By-laws of the Canadian Soccer Association Incorporated” (2022), s 6.02(v).

²⁷⁹ Athletics Canada, “Athletics Canada Bylaws” (2021), s 5.1(d).

²⁸⁰ “Diversity, Equity and Inclusion Policy” (July 2020) at s 6, online (pdf): *Athletics Canada* <[Athletics-Canada-Diversity-Equity-and-Inclusion-Policy-July-2020.pdf](#)>.

²⁸¹ “Diversity, Equity and Inclusion Policy” (July 2020) at s 7, online (pdf): *Athletics Canada* <[Athletics-Canada-Diversity-Equity-and-Inclusion-Policy-July-2020.pdf](#)>.

²⁸² Canada Basketball, “Equity and Inclusion Policy” at s 4, online (pdf): <https://assets.website-files.com/5d24fc966ad064837947a33b/5e25e16b0482df7fb643b522_Equity%20and%20Inclusion%20Policy.pdf>; “Diversity, Equity and Inclusion Policy” (July 2020) at s 5, online (pdf): *Athletics Canada* <[Athletics-Canada-Diversity-Equity-and-Inclusion-Policy-July-2020.pdf](#)>.

²⁸³ “Canadian Sport Governance Code” (1 September 2021) at 4, section B.5, online: *Canadian Olympic Committee – NSO Sharing Centre* <<https://nso.olympic.ca/canadian-sport-governance-code/>>.

minimum thresholds for representation of all genders are the lowest. Although Hockey Canada’s Equity, Diversity and Inclusion Policy provides that the “Board will encourage the removal of barriers to achieve balanced gender representation on its Board,”²⁸⁴ the current Board’s composition has a noticeable disproportion of men to women Directors. In our view, Hockey Canada should take a more proactive approach to achieving balanced gender representation on its Board. To that end, we recommend that Hockey Canada amend its By-laws to increase its gender representation thresholds and to provide that no more than 60% of the Directors will be of the same gender, as per the COC Code.

6. Athlete Representatives

The COC is of the view that it “is fundamental for athletes to have meaningful representation in the governance structure of the NSO and for athlete voices to be heard.”²⁸⁵ While the COC Code provides that each NSO should determine how it can best achieve that objective, athlete representation among the directors is “strongly encouraged” and each NSO must establish a process that allows the athlete representative to be selected with significant input from that sport’s athletes.²⁸⁶ The term “athlete” is defined as “a person currently on a national team or competing at the international level or a person who is retired and was a member of a national team or competed at the international level, not more than eight years previously.”²⁸⁷

Hockey Canada’s By-laws have no express requirements for athlete representation on the Board, although the Matrix and the Matrix Supplement lists “Industry/Sector Experience” and “player” experience, respectively, as one of the types of experience tracked. We note that three of the current Directors of Hockey Canada are former hockey players who have competed at the university level, albeit more than eight years ago. There are no current Directors who are either currently on or were formally on a national team or other team competing at the international level. When compared to the Comparator Associations, at least two of them have national team athlete representation on their board entrenched in their By-laws. Canada Soccer’s By-laws provide that its board shall include “one (1) former Athlete (member of one of the National Teams; e.g., Senior, Youth, Para, Beach and/or Futsal).”²⁸⁸ Athletics Canada’s By-laws state that its board shall include three “Athlete Directors,” who will consist of at least “one para-athlete and one able-bodied athlete who are a member of and nominated by the group of athletes who are 18 years of age or older and who have been nominated or selected by [Athletics Canada] to a National Team in any discipline in the previous four years.”²⁸⁹

²⁸⁴ Hockey Canada, “Equity, Diversity and Inclusion Policy” (approved by Board May 2019) at 1.

²⁸⁵ “Canadian Sport Governance Code” (1 September 2021) at 4, section B.6, online: *Canadian Olympic Committee – NSO Sharing Centre* <<https://nso.olympic.ca/canadian-sport-governance-code/>>.

²⁸⁶ “Canadian Sport Governance Code” (1 September 2021) at 4, section B.6, online: *Canadian Olympic Committee – NSO Sharing Centre* <<https://nso.olympic.ca/canadian-sport-governance-code/>>.

²⁸⁷ “Canadian Sport Governance Code” (1 September 2021) at 4, section B.6, online: *Canadian Olympic Committee – NSO Sharing Centre* <<https://nso.olympic.ca/canadian-sport-governance-code/>>.

²⁸⁸ Canada Soccer, “By-laws of the Canadian Soccer Association Incorporated” (2022), s 6.02(iv).

²⁸⁹ Athletics Canada, “Athletics Canada Bylaws” (2021), s 5.1(d).

ii. *Term and term limits of Hockey Canada’s Directors and observations about their alignment with best practices;*

1. Director Terms

1.1 Elected Directors

As part of our review, we have been asked if the current terms and term limits of the Hockey Canada Directors align with best practices. The elected Directors of Hockey Canada serve on the Board for a term of two years.²⁹⁰ The term commences on the date of the Director’s election and ends at the second annual meeting of members that follows. As Hockey Canada holds an election of Directors only in even numbered years,²⁹¹ the term of all the elected Directors expire at the same time and are not staggered.

The CNCA and the *Canada Not-for-Profit Corporations Regulations*, SOR/2011-223 set a limit of four years for any one term for an elected director.²⁹² The CNCA does not require that a corporation hold an election of directors annually, but rather “at each annual meeting at which an election of directors is required.”²⁹³

Hockey Canada’s current Director term of two years is compliant with law and generally consistent with the practices of the Comparator Associations. For example, both Athletics Canada and Canada Basketball prescribe a two-year term for their elected directors. Pursuant to their respective By-laws, the elected directors of Curling Canada serve for a term of four years²⁹⁴ and the directors of Canada Soccer for a term of three years.²⁹⁵ In addition, the COC Code provides that a single term for a director of an NSO should be “not longer than four years.”²⁹⁶

With respect to standards in the broader not-for-profit sector, a 2021 study conducted by BoardSource (the leading organization focused on strengthening and supporting non-profit board leadership) found 54% of American non-profit boards have both prescribed term lengths and term limits.²⁹⁷ The most common board member term structure was a three-year term, with a two-term

²⁹⁰ “Hockey Canada By-Laws, Regulations and History” (May 2022), s 30.1, online (pdf): *Hockey Canada* <<https://cdn.hockeycanada.ca/hockey-canada/Corporate/About/Downloads/2022-23-bylaws-e.pdf>>.

²⁹¹ “Hockey Canada By-Laws, Regulations and History” (May 2022), s 28.1, online (pdf): *Hockey Canada* <<https://cdn.hockeycanada.ca/hockey-canada/Corporate/About/Downloads/2022-23-bylaws-e.pdf>>.

²⁹² *Canada Not-for-profit Corporations Act*, SC 2009, c 23, s 128(3); *Canada Not-for-Profit Corporations Regulations*, SOR/2011-223, s 28(1).

²⁹³ *Canada Not-for-profit Corporations Act*, SC 2009, c 23, s 128(3).

²⁹⁴ Curling Canada, “By-laws of Canadian Curling Association” (5 December 2018) at Part VIII, s 2(b).

²⁹⁵ Canada Soccer, “By-laws of the Canadian Soccer Association Incorporated” (2022), s 6.03(A)(i).

²⁹⁶ “Canadian Sport Governance Code” (1 September 2021) at 5, section B.10, online: *Canadian Olympic Committee – NSO Sharing Centre* <<https://nso.olympic.ca/canadian-sport-governance-code/>>.

²⁹⁷ “Leading with Intent: BoardSource Index of Nonprofit Board Practices” (2021) at 33, online (pdf): *BoardSource* <<https://leadingwithintent.org/wp-content/uploads/2021/06/2021-Leading-with-Intent-Report.pdf?hsCtaTracking=60281ff7-cadf-4b2f-b5a0-94ebff5a2c25%7C428c6485-37ba-40f0-a939-aeda82c02f38>>.

maximum.²⁹⁸ In Canada, an older study from 2006 found that three to four years was the most common term length for boards in the not-for-profit and voluntary sector.²⁹⁹ Additionally, 48% of respondents allowed board members to serve one to two consecutive terms, whereas 47% allowed three or more consecutive terms. Only 5% of respondents did not allow consecutive terms.

While the current two-year term for Directors complies with the CNCA and the COC Code, and is generally consistent with the practices of the Comparator Associations, it is our view that Hockey Canada would be better served by increasing the length of the Director term to up to three years. The complexity of the Hockey Canada organization imposes a steep learning curve on its Directors, particularly those coming from backgrounds outside the sport of hockey. As such, there is a risk that by the time their two-year term expires, the Directors have only recently been able to “get up to speed” in the activities and affairs of the organization. Increasing the single term length by one year would ensure that Directors can familiarize themselves with the nuances of Hockey Canada sufficiently, thereby fostering strategic leadership and enabling Directors to have a more significant impact on the organization’s short- and long-term goals. A term length of up to three years, coupled with the introduction of staggered terms (discussed below), also provides greater opportunity for Board renewal and succession planning.

1.2 Staggered terms for elected Directors

As mentioned above, the terms of the Hockey Canada Directors are not staggered and the term of each Director expires at the same time. Although the law does not require that the terms of directors be staggered, many organizations use overlapping or rotating terms to avoid having all directors retire at the same time and to ensure that there is a balance of new and experienced directors on the board. In that regard, the CNCA provides that “[i]t is not necessary that all directors elected at a meeting of members hold office for the same term.”³⁰⁰

We note that at least three of the four Comparator Associations expressly provide for staggered terms in their By-laws. In accordance with its by-laws, three directors of the Canada Basketball board are elected in even numbered years and three are elected in odd numbered years.³⁰¹ Meanwhile, each of the by-laws of Athletics Canada³⁰² and Curling Canada³⁰³ provides for a similar rotation process, whereby a minimum number of directors must be elected in even numbered years and in odd numbered years. Although Soccer Canada’s by-laws do not expressly provide for staggered terms, their elections process is structured in such a way that four directors (excluding

²⁹⁸ “Leading with Intent: BoardSource Index of Nonprofit Board Practices” (2021) at 33, online (pdf): *BoardSource* <<https://leadingwithintent.org/wp-content/uploads/2021/06/2021-Leading-with-Intent-Report.pdf?hsCtaTracking=60281ff7-cadf-4b2f-b5a0-94ebff5a2c25%7C428c6485-37ba-40f0-a939-aeda82c02f38>>.

²⁹⁹ Grace Bugg & Sue Dallhoff, “National Study of Board Governance Practices in the Non-Profit and Voluntary Sector in Canada” (2006) at 26, online (pdf): *Strategic Leverage Partners Inc., & Centre for Voluntary Sector Research and Development* <http://www.strategicleveragepartners.com/bhg768kjmhgvxyxwq/National_Study_of_Board_Governance_Practices_in_the_Non-Profit_and_Voluntary_Sector_in_Canada.PDF>

³⁰⁰ *Canada Not-for-profit Corporations Act*, SC 2009, c 23, s 128(4).

³⁰¹ Canada Basketball, “Bylaw #1 Canada Basketball” (25 May 2014), s 3.11.

³⁰² Athletics Canada, “Athletics Canada Bylaws” (2021), s 5.5.

³⁰³ Curling Canada, “By-laws of Canadian Curling Association” (5 December 2018), s 4 and “Temporary Bylaw Amendment” appended thereto.

the Vice-President and President) are up for election every year. In addition, the election of the Vice-President and President (each of whom serve a four year term) is also staggered so that every two years either the Vice-President or President is also up for election.

During our interviews with Hockey Canada representatives, one individual stated that the organization holds an election of Directors only every second year because of the significant amount of time and resources needed to organize and plan it. One of the Member representatives we interviewed expressed the view that there would only be a complete turnover of the Hockey Canada Board if that is what the Members wanted. Respectfully, the risk of a complete turnover of the Board exists independently of what the Hockey Canada Members may want. In any given election year, the two-year term of all of the Hockey Canada Directors naturally expires. While some or all of those Directors may be eligible for re-election, there is never any guarantee that any or all of the eligible Directors will want to run for a subsequent term. Accordingly, we are of the view that the preferred approach is to implement a nominations and elections process that contemplates the election of some Directors at every annual meeting of Members. That not only reduces the risk of having all or an important number of the Directors leave the Board at the same time, but also ensures that there is a combination of new and longer-serving Directors on the Board.

Considering our recommendation above that the term length of an elected Director should be increased to up to three years, we also recommend that the terms be staggered so that only about one third (1/3) of the elected Director positions on the Board of Hockey Canada would be up for election every year. This arrangement would ensure a measure of continuity within the Board for up to three years. In addition, the staggering of Director terms promotes the preservation of institutional knowledge because the knowledge and skills of outgoing Directors are continually being transferred or imparted to new members who are joining the Board on an annual basis.

1.3 Appointed Directors

The Board of Hockey Canada may also include up to one Director appointed by the elected Directors of Hockey Canada.³⁰⁴ The term of an appointed Director commences on the date of such appointment and expires immediately upon the close of the next annual meeting of Members.³⁰⁵ The CNCA allows such a practice and prescribes that any Directors so appointed “shall hold office for a term expiring not later than the close of the next annual meeting of members.”³⁰⁶ The CNCA also provides that “the total number of directors so appointed may not exceed one third of the number of directors elected at the previous annual meeting of members.”³⁰⁷

We note that the term of Hockey Canada’s appointed Director (if one is appointed) is for up to one year and expires at the close of the next annual meeting of members, which is compliant with the CNCA. Accordingly there is no need to change or revise that practice.

³⁰⁴ Industry Canada, “Hockey Canada Association Articles of Continuance” (10 June 2014) at Sched B; “Hockey Canada By-Laws, Regulations and History” (May 2022), s 26.1(b), online (pdf): *Hockey Canada* <<https://cdn.hockeycanada.ca/hockey-canada/Corporate/About/Downloads/2022-23-bylaws-e.pdf>>.

³⁰⁵ “Hockey Canada By-Laws, Regulations and History” (May 2022), s 30.2, online (pdf): *Hockey Canada* <<https://cdn.hockeycanada.ca/hockey-canada/Corporate/About/Downloads/2022-23-bylaws-e.pdf>>.

³⁰⁶ *Canada Not-for-profit Corporations Act*, SC 2009, c 23, s 128(8).

³⁰⁷ *Canada Not-for-profit Corporations Act*, SC 2009, c 23, s 128(8).

We also point out that, pursuant to the CNCA, the Board of Hockey Canada would only be permitted to exercise its right to appoint an additional Director in those years where an election was held. As mentioned above, the CNCA provides that the total number of appointed directors cannot exceed one third of the number of directors elected at the previous annual meeting of members. Accordingly, if no Directors were elected at the previous annual meeting of members (i.e. at an annual meeting held in an odd numbered year), then the Board would not be allowed to appoint any Director during that year. We note that if our recommendation above to implement overlapping or staggered terms for elected Directors is accepted, the likelihood of the Board not being able to appoint a Director would be reduced if not eliminated as there would probably be at least three Directors up for election at every annual meeting of members.

2. Term Limits.

The law does not mandate a maximum number of consecutive single terms for directors, but term limits are considered useful by many organizations. They are a gentle yet effective way of ensuring people retire from the board on a regular basis. Term limits also assist with a perception of fairness and independence. If a group of directors has been serving the board for a prolonged period, there might be a perception or concern that those directors lack independence³⁰⁸ and have become too aligned with management. Term limits generate renewal and provide opportunity for new individuals to share fresh ideas with existing directors and management.

Hockey Canada's By-laws state that an elected Director may, if the Director continues to meet the eligibility criteria, be re-elected for up to four consecutive two-year terms (i.e. eight years).³⁰⁹ A Director who has served eight consecutive years on the Board is not eligible for re-election to the Board until at least two consecutive years have lapsed since that Director's last term served.³¹⁰

The By-laws do not prescribe a limit on the number of terms that an appointed Director can serve.

No individual may serve more than two consecutive two year terms as Chair of the Board.³¹¹

2.1 Elected Directors

Hockey Canada's rule that limits an elected Director to serving no more than eight consecutive years on the Board is generally consistent with the Comparator Associations. Athletics Canada imposes on its elected directors a limit of eight years,³¹² Curling Canada prescribes a limit of ten

³⁰⁸ Peter Dey & Sarah Kaplan, "360° Governance: Where are the Directors in a World in Crisis?" (2021) at 31, online (pdf): *Rotman School of Management University of Toronto* <<https://www.rotman.utoronto.ca/FacultyAndResearch/ResearchCentres/LeeChinInstitute/Sustainability-Research-Resources/360-Governance-Report>>.

³⁰⁹ "Hockey Canada By-Laws, Regulations and History" (May 2022), s 30.3, online (pdf): *Hockey Canada* <<https://cdn.hockeycanada.ca/hockey-canada/Corporate/About/Downloads/2022-23-bylaws-e.pdf>>.

³¹⁰ "Hockey Canada By-Laws, Regulations and History" (May 2022), s 30.3, online (pdf): *Hockey Canada* <<https://cdn.hockeycanada.ca/hockey-canada/Corporate/About/Downloads/2022-23-bylaws-e.pdf>>.

³¹¹ "Hockey Canada By-Laws, Regulations and History" (May 2022), s 31.6, online (pdf): *Hockey Canada* <<https://cdn.hockeycanada.ca/hockey-canada/Corporate/About/Downloads/2022-23-bylaws-e.pdf>>.

³¹² Athletics Canada, "Athletics Canada Bylaws" (2021), s 5.1(c).

years (which need not be consecutive),³¹³ while Canada Soccer imposes a nine year maximum.³¹⁴ It is not clear if the term limits set out in the By-laws of Athletic Canada and Canada Soccer apply to years served consecutively, or to a total number of years served on the board. Hockey Canada's eight-year limit also aligns with the practice mandated by the COC Code. In that regard, the COC Code provides that each director "shall be subject to a term limit. Absent compelling reasons to the contrary as determined by the board's nominating committee, that term limit should be a maximum of nine years (comprised of multiple terms each not longer than four years)."³¹⁵ The COC Code does allow a sitting board chair to serve one additional term for a maximum twelve year term limit, provided that such individual not hold the position of chair of the board for more than six years.³¹⁶

Although the eight-year limit for elected Directors is generally consistent with the practices of the Comparator Associations and the COC Code, we are of the view that the limit should be amended to better align with our recommendation to move to three-year terms for the Directors. If that recommendation is adopted by Hockey Canada without amending the eight-year limit, then a Director re-elected to serve a third term, would not be allowed to complete it and would need to resign in their eighth year of consecutive service. Accordingly, we also recommend that the number of consecutive years that a Director may serve on the Board be increased from eight years to nine years (e.g. three consecutive terms of three years). The slight increase in the maximum number of consecutive years served provides the Hockey Canada Directors with a little more time to educate themselves about the organization and make meaningful contributions to Hockey Canada's long-term goals and strategic objectives. Allowing Directors to serve for up to nine years also ensures greater continuity on the Board, while still avoiding overly long terms, which can "produce directors who are 'stale' and who are no longer able to generate the same degree of commitment and interest in the corporation."³¹⁷

2.2 Board Chair

The Chair of Hockey Canada may serve as Chair for no more than four consecutive years (i.e. two consecutive terms of two years).³¹⁸ The By-laws do not contemplate an exception to this rule. It is not clear if the time served as Chair counts towards the eight-year limit that applies to elected Directors; that should be clarified. The practice of imposing limits on the number of years a person can serve as chair of a board is common for the same reasons director term limits are considered a good practice – they provide opportunity for fresh insights, and enhance board dynamics.³¹⁹ Each

³¹³ Curling Canada, "By-laws of Canadian Curling Association" (5 December 2018), s 2(b)(ii).

³¹⁴ Canada Soccer, "By-laws of the Canadian Soccer Association Incorporated" (2022), s 6.03(A)(ii).

³¹⁵ "Canadian Sport Governance Code" (1 September 2021) at 5, section B.10, online: *Canadian Olympic Committee – NSO Sharing Centre* <<https://nso.olympic.ca/canadian-sport-governance-code/>>.

³¹⁶ "Canadian Sport Governance Code" (1 September 2021) at 5, section B.10, online: *Canadian Olympic Committee – NSO Sharing Centre* <<https://nso.olympic.ca/canadian-sport-governance-code/>>.

³¹⁷ Burke-Robertson, Carter & Man, *Corporate and Practice Manual for Charities and Not-for-Profit Corporations* (Toronto: Thomson Reuters Canada, 2022) at § 7C.6 (Proview).

³¹⁸ "Hockey Canada By-Laws, Regulations and History" (May 2022), s 31.6, online (pdf): *Hockey Canada* <<https://cdn.hockeycanada.ca/hockey-canada/Corporate/About/Downloads/2022-23-bylaws-e.pdf>>.

³¹⁹ Peter Dey & Sarah Kaplan, "360° Governance: Where are the Directors in a World in Crisis?" (2021) at 33, online (pdf): *Rotman School of Management University of Toronto*

of Athletics Canada and Canada Soccer prescribes a limit on the number of years a person may occupy the office of chair/president, namely six³²⁰ and eight³²¹ years respectively. In addition, the COC Code provides that a board chair “may not hold the position of chair of the board for longer than six years.”³²²

Considering that the maximum number of years an elected Director of Hockey Canada may serve on the Board is eight years, the four-year limit on occupying the office of Chair is, in our view, reasonable in the circumstances and generally aligned with the standard prescribed by the COC Code.

Although the four-year limit for the Board Chair is generally consistent with the practices of the Comparator Associations and the COC Code, and for the same reasons expressed above in respect of the limit of consecutive terms that may be served by an elected Director, we are of the view that the Board Chair limit should be amended to better align with our recommendation to move to three-year terms for the Directors. If that recommendation is adopted by Hockey Canada without amending the maximum number of terms for the Chair, then a Chair who is re-elected to serve a second term, would not be allowed to complete it and would need to resign in their fourth year of consecutive service. Accordingly, we also recommend that the number of consecutive years that the Board Chair may serve in that office be increased from four years to six years (i.e. two consecutive terms of three years).

iii. *Hockey Canada’s nominating process and observations about their alignment with best practices?*

1. The Nominating Process

We have been asked to consider whether Hockey Canada’s nominating process needs to be amended. To answer this question, we looked at Hockey Canada’s By-laws and Nominating Committee Terms of Reference. We also heard from a number of Hockey Canada Representatives who are familiar with the nominating process, including Hockey Canada’s General Counsel and the Chair of the Nominating Committee. In accordance with the By-laws, the election of Directors is held at each annual meeting in even numbered years.³²³ The election of Directors includes the election of the Board Chair.³²⁴

Hockey Canada informed us that the nominating process followed in 2020 reflected a renewed approach by the Nominating Committee, who wanted to set out the nominations path and process

<<https://www.rotman.utoronto.ca/FacultyAndResearch/ResearchCentres/LeeChinInstitute/Sustainability-Research-Resources/360-Governance-Report>>.

³²⁰ Athletics Canada, “Athletics Canada Bylaws” (2021), s 5.1(a).

³²¹ Canada Soccer, “By-laws of the Canadian Soccer Association Incorporated” (2022), 6.03(A)(iv).

³²² “Canadian Sport Governance Code” (1 September 2021) at 5, section B.10(i), online: *Canadian Olympic Committee – NSO Sharing Centre* <<https://nso.olympic.ca/canadian-sport-governance-code/>>.

³²³ “Hockey Canada By-Laws, Regulations and History” (May 2022), s 28.1, online (pdf): *Hockey Canada* <<https://cdn.hockeycanada.ca/hockey-canada/Corporate/About/Downloads/2022-23-bylaws-e.pdf>>.

³²⁴ “Hockey Canada By-Laws, Regulations and History” (May 2022), s 31.1, online (pdf): *Hockey Canada* <<https://cdn.hockeycanada.ca/hockey-canada/Corporate/About/Downloads/2022-23-bylaws-e.pdf>>.

more clearly. In 2020, the nominating process for the election of Directors, which was led by the Nominating Committee, was carried out as follows:

1. Approximately five months³²⁵ prior to the commencement of the annual meeting of Members, Hockey Canada notified Members, through a call for nominations, that Members may put forward nominations during the nominations period (the “**Call for Nominations**”). Hockey Canada also reached out to the broader public to seek candidates for the election of the Chair and Directors. The Call for nominations was published or posted on Hockey Canada’s social media platforms and website, on LinkedIn and through other postings with groups such as the Sport Information Resource Centre and the Institute of Corporate Directors.
2. The Call for Nominations included: (i) a brief description of Hockey Canada; (ii) the positions to be filled on the Board; (iii) a statement indicating that Hockey Canada “is seeking a diverse group of individuals to serve; bringing a variety of thoughts, knowledge and experiences is critical to the success of the organization”; (iv) a statement on who are “ideal candidates” for the Board; (v) the director eligibility criteria required by the CNCA and the Hockey Canada By-laws; (vi) a description of the nominations process, including key dates of the process; and (vii) a summary of the fiduciary duties of Directors.
3. Pursuant to the By-laws, nominations for the position of elected Director could only be submitted by a Member or by the Chair of the Nominating Committee. No Member could submit a number of nominations that exceeded the number of Directors’ positions available for election.³²⁶ There was no limit on the number of nominations that could be submitted by the Chair of the Nominating Committee.
4. Through the Call for Nominations, the Chair of the Nominating Committee invited individuals who were interested in being nominated by the Chair of the Nominating Committee (an “**External Candidate**”) to complete and file an application form, in the same way that an individual endorsed by a Member must complete and file one, except the External Candidate’s application need not be endorsed by a Member.
5. In accordance with the By-laws, all nominations for the position of elected Director had to be submitted to the Chair of the Nominating Committee, at least 60 days prior to the commencement of the annual meeting of Members, and had to include a resume of the candidate’s credentials, and a written statement by the candidate expressing a willingness to serve as a Director.³²⁷

³²⁵ Hockey Canada has indicated that in prior years since 2014, the call for nominations was issued sometime between the months of mid-June to early July. There are also no internal rules or policies prescribing when a call for nominations must be deployed.

³²⁶ “Hockey Canada By-Laws, Regulations and History” (May 2022), s 27.1, online (pdf): *Hockey Canada* <<https://cdn.hockeycanada.ca/hockey-canada/Corporate/About/Downloads/2022-23-bylaws-e.pdf>>.

³²⁷ “Hockey Canada By-Laws, Regulations and History” (May 2022), s 27.2, online (pdf): *Hockey Canada* <<https://cdn.hockeycanada.ca/hockey-canada/Corporate/About/Downloads/2022-23-bylaws-e.pdf>>.

6. Any individual nominated for the position of elected Director was eligible to stand for election as Chair of the Board.³²⁸ Individuals who wished to run for the position of Chair of the Board had to, no later than 45 days prior to the annual meeting of Members at which the election will take place, instruct the Chair of the Nominating Committee to include that individual's name on the ballot for the position of Chair of the Board.³²⁹
7. The Nominating Committee reviewed all applications submitted by External Candidates and "may, depending on the volume of submissions, create a short-list of external candidates."³³⁰ The Nominating Committee, in its deliberations with the Chair of the Nominating Committee, made reference to the Matrix and list of duties of Directors that accompanied the Call for Nominations to evaluate and select the External Candidates to be nominated by the Chair of the Nominating Committee.
8. The Nominating Committee met with the External Candidates being considered for a nomination and candidates nominated by the Members to review their applications and résumés.³³¹
9. The Nominating Committee created a final list of nominees that included all of the nominations made by the Members, and the External Candidates nominated by the Chair of the Nominating Committee. Each nominee was asked to produce a short video.³³²
10. The Nominating Committee forwarded all nominations for the Director positions and the Chair of the Board position, along with the video and any supporting documentation to the Members at least 30 days prior to the annual meeting of Members.³³³ We understand that some candidates offered to speak to Members and that Members' responses to these offers varied. In accordance with the By-laws, nominations from the floor at the annual meeting of Members were not permitted.³³⁴
11. The election of the Directors and Chair was carried out at the annual meeting in accordance with the By-laws, which provided (and still provide):

³²⁸ "Hockey Canada By-Laws, Regulations and History" (May 2022), s 31.2, online (pdf): *Hockey Canada* <<https://cdn.hockeycanada.ca/hockey-canada/Corporate/About/Downloads/2022-23-bylaws-e.pdf>>.

³²⁹ "Hockey Canada By-Laws, Regulations and History" (May 2022), s 31.3, online (pdf): *Hockey Canada* <<https://cdn.hockeycanada.ca/hockey-canada/Corporate/About/Downloads/2022-23-bylaws-e.pdf>>.

³³⁰ "Nominations for Election to the Hockey Canada Board of Directors" (2020) at 2.

³³¹ "Nominations for Election to the Hockey Canada Board of Directors" (2020) at 2.

³³² "Nominations for Election to the Hockey Canada Board of Directors" (2020) at 2.

³³³ "Hockey Canada By-Laws, Regulations and History" (May 2022), ss 27.2, 31.3, online (pdf): *Hockey Canada* <<https://cdn.hockeycanada.ca/hockey-canada/Corporate/About/Downloads/2022-23-bylaws-e.pdf>>.

³³⁴ "Hockey Canada By-Laws, Regulations and History" (May 2022), s 27.3, online (pdf): *Hockey Canada* <<https://cdn.hockeycanada.ca/hockey-canada/Corporate/About/Downloads/2022-23-bylaws-e.pdf>>.

- a. The Directors and Chair of the Board are elected by the Hockey Canada Members at the annual meeting of Members.³³⁵
- b. The names of all of the nominees for elected Director positions shall appear on the ballot.³³⁶ Each Member in attendance at the annual meeting of Members receives a number of ballots equal to the number of votes that the Member is entitled to cast.³³⁷
- c. The Chair candidate receiving the most votes shall be declared elected as Chair of the Board. If more than one Chair candidate receives the highest number of votes on the first ballot or any subsequent ballot, the candidates who receive less than the highest number of votes on the current ballot is removed from the ballot and voting will continue until one candidate is the sole recipient of the most votes.³³⁸
- d. Following the election of the Chair of the Board, all of the remaining nominees, including nominees who unsuccessfully ran for the position of Chair of the Board, shall be eligible to run for the vacant elected Board positions using the procedure generally described in the By-laws.³³⁹

As mentioned earlier in this report, the Articles and By-laws provide that the Board may appoint up to one Director.³⁴⁰ Pursuant to the By-laws, the general process for appointing an additional Director is as follows:

1. The Board informs the Nominating Committee that it wishes to exercise its right to appoint a Director to the Board.
2. Within 30 days of receiving a request from the elected Directors, the Chair of the Nominating Committee forwards to the Board the names of individuals recommended by the Nominating Committee to fill any appointed positions.³⁴¹ That By-law requirement is supplemented by the Terms of Reference of the Nominating Committee which reiterate that the Nominating Committee is responsible for identifying and

³³⁵ “Hockey Canada By-Laws, Regulations and History” (May 2022), ss 28.1, 31.1, online (pdf): *Hockey Canada* <<https://cdn.hockeycanada.ca/hockey-canada/Corporate/About/Downloads/2022-23-bylaws-e.pdf>>.

³³⁶ “Hockey Canada By-Laws, Regulations and History” (May 2022), s 28.1, online (pdf): *Hockey Canada* <<https://cdn.hockeycanada.ca/hockey-canada/Corporate/About/Downloads/2022-23-bylaws-e.pdf>>.

³³⁷ “Hockey Canada By-Laws, Regulations and History” (May 2022), s 28.2, online (pdf): *Hockey Canada* <<https://cdn.hockeycanada.ca/hockey-canada/Corporate/About/Downloads/2022-23-bylaws-e.pdf>>.

³³⁸ “Hockey Canada By-Laws, Regulations and History” (May 2022), s 31.4, online (pdf): *Hockey Canada* <<https://cdn.hockeycanada.ca/hockey-canada/Corporate/About/Downloads/2022-23-bylaws-e.pdf>>.

³³⁹ “Hockey Canada By-Laws, Regulations and History” (May 2022), s 31.5, online (pdf): *Hockey Canada* <<https://cdn.hockeycanada.ca/hockey-canada/Corporate/About/Downloads/2022-23-bylaws-e.pdf>>.

³⁴⁰ “Hockey Canada By-Laws, Regulations and History” (May 2022), s 26.1(b), online (pdf): *Hockey Canada* <<https://cdn.hockeycanada.ca/hockey-canada/Corporate/About/Downloads/2022-23-bylaws-e.pdf>>.

³⁴¹ “Hockey Canada By-Laws, Regulations and History” (May 2022), s 29.2, online (pdf): *Hockey Canada* <<https://cdn.hockeycanada.ca/hockey-canada/Corporate/About/Downloads/2022-23-bylaws-e.pdf>>.

recruiting qualified individuals to stand for appointment as Directors and for providing the Board with the names of such individuals to fill the appointed Director position.³⁴²

3. The elected Directors by Special Resolution,³⁴³ may appoint a recommended candidate to serve as an appointed Director.³⁴⁴

There is no further guidance in the By-laws or other governance documents of Hockey Canada in respect of the nominating or appointment process of appointed Directors.

2. Observations on Nominating Process

Hockey Canada's Nominating Committee leads the nominating process for Directors. Hockey Canada's Nominating Committee is responsible for ensuring, on a continuing basis, that the Board is comprised of qualified and skilled persons capable of, and committed to, providing effective governance leadership to Hockey Canada.³⁴⁵ The Nominating Committee Chair oversees elections of the Board Chair and other Board positions. The Nominating Committee Chair must ensure that candidate names appear on official ballots and oversees distribution and collection of ballots, counting of votes, announcing results and destroying ballots immediately thereafter.³⁴⁶ However, the Nominating Committee Chair may delegate these responsibilities to a third party appointed by the Nominating Committee if the elections happen entirely online, by phone or telecommunications.³⁴⁷

Pursuant to its Terms of Reference, the Nominating Committee has a number of other responsibilities, including the following:

- Promoting diversity of the Board in relation to gender, age, language, ethnicity, professional backgrounds and personal experiences;
- Having regard to the specific and desired competencies required on the Board as a whole in soliciting nominations; and
- Carrying out its duties in a manner that encourages a long-term view of Hockey Canada's leadership needs, as well as Board succession planning.

³⁴² "Nominations" in *Hockey Canada Terms of Reference* (updated to 18 November 2021) at 35, s 5.4.

³⁴³ "Special Resolution" means "a resolution passed by a majority of not less than two-thirds (2/3) of the votes cast on that resolution:" see "Hockey Canada By-Laws, Regulations and History" (May 2022), s aa, online (pdf): *Hockey Canada* <<https://cdn.hockeycanada.ca/hockey-canada/Corporate/About/Downloads/2022-23-bylaws-e.pdf>>.

³⁴⁴ "Hockey Canada By-Laws, Regulations and History" (May 2022), s 29.3, online (pdf): *Hockey Canada* <<https://cdn.hockeycanada.ca/hockey-canada/Corporate/About/Downloads/2022-23-bylaws-e.pdf>>.

³⁴⁵ "Hockey Canada By-Laws, Regulations and History" (May 2022), s 48.1, online (pdf): *Hockey Canada* <<https://cdn.hockeycanada.ca/hockey-canada/Corporate/About/Downloads/2022-23-bylaws-e.pdf>>.

³⁴⁶ "Hockey Canada By-Laws, Regulations and History" (May 2022), s 48.3, online (pdf): *Hockey Canada* <<https://cdn.hockeycanada.ca/hockey-canada/Corporate/About/Downloads/2022-23-bylaws-e.pdf>>.

³⁴⁷ "Hockey Canada By-Laws, Regulations and History" (May 2022), s 48.4, online (pdf): *Hockey Canada* <<https://cdn.hockeycanada.ca/hockey-canada/Corporate/About/Downloads/2022-23-bylaws-e.pdf>>.

The language set out in the By-laws and Nominating Committee Terms of Reference suggests to the reader that the Nominating Committee carries out an important leadership role in forming the Board of Hockey Canada, in building a diverse Board whose composition is carefully considered in light of the organization's needs and strategic objectives, and engages in proactive succession planning for the Board. However, the current nomination process does not allow the Nominating Committee to fully carry out this role.

Moreover, there ought to be more effective use of the Matrix in the call for nominations. The 2020 Call for Nominations that we reviewed provides "Hockey Canada is seeking a diverse group of individuals to serve on the Board; bringing a variety of thoughts, knowledge and experiences to the Board is critical to our success."³⁴⁸ It also includes a section entitled "Ideal Candidates" that describes a number of general qualities of Hockey Canada Directors, such as: "they have a strong passion for the game," "they have a genuine interest in contributing to the fulfillment of governance responsibilities using policy governance principles," "they should feel comfortable providing objective and independent points of view with sound judgement and a broad perspective," "they should be good communicators" and "they should be committed to the values and mission of Hockey Canada that inspire and enable all Canadians to enjoy the sport of hockey."³⁴⁹ Although such qualities are personality traits that are desired in Directors, they are not, in our view, the only criteria that ought to be highlighted in a call for nominations for Directors and the Chair of the Board given the skills-expertise Matrix.

As mentioned above, the Hockey Canada Board skills-expertise Matrix serves as an inventory of current Directors' skills, expertise and characteristics and any gaps in respect of them. As such, the Matrix helps the Nominating Committee identify, for each Director of the Board, which of the listed skills, expertise and characteristics the Director possesses. However, the purpose of a board skills and diversity matrix is not only to provide a snapshot of what the current Board looks like, but also to assist the Nominating Committee in establishing the eligibility criteria for future directors based on a board's needs and stakeholder accountability.³⁵⁰ In other words, the Matrix should form part of a broader framework that strives to establish a Board made up of individuals who collectively and individually have a diverse mix of skills, knowledge and experience to effectively govern and direct the organization.

Although the 2020 Call for Nominations does state that Hockey Canada is seeking "a diverse group of individuals to serve on the Board,"³⁵¹ it does not mention any of the specific skills, expertise or diversity criteria of the Matrix that are of particular interest to the Nominating Committee nor does it encourage individuals who possess some of those specific elements (which might be lacking on the then current Board) to apply for a position on the Board. In short, the Call for Nominations does not reflect that the Nominating Committee has considered (as it may well have) the specific and desired competencies required on the Board or the elements of diversity needed to address any gaps in the Board's current composition. Instead, the Call for Nominations casts a very broad net

³⁴⁸ "Nominations for Election to the Hockey Canada Board of Directors" (2020) at 1.

³⁴⁹ "Nominations for Election to the Hockey Canada Board of Directors" (2020) at 2.

³⁵⁰ Anne Corbett & James M Mackay, *Guide to Good Governance: Not-for-Profit and Charitable Organizations*, 2nd ed (September 2013) at 122.

³⁵¹ "Nominations for Election to the Hockey Canada Board of Directors" (2020) at 1.

among the Members of Hockey Canada and the general public, and does not draw attention to, or set as eligibility requirements any of the skills, expertise or diversity elements set out in the Matrix.

In accordance with the Hockey Canada By-laws,³⁵² “the Nominating Committee shall forward all nominations to the Members at least thirty (30) Days prior to the commencement of the Annual Meeting.” The By-laws also provides that “the names of all of the nominees for elected Directors’ positions shall appear on the ballot.”³⁵³ Although the Call for Nominations provides that the Chair of the Nominating Committee may create a short-list of External Candidates that they want to include on the final list of nominees circulated to the Members,³⁵⁴ the same practice is not followed for nominations made by the Members. Instead, Hockey Canada allows all of the nominees endorsed by the Members to be included on the final list of nominees that is circulated to the Members prior to the annual meeting of Members. That may be due in part to the language set out in the By-laws (quoted above) that stipulates that the Nominating Committee “shall forward all nominations” [emphasis added] to the Members and that “the names of all of the nominees [...] shall appear on the ballot” [emphasis added].

We understand that in some years, a call for nominations can generate a high number of candidacies therefore resulting in a ballot with a very long list of candidates. For example, the ballot for the 2020 election of Directors included 24 candidates, of which 15 were on automatically from the Members and 9 were from the Chair of the Nominating Committee. Five of those candidates were on the ballot for the position of Board Chair. The high number of candidates is in part a consequence of the biennial election system, which results in having nine Director positions become vacant or up for re-election at the same time. In addition, each Member is entitled to nominate a number of candidates that is equal to the number of Directors’ positions available for election.³⁵⁵ All 13 Members could nominate up to 9 individuals, in which case the Nominating Committee would receive 117 Members’ nominations, all of which would need to be reviewed and considered for inclusion on the final list of nominees included on the election ballot.

We have heard from several persons interviewed that elections are held only every two years because of the amount of time, resources and planning required to carry out the nominations and elections process. It is likely that the past and most recent methods of director recruitment and nominations, which are not strongly supported or informed by any skills- or expertise-related criteria, are adding to the workload as the process tends to yield a high number of candidates, who might not have a suitable mix of competencies and experience to effectively carry out the Board’s functions and meet the specific needs of Hockey Canada.

Furthermore, the practice of allowing Members to nominate without a requirement to have regard to the Matrix and allowing all such nominated candidates to be included on the final election ballot is, in our view, problematic and could be a significant barrier to making progress on diversity

³⁵² “Hockey Canada By-Laws, Regulations and History” (May 2022), s 27.2, online (pdf): *Hockey Canada* <<https://cdn.hockeycanada.ca/hockey-canada/Corporate/About/Downloads/2022-23-bylaws-e.pdf>>.

³⁵³ “Hockey Canada By-Laws, Regulations and History” (May 2022), s 28.1, online (pdf): *Hockey Canada* <<https://cdn.hockeycanada.ca/hockey-canada/Corporate/About/Downloads/2022-23-bylaws-e.pdf>>.

³⁵⁴ “Nominations for Election to the Hockey Canada Board of Directors” (2020) at 2.

³⁵⁵ “Hockey Canada By-Laws, Regulations and History” (May 2022), s 27.1, online (pdf): *Hockey Canada* <<https://cdn.hockeycanada.ca/hockey-canada/Corporate/About/Downloads/2022-23-bylaws-e.pdf>>.

objectives. Pursuant to its mandate, the Nominating Committee is “responsible for ensuring, on a continuing basis, that the Board of Directors is composed of qualified and skilled persons capable of, and committed to, providing effective governance leadership to Hockey Canada.”³⁵⁶ However, that committee’s ability to carry out that mandate effectively and make nominating decisions that have a meaningful impact on the Board’s composition and diversity is limited because, ultimately, the Members have the right to elect the Directors and there is no requirement that all candidates on the ballot have been assessed according to the Matrix and may not have the particular skills, experience, competencies or other qualities that are needed on the Hockey Canada Board at that time.

3. Observations on Nomination and Election of Chair

The Chair of the Hockey Canada Board is elected by the Members,³⁵⁷ who also have the authority to remove the Chair from office.³⁵⁸ Although the default rule under the CNCA is that the officers of a corporation are appointed by the directors, the CNCA does allow the articles or the by-laws of the corporation to provide for a different manner of appointing officers.³⁵⁹ The practice of having a chair of the board elected by the members, rather than by the directors, is common in organizations where member involvement is high,³⁶⁰ such as an NSO. For example, the Chair of Athletics Canada is also elected by its members.³⁶¹ At Soccer Canada, the President (who carries out the functions of board chair), is elected at the annual meeting by the members as President-Elect, then subsequently appointed (or “ratified”) by the board as President at the first board meeting following that annual meeting of members.³⁶² However, the directors of each of Basketball Canada³⁶³ and Curling Canada³⁶⁴ elect their chair of the board on an annual basis. Similarly, the COC Code provides that the board chair of an NSO should be elected by the directors³⁶⁵ and should be an independent director.³⁶⁶

Thus, Members electing the Board Chair is in line with most of the points of reference we have considered. However, there does not appear to be any defined eligibility qualifications or a well-defined process for selecting the Chair of Hockey Canada. In that regard, the By-laws provide that

³⁵⁶ “Hockey Canada By-Laws, Regulations and History” (May 2022), s 48.1, online (pdf): *Hockey Canada* <<https://cdn.hockeycanada.ca/hockey-canada/Corporate/About/Downloads/2022-23-bylaws-e.pdf>>.

³⁵⁷ “Hockey Canada By-Laws, Regulations and History” (May 2022), s 31.1, online (pdf): *Hockey Canada* <<https://cdn.hockeycanada.ca/hockey-canada/Corporate/About/Downloads/2022-23-bylaws-e.pdf>>.

³⁵⁸ “Hockey Canada By-Laws, Regulations and History” (May 2022), s 34.1, online (pdf): *Hockey Canada* <<https://cdn.hockeycanada.ca/hockey-canada/Corporate/About/Downloads/2022-23-bylaws-e.pdf>>.

³⁵⁹ *Canada Not-for-profit Corporations Act*, SC 2009, c 23, s 142.

³⁶⁰ Burke-Robertson, Carter & Man, *Corporate and Practice Manual for Charities and Not-for-Profit Corporations* (Toronto: Thomson Reuters Canada, 2022) at § 7D.3 (Proview).

³⁶¹ Athletics Canada, “Athletics Canada Bylaws” (2021), s 5.1(a).

³⁶² Canada Soccer, “By-laws of the Canadian Soccer Association Incorporated” (2022), ss 6.03(C)(vii), 8.01(i).

³⁶³ Canada Basketball, “Bylaw #1 Canada Basketball” (25 May 2014), s 3.26.

³⁶⁴ Curling Canada, “By-laws of Canadian Curling Association” (5 December 2018) at Part IX, section 2.

³⁶⁵ “Canadian Sport Governance Code” (1 September 2021) at 5, section B.8, online: *Canadian Olympic Committee – NSO Sharing Centre* <<https://nso.olympic.ca/canadian-sport-governance-code/>>.

³⁶⁶ “Canadian Sport Governance Code” (1 September 2021) at 5, section B.9, online: *Canadian Olympic Committee – NSO Sharing Centre* <<https://nso.olympic.ca/canadian-sport-governance-code/>>.

“any individual nominated for the position of elected Director in accordance with [the By-laws] is eligible to stand for election as Chair of the Board”³⁶⁷ and that “any individual [so nominated] who wishes to run for the position of Chair of the Board shall [...] instruct the Chair of the Nominating Committee to include that individual’s name on the ballot for the position of Chair of the Board.”³⁶⁸ Essentially, the By-laws allow anyone, regardless of their skills, experience or expertise to be nominated for the position of Board Chair and the By-laws are not supplemented by any other Board policies or terms of reference that would provide additional guidance in this respect.

The absence of such criteria and selection processes is concerning because the role of the chair is a critical one. To be effective, the chair of a board must have the necessary skills and qualities to provide leadership to the board and to the organization as a whole. In addition, the chair must have the ability to manage board meetings, and develop and maintain healthy relationships with other directors, committee chairs, management and stakeholder groups. Such skills and competencies are particularly important in an organization such as Hockey Canada that has a broad and multi-faceted mandate and complex organizational and operational structures.

4. Preliminary Recommendations Regarding the Nominating Process

Considering our observations above, we are of the view that Hockey Canada ought to make a number of changes to its current Director nominating process with a view to enhancing diversity on the Hockey Canada Board. Some of our preliminary recommendations include:

1. As mentioned above, amend the By-laws to provide that no more than 60% of the Directors are of the same gender, as per the COC Code.
2. Review and, if required, update the Board Matrix to ensure it reflects the skills, experience and diversity elements that are needed on the Hockey Canada Board.
 - The implementation of this recommendation does not require a By-law amendment and can be put into effect immediately. Such an exercise falls within the existing duties of the Nominating Committee to ensure, on a continuing basis, that the Board is composed of qualified and skilled persons capable of, and committed to, providing effective governance leadership to Hockey Canada, as set out in its Terms of Reference and By-laws.³⁶⁹
 - The skills, experience and diversity elements ought to be reviewed having regard to Hockey Canada’s strategic direction and any specific requirements, initiatives or projects facing the organization in the next three to five years.³⁷⁰

³⁶⁷ “Hockey Canada By-Laws, Regulations and History” (May 2022), s 31.2, online (pdf): *Hockey Canada* <<https://cdn.hockeycanada.ca/hockey-canada/Corporate/About/Downloads/2022-23-bylaws-e.pdf>>.

³⁶⁸ “Hockey Canada By-Laws, Regulations and History” (May 2022), s 31.3, online (pdf): *Hockey Canada* <<https://cdn.hockeycanada.ca/hockey-canada/Corporate/About/Downloads/2022-23-bylaws-e.pdf>>.

³⁶⁹ “Hockey Canada By-Laws, Regulations and History” (May 2022), s 48.1, online (pdf): *Hockey Canada* <<https://cdn.hockeycanada.ca/hockey-canada/Corporate/About/Downloads/2022-23-bylaws-e.pdf>>.

³⁷⁰ This aligns with the Nominating Committee’s duty to “Carry out [its] duties in a manner that encourages a long-term view of Hockey Canada’s leadership need, as well as Board succession planning.”

- The Matrix should take into account regional representation of the Hockey Canada Members rather than just “geography.”³⁷¹
 - The Matrix should be reviewed at least annually and otherwise periodically as the circumstances require, and revised as necessary.³⁷²
3. For each election cycle (including the 2022 election), that the Nominating Committee use the Board Matrix as a tool to support the call for nominations and to clearly articulate the specific skills and competencies being sought for the Board positions to be filled.³⁷³
- The implementation of this recommendation does not require a By-law amendment and can be put into effect for the next election cycle. This aligns with the Nominating Committee’s duty to “Have regard to the specific and desired competencies required on the Board as a whole in soliciting nominations.”³⁷⁴
 - The Nominating Committee should conduct an evaluation of the Board’s composition annually to “strengthen the board’s effectiveness, to assess the diversity in the boardroom, and to highlight gaps between the skills and background of existing Directors and their optimal mix.”³⁷⁵ The results of that evaluation should be used to inform the next recruitment and nominating process leading up to the next election of Directors.
4. Confirm and document the Members’ undertaking not to put forward any nominations for Director and Board Chair candidates for the 2022 election. We understand that they have agreed to direct anyone whom they might want to nominate to apply through the Chair of the Nominating Committee process. As such, the Nominating Committee can rely on its past practice of reviewing and vetting all nominations so received, and creating a short-list of External Candidates in the same way it did in accordance with the 2020 Call for Nominations. That vetting process should be done having regard to the Board Matrix. We recommend that this approach be implemented for the current election cycle.
5. Subject to additional comments in our final report, revise and update the current “Chair of the Board Terms of Reference” to ensure they are current and reflect the current needs of Hockey Canada. In addition to the existing description of the Chair’s role set

³⁷¹ This aligns with the Nominating Committee’s duty to “Promote a regional balance in the composition of the Board by recruiting candidates from different regions of the country.”

³⁷² Goodmans LLP, “Nominating Committee Terms of Reference” in *Canadian Sport Governance Code: Supporting Resources* (27 April 2021) at 65, s 1.1.

³⁷³ This aligns with the Nominating Committee’s duty to “Have regard to the specific and desired competencies required on the Board as a whole in soliciting nominations.”

³⁷⁴ “Nominations” in *Hockey Canada Terms of Reference* (updated to 18 November 2021) at 35.

³⁷⁵ Deloitte, “Diversity in the Boardroom, Practices and Perspectives” (2015) at 13, online: *Deloitte* <https://www2.deloitte.com/za/en/pages/governance-risk-and-compliance/articles/diversity_in_the_boardroom.html>.

out in those Terms of Reference, amend the “Chair of the Board Terms of Reference” to include a list of qualities and minimum competencies required of the Chair.

- Use the list of defined qualities and competencies to support the call for nominations for the position of Chair. It should also be used as the basis for vetting and selecting candidates who submit their candidacy for the role of Chair. Some qualities and competencies to consider include:³⁷⁶
 - a. Proven leadership skills;
 - b. Good strategic and facilitation skills; ability to influence and achieve consensus;
 - c. Ability to act impartially and without bias and display tact and diplomacy;
 - d. Effective communicator;
 - e. Political acuity;
 - f. Must have the time to continue the legacy of building strong relationships between the corporation and stakeholders;
 - g. Ability to establish trusted advisor relationships with the chief executive officer and other board members;
 - h. Governance and board-level experience;
 - i. Outstanding record of achievement in one or several areas of skills and experience used to select board members.
6. Amend and remove all language in the By-laws that states or suggests that all nominations of candidates proposed by the Members shall be included in the final ballot for the election of the Directors and the Board Chair.
 7. Subject to our final report, update or replace the Nominating Committee Terms of Reference to revise its composition and how its members are appointed, and better define the role and duties of the Nominating Committee, particularly in respect of the process and rules for how individuals are nominated for the positions of Directors and Board Chair.
 - We expect to make additional recommendations in our final report due at the end of October.

³⁷⁶ Anne Corbett & James M Mackay, *Guide to Good Governance: Not-for-Profit and Charitable Organizations*, 2nd ed (September 2013) at 122.

- We are currently of the view, for example, that the Nominating Committee should review and vet all nominations received, including those from the Members, and ensure that all candidates meet the targeted Board Matrix criteria for nominees. Once vetted, the Nominating Committee should also have the authority to short-list candidates (even those proposed by Members) and put forward a final list of nominees for inclusion on the election ballot. That authority of the Nominating Committee should be expressly provided for in the Nominating Committee’s Terms of Reference and in the By-laws.
 - We are also currently supportive of the approach whereby some members of the Nominating Committee are at arm’s length from the Board, but will also be considering whether some Directors should also be on the committee, and whether Members ought to be asked to approve a revised nominations process for the members of the Nominating Committee and will be doing further work on whether this represents best practice.
 - We have also noted some duplication of or overlap between the duties of the Governance Committee and those of the Nominating Committee, which will be considered further in our final report.
8. Amend the By-laws to provide that the Board may appoint additional Directors within the legal limits imposed by the CNCA, rather than limiting the option to only one additional Director. That change would also align with the language in the Articles, which currently mirrors the CNCA rule.
- iv. *Hockey Canada’s committee structure (standing committees and task teams), committee mandates/terms of reference and mechanisms for reporting to the Board, and observations about their alignment with best practices.*

Committees are formed to assist the Board in accomplishing its duties and responsibilities. Committees are a very important element of the governance process and “should be established with clearly agreed reporting procedures and a written scope of authority”,³⁷⁷ typically by way of Terms of Reference. To be most valuable, Terms of Reference should include detail pertaining to “the composition of the committee, the objectives, purpose and activities, the powers that have been delegated, any mandate to make recommendations to the board, the lifespan of the committee, and how the committee reports to the board.”³⁷⁸

1. Committee Structure

As per its By-Laws, Hockey Canada’s committee structure is comprised of seven standing committees and a variety of task teams. A standing committee is permanent, while a task team is temporary.

³⁷⁷ Deloitte, “Board committees” (2014) at 1.

³⁷⁸ Deloitte, “Board committees” (2014) at 1.

Standing committees

Hockey Canada’s seven standing committees are the following:

- Audit and Finance
- Female Hockey Policy
- Governance
- Human Resources
- Nominating
- Program Standards
- Risk Management³⁷⁹

All standing committees report to the Board. They must maintain minutes of their meetings and make those minutes available to the Board.³⁸⁰

Task teams

The Chair of the Board (in consultation with the Board, the CEO, the President and Chief Operating Officer) may establish a Task Team to undertake a specific task or project to be completed within a defined period of time.³⁸¹ All Task Teams report to the Board. A Task Team is dissolved once it has accomplished its task or project.³⁸²

With the exception of the Nominating Committee, all Hockey Canada standing committees are chaired by a Director who is appointed by the Chair of the Board.³⁸³ Each standing committee must be comprised of four to eight members, including the Committee Chair.³⁸⁴ With the exception of the Nominating Committee, the Chair of the Board (in consultation with the Board) determines

³⁷⁹ “Hockey Canada By-Laws, Regulations and History” (May 2022), s 44.1, online (pdf): *Hockey Canada* <<https://cdn.hockeycanada.ca/hockey-canada/Corporate/About/Downloads/2022-23-bylaws-e.pdf>>: note however that the Female Hockey Policy Committee is not referenced in the By-laws.

³⁸⁰ “Standing Committees” in *Hockey Canada Terms of Reference* (updated to 18 November 2021) at 26.

³⁸¹ “Hockey Canada By-Laws, Regulations and History” (May 2022), s 51.1, online (pdf): *Hockey Canada* <<https://cdn.hockeycanada.ca/hockey-canada/Corporate/About/Downloads/2022-23-bylaws-e.pdf>>.

³⁸² “Hockey Canada By-Laws, Regulations and History” (May 2022), s 51.1, online (pdf): *Hockey Canada* <<https://cdn.hockeycanada.ca/hockey-canada/Corporate/About/Downloads/2022-23-bylaws-e.pdf>>.

³⁸³ “Hockey Canada By-Laws, Regulations and History” (May 2022), s 44.2, online (pdf): *Hockey Canada* <<https://cdn.hockeycanada.ca/hockey-canada/Corporate/About/Downloads/2022-23-bylaws-e.pdf>>.

³⁸⁴ “Hockey Canada By-Laws, Regulations and History” (May 2022), s 44.3, online (pdf): *Hockey Canada* <<https://cdn.hockeycanada.ca/hockey-canada/Corporate/About/Downloads/2022-23-bylaws-e.pdf>>.

the composition of each standing committee.³⁸⁵ There is also a staff resource person on each committee (non-voting).³⁸⁶

Standing committee members serve on a committee for a term of two years, but may be reappointed for subsequent terms.³⁸⁷ However, committee members may be removed from their role as committee member, at any time, by the Board Chair.³⁸⁸

Each Task Team Chair is appointed by the Chair of the Board. Task Teams also include a Director, appointed by the Chair of the Board, who serves in a non-voting role to act as a liaison between the Task Team and the Board. Task Team members are appointed by the Chair of the Board. Each Task Team must be comprised of four to eight members, including the Task Team Chair, but not including the appointed Director. On an interim basis, Task Teams can include up to 14 members.³⁸⁹

Each standing committee has its own mandate and Terms of Reference, but all standing committees review policies for which they are responsible, as well as their Terms of Reference, at least every two years.³⁹⁰ The Terms of Reference of standing committees are set out in policies established by the Board. Standing committees may propose changes to its Terms of Reference to the Board.³⁹¹ Those Terms of Reference will be considered in more detail in our final report.

Task teams also have their own mandates and Terms of Reference, which will be reviewed and examined in our final report.

2. Preliminary Observations

Hockey Canada's standing committees include board committees that a large not-for-profit organization would typically have, such as the Audit and Finance Committee, the Governance Committee, the Human Resources Committee, the Nominating Committee and the Risk Management Committee. Such committees are common and considered best practice since each of them carries out functions that are related to the core duties and responsibility of the directors. We note that the COC Code stipulates that a board of an NSO should have committees that focus on nominations, governance and ethics, audit and finance, compensation and human resources.³⁹²

³⁸⁵ "Hockey Canada By-Laws, Regulations and History" (May 2022), s 44.3, online (pdf): *Hockey Canada* <<https://cdn.hockeycanada.ca/hockey-canada/Corporate/About/Downloads/2022-23-bylaws-e.pdf>>.

³⁸⁶ "Standing Committees" in *Hockey Canada Terms of Reference* (updated to 18 November 2021) at 26.

³⁸⁷ "Hockey Canada By-Laws, Regulations and History" (May 2022), s 44.4, online (pdf): *Hockey Canada* <<https://cdn.hockeycanada.ca/hockey-canada/Corporate/About/Downloads/2022-23-bylaws-e.pdf>>.

³⁸⁸ "Hockey Canada By-Laws, Regulations and History" (May 2022), s 44.8, online (pdf): *Hockey Canada* <<https://cdn.hockeycanada.ca/hockey-canada/Corporate/About/Downloads/2022-23-bylaws-e.pdf>>.

³⁸⁹ "Task Teams" in *Hockey Canada Terms of Reference* (updated to 18 November 2021) at 40.

³⁹⁰ "Standing Committees" in *Hockey Canada Terms of Reference* (updated to 18 November 2021) at 26.

³⁹¹ "Hockey Canada By-Laws, Regulations and History" (May 2022), s 44.5, online (pdf): *Hockey Canada* <<https://cdn.hockeycanada.ca/hockey-canada/Corporate/About/Downloads/2022-23-bylaws-e.pdf>>.

³⁹² "Canadian Sport Governance Code" (1 September 2021) at 6, section C.1, online: *Canadian Olympic Committee – NSO Sharing Centre* <<https://nso.olympic.ca/canadian-sport-governance-code/>>.

Although Hockey Canada’s approach to its standing committee structure generally aligns with best practices, we did note a few exceptions that will be examined in greater detail in our final report. We have not yet completed our study of the appropriateness of the committees’ and task teams’ terms of reference, which will be given more detailed consideration in our final report.

C. Conclusion and summary of recommendations in light of observations and best practices

Terms of Reference Question	Response
2. Are the organization’s By-Laws concerning the constitution and operation of the Board of Directors in line with current best practices, appropriate or require amendments?	<ul style="list-style-type: none"> - The current By-laws are not significantly misaligned with the points of reference that we examined (i.e. Sports Canada’s Governance Principles for Sport Organizations, the Canadian Sport Governance Code, Athletics Canada Athlétisme Canada, Canada Basketball, Curling Canada, Canada Soccer). - However, as set out above, we have several suggested changes.
a. Recognizing the Board’s current composition, are there recommended changes to the organization’s governance structure that would support and further enhance the diversity of the Board?	<ul style="list-style-type: none"> - Yes. See below under “c.” respecting the nominating process.
b. Are current terms and term limits aligned with best practices?	<ul style="list-style-type: none"> - There are no significant divergences from best practices, but the following measures would strengthen the Board’s capacity: - Amend the corporation’s Articles to increase the maximum number of Directors from nine to thirteen; - Increase the Directors’ terms to up to three years from two; - Stagger Directors’ terms so that only about one third of the Board would be up for re-election in any year; - Increase term limit to nine consecutive years from eight;

Terms of Reference Question	Response
	<ul style="list-style-type: none"> - Increase term limit of the Board Chair to six consecutive years from four to align with the new three year term for Directors.
<p>c. Does the nominating process need to be amended?</p>	<ul style="list-style-type: none"> - Yes. - Amend the By-laws to provide that no more than 60% of the Directors are of the same gender, to bring this aspect in line with the COC Canadian Sport Governance Code. - Review and, if required, update the Board Matrix to ensure it reflects the skills, experience and diversity elements that are needed on the Hockey Canada Board; this can be put into effect immediately and should be done annually. - For each election cycle (including the 2022 election), that the Nominating Committee use the Board Matrix as a tool to support the call for nominations and to articulate clearly the specific skills and competencies being sought for the Board positions to be filled. - Confirm and document the Members’ undertaking not to put forward any nominations for Director and Board Chair candidates for the 2022 election and allow all nominations to be submitted through the Chair of the Nominating Committee process. The Nominating Committee can and should rely on its past practice of reviewing and vetting all nominations so received, and creating a short-list of External Candidates in the same way it did in accordance with the 2020 Call for Nominations. That vetting process should be done having regard to the Board Matrix. We recommend that this approach be implemented for the current election cycle. - Subject to additional comments in our final report, we are currently of the view that, going forward, this practice should become the Nominating Committee’s standard practice and that the committee’s authority to short-list candidates (even those proposed by Members) and put forward a final list of nominees for

<p>Terms of Reference Question</p>	<p>Response</p>
	<p>inclusion on the election ballot should be expressly provided for in the Nominating Committee’s Terms of Reference and in the By-laws.</p> <ul style="list-style-type: none"> - Revise and update the current “Chair of the Board Terms of Reference” to ensure they are current and include a list of qualities and minimum competencies required of the Board Chair. - Amend and remove all language in the By-laws that states or suggests that all nominations of candidates proposed by the Members shall be included in the final ballot for the election of the Directors and the Board Chair. - Subject to our final report, update or replace the Nominating Committee Terms of Reference to revise its composition and how its members are appointed, and to better define the committee’s role and duties. - Amend the By-laws to provide that the Board may appoint additional Directors within the legal limits imposed by the CNCA, rather than limiting the option to only one additional Director. - We expect to make additional recommendations in our final report due at the end of October.
<p>d. Is the structure of the various standing committees and task teams, including their Terms of Reference/mandates and reporting mechanism to the Board, appropriate?</p>	<ul style="list-style-type: none"> - Our preliminary work has identified that Hockey Canada’s approach to its standing committee structure generally aligns with best practices, subject to a few exceptions, which we will consider further in our final report. - We have not completed our study of the appropriateness of the standing committees’ and task teams’ terms of reference, which again, will be given more detailed consideration in our final report.

VI. WAS THE USE OF THE NATIONAL EQUITY FUND APPROPRIATE?

Risk management is an important consideration for all organizations. One of the Board’s core responsibilities is to ensure that risks are identified and that appropriate measures are put in place to address them.

Many not-for-profit corporations create reserve funds as a risk management tool to ensure they have sufficient resources to respond to risks, if and when they materialize. Hockey Canada’s National Equity Fund (“NEF”) must be understood and assessed in this context. The key questions for this review are whether the NEF was established properly, and whether Hockey Canada governs the maintenance and use of the Fund appropriately.

A. Development, Purposes and Funding of the National Equity Fund

i. *Introduction*

The NEF has existed in some form since 1986,³⁹³ but its purposes have evolved over time. For this review, its evolution is best divided into three phases – the self-insurance phase (1986–1995), the initial commercial insurance phase (1995–2016), and the current phase (2016–Present).

The NEF is now one element in an interlocking framework, which aims to ensure that Hockey Canada retains adequate resources to meet its potential liabilities and those of its Members, and Participants. The other elements are two distinct funds: the Participants Legacy Trust Fund (the “**Legacy Trust**”) and the Insurance Rate Stabilization Fund (“**IRS Fund**”) along with extensive insurance coverages.

For the purpose of this chapter, we have defined the following terms:

- **Members** are the provincial, regional or territorial associations/federations that manage and foster amateur hockey within their geographic regions and have the responsibility to represent their constituents.³⁹⁴ The 13 Members of Hockey Canada currently are: British Columbia Hockey, Hockey Alberta, Hockey Saskatchewan, Hockey Manitoba, Hockey Northwestern Ontario, Ontario Hockey Federation, Hockey Eastern Ontario, Hockey Québec, Hockey New Brunswick, Hockey Nova Scotia, Hockey Prince Edward Island, Hockey Newfoundland and Labrador, and Hockey North. These Members have certain right and obligations under Hockey Canada’s constating documents.
- **Participant** means all players, coaches, referees, assistant coaches, trainers, managers and volunteers of Hockey Canada and its Members, including local associations and teams.

³⁹³ Questions Answered by Glen McCurdie, former Vice President of Insurance and Risk at Hockey Canada (dated August 29, 2022); see also Canadian Amateur Hockey Association, “Audited Financial Statement 1987-88 fiscal year”.

³⁹⁴ Hockey Canada 2020-21 Annual Report” (last visited 21 August 2022) at 5, online (pdf): *Hockey Canada* <<https://cdn.hockeycanada.ca/hockey-canada/Corporate/About/Downloads/2020-21-annual-report-e.pdf>>; “Hockey Canada By-Laws, Regulations and History” (May 2022), s 2.3, online (pdf): *Hockey Canada* <<https://cdn.hockeycanada.ca/hockey-canada/Corporate/About/Downloads/2022-23-bylaws-e.pdf>>.

ii. *1986–1995: The Self-Insurance Phase*

In September 1986, Hockey Canada’s predecessor, the Canadian Amateur Hockey Association (“CAHA”), began operating the National Equity Fund Insurance Program (the “**Program**”).³⁹⁵ This self-funded Program was created as an opportunity to reduce insurance costs and benefit from the CAHA’s size to spread out individual Members’ financial risk.³⁹⁶ The partner organization, Canadian Hockey League (“CHL”), and several Members across Canada contributed to the Program throughout its existence, under which they were “beneficiaries.”³⁹⁷ The Fédération québécoise de hockey sur glace (now Hockey Québec) only participated in the Program until August 31, 1993, and only certain teams in that federation participated between September 1, 1993 and August 31, 1995.³⁹⁸ Hockey North (which currently holds jurisdiction of the Northwest Territories and Nunavut) was not a contributing Member.³⁹⁹

The Program was initially comprised of general liability coverage of \$2M from the CAHA Liability Fund (which we understand to be the NEF), bolstered with \$3M excess liability coverage with Segwick Tomenson Inc., which also provided comprehensive accident insurance coverage (for accidental injury or death while participating in sanctioned hockey activities).⁴⁰⁰

In 1988, Hockey Canada obtained a \$3M comprehensive general liability policy with the Co-operators General Insurance Company (the “**Co-operators**”), in addition to a \$3M excess policy from the Zurich Insurance Company. Hockey Canada advised that, in the same year, the CAHA contracted with the Cooperators to administer the Program, and paid them an annual premium (the “**Co-operators Agreement**”). Unfortunately, Hockey Canada has been unable to locate the original agreement with the Co-operators. The information provided indicates that the agreement

³⁹⁵ See Canada Hockey Association, “Trust Agreement” (1 June 1999); see also Canadian Amateur Hockey Association, “General Liability Fund and Excess Insurance Plus Comprehensive Accident Insurance Brochure” (1986-1987 Season).

³⁹⁶ The Alexander Consulting Group, “Summary of Insurance” (31 May 1989) at s I.

³⁹⁷ Hockey Canada, “History of the National Equity Fund” at 1.

³⁹⁸ Canada Hockey Association, “Trust Agreement” (1 June 1999); Interview of Brian Cairo, Chief Financial Officer of Hockey Canada (6 September 2022): Hockey Canada advised that certain teams within Hockey Quebec had provincial coverage and thus did not contribute from September 1, 1993 and August 31, 1995.

³⁹⁹The contributing members at the time included different organizations/associations than they are today. At the time when the self-insurance program was operating the following entities were considered contributing members: British Columbia Amateur Hockey Association, the Alberta Amateur Hockey Association (now Hockey Alberta), the Saskatchewan Amateur Hockey Association (now Saskatchewan Hockey), the Manitoba Amateur Hockey Association (now Hockey Manitoba), the Thunder Bay Amateur Hockey Association (now Hockey Northwestern Ontario), the Ontario Hockey Federation, the Ottawa and District Hockey Association (now Hockey Eastern Ontario), the Prince Edward Island Hockey Association (now Hockey PEI), the New Brunswick Amateur Hockey Association (now Hockey New Brunswick), the Nova Scotia Hockey Association (now Hockey Nova Scotia), the Newfoundland and Labrador Hockey Association (now Hockey Newfoundland and Labrador), the Federation Québécoise de Hockey sur Glace (now Hockey Quebec) and the Canadian Hockey League; see Canada Hockey Association, “Trust Agreement” (1 June 1999) at s 1; see also “Hockey Canada By-Laws, Regulations and History” (May 2022), s 9.1, online (pdf): *Hockey Canada* <<https://cdn.hockeycanada.ca/hockey-canada/Corporate/About/Downloads/2022-23-bylaws-e.pdf>>.

⁴⁰⁰ Canadian Amateur Hockey Association, “General Liability Fund and Excess Insurance Plus Comprehensive Accident Insurance Brochure” (1986-1987 Season) at 2-4; The Alexander Consulting Group, “Summary of Insurance” (31 May 1989) at 1-7.

has been in force since at least 1988.⁴⁰¹ Hockey Canada has advised that the agreement was renewed annually.

Under the Co-operators Agreement, a Claims Management Committee, which included representatives from the CAHA and the Co-operators, would administer claims.⁴⁰² However, the CAHA bore the responsibility of reporting, investigating, defending and settling all claims made under the Program.⁴⁰³ The Co-operators Agreement also included an excess commercial liability policy. The policy existed to insure all Members and Participants for injuries, and provided the CAHA coverage of up to \$6M in the event a claim exceeded the NEF balance at a given time.⁴⁰⁴ To the best of Hockey Canada's knowledge, the NEF had sufficient funding to respond to all claims and the excess policy was never invoked.⁴⁰⁵ The Co-operators Agreement also required the CAHA to maintain an escrow trust fund. It is unclear if and how the escrow trust fund was used and if it was linked to the NEF or the settlement of claims.⁴⁰⁶

We have not been provided with any constituting documents for the NEF. The CAHA first reported the NEF in its audited financial statement for the 1987-1988 fiscal year.⁴⁰⁷ The financial statement clearly advises that the CAHA was involved in defending legal actions resulting from accidents and injuries sustained by "participants in CAHA play."⁴⁰⁸ The statement provides that the NEF balance was accumulated as a precaution against current and potential future claims against the CAHA, Members, and Participants.⁴⁰⁹ In 1987, the NEF had a balance of \$445,117, which rose to \$981,435 in 1988.⁴¹⁰

On September 1, 1988 the CAHA created the Health and Accident Fund to provide supplementary medical and dental coverage to Participants, which continues to operate today as the Health Benefit Trust Fund.⁴¹¹

The December 1989 Board of Directors meeting minutes document the first NEF-funded settlement, which involved a player in one of the leagues of the CHL who became paralyzed from

⁴⁰¹ Canadian Amateur Hockey Association & Cooperators General Insurance Company, "Agreement" (1 September 1993), ss 3, 7: replacing the agreement between the parties dated September 1, 1988; see also Cooperators General Insurance Company Insurance Policy No. 1135073 (September 1, 1988).

⁴⁰² Canadian Amateur Hockey Association & Cooperators General Insurance Company, "Agreement" (1 September 1993), ss 3, 7: replacing the agreement between the parties dated September 1, 1988.

⁴⁰³ Interview of Sam Ciccolini, Advisor to Risk Management Committee at Hockey Canada (24 August 2022).

⁴⁰⁴ Interview of Sam Ciccolini, Advisor to Risk Management Committee at Hockey Canada (24 August 2022).

⁴⁰⁵ Interview of Sam Ciccolini, Advisor to Risk Management Committee at Hockey Canada (24 August 2022).

⁴⁰⁶ Canadian Amateur Hockey Association & Cooperators General Insurance Company, "Agreement" (1 September 1993), ss 3, 7: replacing the agreement between the parties dated September 1, 1988.

⁴⁰⁷ Canadian Amateur Hockey Association, "Audited Financial Statement 1987-88 fiscal year".

⁴⁰⁸ Canadian Amateur Hockey Association, "Audited Financial Statement 1987-88 fiscal year" at 9.

⁴⁰⁹ Canadian Amateur Hockey Association, "Audited Financial Statement 1987-88 fiscal year" at 9.

⁴¹⁰ Canadian Amateur Hockey Association, "Audited Financial Statement 1987-88 fiscal year" at 9.

⁴¹¹ Canadian Amateur Hockey Association, "Audited Financial Statement 1987-88 fiscal year" at 9.

an injury sustained during a hockey game.⁴¹² The minutes indicate that the terms and amount of the settlement were not disclosed due to confidentiality requirements.⁴¹³

Hockey Canada has advised that the NEF originally operated as a vehicle to receive premiums from Participants to fund the Program.⁴¹⁴ We have been advised that Participants paid an annual fee of approximately \$11.50 – consisting of a \$1.50 membership fee and a \$10.00 self-insurance premium – to the CAHA through their Member.⁴¹⁵ The membership fee was deposited into the CAHA’s Operating Fund whereas the self-insurance premium made its way into the NEF and the Health and Benefit Trust Fund. The organization then used the NEF funds to pay the annual premium to the Co-operators as well as any claims made against the CAHA, its Members and all Participants.⁴¹⁶

The Program continued to operate until 1995.

iii. 1995–2016: The Initial Commercial Insurance Phase

On February 1, 1995, Supplementary Letters Patent were issued to the CAHA, changing its name to the Canadian Hockey Association.⁴¹⁷ Concerned with the increase of serious spinal injuries in amateur hockey across Canada and the liability that could flow from them, the organization, on September 1, 1995, purchased commercial liability insurance policies instead of continuing the Program. These new policies provided a myriad of coverages including general liability, personal injury and medical expense coverage to the CAHA, its Members and all Participants.⁴¹⁸ As under the former Program, Participants paid an annual fee to the CAHA through the Members. A portion of this fee then remained and grew in the NEF and covered the insurance premiums for the commercial policies, any deductibles, and any uninsured or underinsured claims.⁴¹⁹

In 1998, the Canadian Hockey Association merged with Hockey Canada bringing every aspect of Canadian Hockey, both amateur and international competition, under one umbrella known as Hockey Canada.⁴²⁰

1. Purchase of Sexual Misconduct Coverage

In 1998, largely in response to the abuse committed by Graham James, Hockey Canada expanded its commercial liability policy to provide sexual misconduct coverage for Hockey Canada, its

⁴¹² Hockey Canada, Board of Directors, *Minutes of Meeting* (held on 1-3 December 1989) at 240.

⁴¹³ Hockey Canada, Board of Directors, *Minutes of Meeting* (held on 1-3 December 1989) at 240.

⁴¹⁴ Interview of Glen McCurdie, former Vice President of Insurance and Risk at Hockey Canada (31 August 2022).

⁴¹⁵ All Participants paid the same insurance fee; however, referees paid a different membership fee that was dependent on the level of hockey they were working in.

⁴¹⁶ Interview of Glen McCurdie, former Vice President of Insurance and Risk at Hockey Canada (31 August 2022).

⁴¹⁷ Industry Canada, “Canadian Amateur Hockey Association Supplementary Letters Patent” (1 February 1995).

⁴¹⁸ Interview of Barry Lorenzetti, Advisor to Hockey Canada (24 August 2022) at BFL.

⁴¹⁹ Interview of Glen McCurdy, former Vice President of Insurance and Risk at Hockey Canada (24 August 2022).

⁴²⁰ “Learn about the history of Hockey Canada” (last visited 21 August 2022), online: *Hockey Canada* <www.hockeycanada.ca/en-ca/corporate/history>; for further information about the history of the CAHA and Hockey Canada please see Chapter 4 of this Report.

Members and its Participants.⁴²¹ As a condition of this coverage, known and suspected acts of past sexual misconduct were excluded from coverage, and the insurer required that Hockey Canada provide a list of all individuals suspected of having committed sexual misconduct during the self-insured period (i.e. 1986–1995).⁴²² Hockey Canada, working with its Members, compiled a list of known perpetrators it provided to the insurer; claims in relation to those known perpetrators were excluded from coverage under the new sexual misconduct insurance.⁴²³ The current policy document states a retroactive coverage date of December 31, 1998. All incidents related to the known perpetrators are expressly excluded from coverage.⁴²⁴ A risk remained that historic events might give rise to claims of various types that would not be statute barred. Concerns grew that further late-reported claims might be brought against Hockey Canada, its Members or Participants. In response, the NEF continued to accrue funds in reserve to cover any potential uninsured, historic claims.

2. The Participants Legacy Trust Fund

On June 1, 1999, Hockey Canada entered into a Trust Agreement to settle the Legacy Trust in order to respond to historic claims. The Legacy Trust provided that Hockey Canada could use funds on behalf of its Members and the CHL to respond to late reported claims for incidents occurring prior to September 1, 1995, in the event the NEF balance was insufficient.⁴²⁵ Approximately \$7.1 million was transferred from the NEF to benefit the Members who had contributed to the former Program.⁴²⁶ In other words, all Members and the CHL, except Hockey North, are beneficiaries of the Legacy Trust and receive an annual distribution, comprised of realized annual investment income, based on their respective contribution levels made to the NEF from 1986 to 1995.⁴²⁷ Hockey Canada is not a beneficiary of the Legacy Trust. These annual distributions do not relate to funding potential or actual liabilities nor risk management. However, the Legacy Trust does permit trustees to transfer \$2.1 million per occurrence (with no aggregate limit) from the Legacy Trust to the NEF to pay late-reported claims relating to events that occurred from 1986 to 1995.⁴²⁸ Hockey Canada itself does not receive any annual distributions from the Legacy Trust.

⁴²¹ Sexual Misconduct was defined as any: (a) sexual or physical abuse or sexual or physical molestation of any person, including but not limited to, any sexual involvement, sexual conduct or sexual contact, regardless of consent, with a person who is a minor or who is legally incompetent; or (b) sexual exploitation, including but not limited to, the development of, or the attempt to develop, a sexual relationship, whether or not there is apparent consent from the individual.

⁴²² Interview of Sam Ciccolini, Advisor to Risk Management Committee at Hockey Canada (24 August 2022).

⁴²³ AIG Insurance Company of Canada, “Endorsement No 21: Sexual Misconduct Liability Endorsement” (effective 1 September 2020); Interview of Sam Ciccolini, Advisor to Risk Management Committee at Hockey Canada (24 August 2022).

⁴²⁴ Interview of Sam Ciccolini, Advisor to Risk Management Committee at Hockey Canada (24 August 2022).

⁴²⁵ Hockey Canada, “Financial Statements” (year end 30 June 2000) at note 9.

⁴²⁶ Canada Hockey Association, “Trust Agreement” (1 June 1999).

⁴²⁷ Canada Hockey Association, “Trust Agreement” (1 June 1999) was renewed to May 15, 2039. No modifications were made to the Trust Agreement except for the revision to the Division Date.

⁴²⁸ Canada Hockey Association, “Trust Agreement” (1 June 1999) at Article V, s 5.1(e).

Schedule A to the Legacy Trust Agreement is a Tail Coverage Agreement, executed in May 1999, directing that all claims from the self-insured period (1986 to 1995) are to be paid by the NEF.⁴²⁹ Hockey Canada has advised that the Legacy Trust operates to provide additional funding in the event the NEF has insufficient funding to respond to historic, uninsured claims on behalf of Members and the CHL. The Legacy Trust essentially acts as an excess policy, accessible once the NEF has been exhausted. Hockey Canada has advised that the only payments that have been made out of the Legacy Trust are the annual distributions paid to the beneficiaries and the legal fees associated with renewing the trust agreement to May 15, 2039.⁴³⁰ The Legacy Trust has not funded any settlements.⁴³¹

Hockey Canada has no formal policy governing the Legacy Trust, beyond the Trust Agreement. Notably, the Tail Coverage Agreement includes conditions requiring that Hockey Canada provide a certain amount of disclosure about the status of the NEF to Members, as discussed below.

3. Transfers to Pillar Funds

From 1999 to 2008, the NEF continued to operate as planned, receiving annual fees from Participants to fund insurance premiums, deductibles, and settle uninsured and underinsured claims. Hockey Canada also established several internally restricted funds known as the “Pillar Funds,” the most relevant of which for present purposes being the Insurance Rate Stabilization Fund (“**IRS Fund**”).⁴³²

The IRS Fund forms another part of Hockey Canada’s risk management matrix. Created and approved by the Board of Directors during the 2007–2008 fiscal year,⁴³³ the IRS Fund acts as a buffer against future increases in insurance rates, as stated in Hockey Canada’s audited financial statements.⁴³⁴ As discussed below, it is apparent that the IRS Fund is now also used as a reserve fund, which is not indicated on the financial statements. Hockey Canada has no formal policy governing the IRS Fund. Hockey Canada has authorized several inter-fund transfers from the NEF to the other Pillar Funds over the years, the vast majority of these going to the IRS fund.⁴³⁵ These inter-fund transfers are approved by the Board of Directors and included in the audited financial statements Members receive prior to the Annual Meeting.

In September 2022, during our review, Hockey Canada’s Audit and Finance Committee approved a draft Pillars Policy which provides clarity on the purpose of the Pillar Funds and outlines the

⁴²⁹ Canadian Hockey Association, “Tail Coverage Agreement” (24 May 1999) at ss 1-2.

⁴³⁰ Interview of Brian Cairo, Chief Financial Officer of Hockey Canada (6 September 2022).

⁴³¹ Interview of Sam Ciccolini, Advisor to Risk Management Committee at Hockey Canada (24 August 2022).

⁴³² Hockey Canada, “Audited Financial Statement” (June 2007-2008) at 13; the other Pillar Funds are Growth Fund, Facilities Fund, Branch Support Fund, International Event Housing Support Fund, and Technology. Please consult the Audited Financial Statements for more information about the purposes of each of these funds.

⁴³³ Hockey Canada, “Audited Financial Statement” (June 2007-2008) at 13.

⁴³⁴ Hockey Canada, “Audited Financial Statement” (June 2007-2008) at 13.

⁴³⁵ See Hockey Canada, “Audited Financial Statement” (June 2015-2016, June 2016-2017, 2017-2018, 2018-2019, 2019-2020).

authorization process for inter-fund transfers (this policy has yet to be approved by the Board). This draft policy clarifies that the IRS Fund may be used to support four purposes:

- to offset any significant increases in third party insurance premiums to mitigate increases in insurance fees Hockey Canada charges Members;
- to pay liability settlements for claims related to Hockey Canada’s uninsured period, including fiscal years 1986–87 to 1994–95;
- to support insurance-related Strategic Plan initiatives; and
- to cover start-up expenses related to a Hockey Canada self-insured insurance plan.

The draft policy provides that any payments from the IRS Fund would require Board approval following a recommendation from the Risk Management Committee. Additionally, any transfer or re-allocation of funds between Hockey Canada Operating Fund, Health Benefit Trust or NEF to the Pillar Funds, or between the Pillar Funds would require Board approval following a motion at a Director’s meeting. Finally, transfers of NEF year-end surplus, if applicable, to the IRS Fund would require a Board motion on an annual basis. The Board of Directors has not yet approved the draft policy.⁴³⁶ However, we are advised by Hockey Canada that it does currently transfer NEF year-end surpluses, when they arise, to the IRS Fund with Board approval.

4. Removal of Reserve Funds from Financial Statements and Surplus Transfers

In 2015, a substantial portion of the NEF consisted of designated reserve funds for possible uninsured or underinsured claims described by Hockey Canada as “general reserves for concussion and sexual abuse.”⁴³⁷ On the advice of its auditors, Hockey Canada removed the presentation of the reserves from the 2015–2016 audited financial statements, which had been listed as liabilities in previous financial statements.⁴³⁸ The auditors believed it was incorrect to list the reserves as liabilities since it was not possible to identify to whom specifically the liabilities would be payable or their amount. Effectively, this presentation change decreased reported liabilities on Hockey Canada’s balance sheet and increased the reported balance of the NEF by several million dollars.⁴³⁹ In turn, Hockey Canada had to re-state the 2015 NEF opening balance to account for this increase, which it disclosed in note 16 of its 2015–2016 audited financial statement.⁴⁴⁰ The auditors advised us that, in their view, Hockey Canada had overestimated its liabilities during that period.⁴⁴¹ When asked how they had estimated those liabilities, Hockey Canada informed us that they had relied on past claims but beyond that, it is not clear to us how these liabilities were estimated.

⁴³⁶ Hockey Canada, “Draft Pillars Policy” (2022).

⁴³⁷ Hockey Canada, “History of the National Equity Fund” at 1.

⁴³⁸ Interview of Tim Sothern, Representative at BDO (24 August 2022).

⁴³⁹ Interview of Tim Sothern, Representative at BDO (24 August 2022); Interview of Brian Cairo, Chief Financial Officer of Hockey Canada (24 August 2022); see also Hockey Canada, “Audited Financial Statement” (2015-2016).

⁴⁴⁰ Hockey Canada, “Audited Financial Statement” (2015-2016) at 18.

⁴⁴¹ Interview of Tim Sothern, Representative at BDO (24 August 2022).

Hockey Canada became concerned that this change on the financial statements inflated the NEF balance artificially, which might signal a large pool of funds set aside for potential claimants and thus might increase the likelihood of additional claims.⁴⁴² Therefore, on November 17, 2016, the Board approved the transfer of \$10.25M in reserve funds from the NEF into the IRS Fund “for the purpose of providing financial support against potential future non-insured claims.”⁴⁴³ In so doing, the Board expanded the scope of the IRS Fund to include a reserve sub-fund for uninsured claims. Indeed, the minutes from the Board meeting during which the transfer was approved note that the transfer was not intended to change the original purpose of the fund, but “simply add to its purpose.”⁴⁴⁴ This expanded purpose was and is still not reflected in the audited financial statements, which show the IRS Fund as a fund to buffer insurance premiums.

The summary notes of the 2016 Annual Winter Congress (which took place on November 19, 2016) indicate that Members were “advised of Board approval of transfer of funds from Equity Fund to the [IRS Fund] for the purpose of providing financial support against potential future non-insured claims.”⁴⁴⁵

From 2016 to present, any surplus generated from investments in the NEF has been transferred to the IRS Fund.⁴⁴⁶ These inter-fund transfers are approved by the Board and included in Hockey Canada’s audited financial statements. For example, during a November 16, 2017 meeting, the Board of Directors approved three inter-fund transfers: \$723,000 from the IRS Fund to the NEF (which Hockey Canada indicated was required to pay settlements relating to uninsured claims against Gordon Stuckless and Graham James), \$2,651,180 from the NEF back to the IRS Fund, and \$1,827,479 from the Growth Fund to the Operating Fund.⁴⁴⁷ Neither the notes for the 2017 Annual Meeting (November 18, 2018) nor those for the 2017 Winter Congress (November 16–18, 2017) mention the transfers. However, the \$2,651,180 transfer to the IRS Fund and the \$1,827,479 transfer to the Operating Fund are noted on the 2017–2018 financial statements, and the \$723,000 transfer to the NEF is included in notes for the 2016–2017 fiscal year.⁴⁴⁸

iv. 2016–Present: The Current Phase

The NEF, the IRS Fund and the Legacy Trust continue to operate to date. Hockey Canada has advised that the IRS Fund contains two sub-funds: the reserve fund and the funds to buffer insurance premium increases. These sub-funds are not listed separately on the audited financial statements. Instead, only the total amount of funds contained in the IRS Fund is displayed, but Hockey Canada maintains that Members are aware of the two so-called sub-funds.⁴⁴⁹ Hockey

⁴⁴² Interview of Brian Cairo, Chief Financial Officer of Hockey Canada (6 September 2022).

⁴⁴³ Hockey Canada, Board of Directors, *Minutes of Meeting* (held on 17 December 2016) at 4, item 5.4.

⁴⁴⁴ Hockey Canada, Board of Directors, *Minutes of Meeting* (held on 17 December 2016).

⁴⁴⁵ Hockey Canada, Winter Congress, *Annual Meeting Summary* (held on 19 November 2016).

⁴⁴⁶ Interview of Brian Cairo, Chief Financial Officer of Hockey Canada (24 August 2022).

⁴⁴⁷ Hockey Canada, Board of Directors, *Minutes of Meeting* (held on 16 November 2017) at 8.

⁴⁴⁸ See Hockey Canada, “Audited Financial Statement” (2016-2017, 2017-2018).

⁴⁴⁹ Interview of Brian Cairo, Chief Financial Officer of Hockey Canada (6 September 2022).

Canada also advised that they maintain an internal document to track the balance of the sub-fund reserve; however, the specific balances are not routinely provided to the Members.⁴⁵⁰

Until December 2021, Hockey Canada’s Vice-President of Risk and Risk Management managed the NEF. Since then, however, the responsibility for the management of the fund seems to have been in transition. We were initially told the CFO was involved in NEF management. Next, Hockey Canada informed us that the Director of Sport Safety played an important role in managing the fund. When asked about the subject, the Director of Sport Safety denied having such a role, and clarified that she was only involved in the NEF insofar as insurance had a certain level of interaction with the Safe Sport initiative. However, she was not involved in NEF management from an insurance perspective. After obtaining these responses, certain Hockey Canada executives again informed us that the Director of Sport Safety managed the fund, but with the assistance of legal counsel. Most recently, the CFO provided us with a chart according to which all matters involving insurance reserves, renewals and claims, as well as settlements expenses were handled by legal counsel. The chart also indicated that the Director of Sport Safety only touches on NEF matters insofar as they concern Safe Sport related expenses. It would appear that the Risk Management Committee and the Audit and Finance Committee also play a role. The Audit and Finance Committee consists of the CFO, other Hockey Canada staff and Members. Hockey Canada also has a Risk Management Committee, which includes several staff and Members. The Committees meet to discuss various financial risk management items, including ongoing lawsuits and claims against Hockey Canada, its Members and Participants.⁴⁵¹

The Board has never formally approved a process for funding under and uninsured claims that exceed the balance available in the NEF, nor has it adopted any written policy to that effect (or regarding any of the NEF, the IRS Fund or the Legacy Trust, for that matter). However, we understand that Hockey Canada would address such claims first by transferring monies from the IRS Fund reserve sub-fund, and if necessary, use the remaining IRS Fund monies designated to buffer against insurance premium rate increases. For claims against Legacy Trust beneficiaries, we understand that Hockey Canada would transfer funds from the Legacy Trust, and if necessary, request further funding from the Members under the Tail Coverage Agreement before resorting to the IRS Fund buffer monies.

At present, the NEF is significantly depleted and projected to be in a deficit by 2023.⁴⁵² Going forward, Hockey Canada will need to make important decisions about how it will continue to manage its risks and retain sufficient funding in reserves to meet its potential liabilities.

1. Funds Received and Funds Paid Out of the NEF

Currently, NEF funds accumulate from past surpluses, income on investments, and annual registration fees paid by Members (currently set at **\$23.80** per Participant).⁴⁵³

⁴⁵⁰ Interview of Brian Cairo, Chief Financial Officer of Hockey Canada (6 September 2022).

⁴⁵¹ Interview of Glen McCurdie, former Vice President of Insurance and Risk at Hockey Canada (31 August 2022).

⁴⁵² Hockey Canada, “2022/2023 Budget Review PowerPoint” (April 2022).

⁴⁵³ It is our understating that some Participants are charged further administration fees from their local association or Member.

The annual registration fee paid to Hockey Canada breaks down as follows:

Fund	Fee description	Amount
Operations fund	Registration/Operations Fee	\$3.00* ⁴⁵⁴
NEF	Directors and Officers Insurance	\$2.00
	General Commercial Liability, including sexual misconduct coverage	\$8.90
	Safety and Administration	\$2.75
	Total (NEF)	\$13.65
Health and Benefit Trust Fund	Major Medical and Dental Coverage	\$2.00
	Accidental Death and Dismemberment	\$5.15
	Total (Health and Benefit Trust Fund)	\$7.15
Total Insurance		\$20.80
Total (All Funds)		\$23.80

The Members also charge an additional \$0.50 insurance and risk management fee, which they recover from each Participant.⁴⁵⁵ Therefore, the total cost of insurance per Participant is \$21.30. This amount accords with the \$21.30 illustrated in the insurance fee section in Hockey Canada’s information guide titled: “Safety Requires Teamwork & Safety for All Management and Insurance Fees.”⁴⁵⁶ This guide is publicly available on Hockey Canada’s website and provided to Members for distribution to their Participants. In fact, we understand that a version of this guide has existed and has been distributed to Participants since 1987.⁴⁵⁷

Notably, deductibles or uninsured claims are not mentioned as a part of the annual registration fee nor are they mentioned in the guide provided to Participants.

The Risk Management Committee is responsible for determining the rate to charge Participants to cover insurance premiums. Hockey Canada wants to avoid increasing the premiums every year.

⁴⁵⁴Note: This fee was reduced to \$1.50 during the 2020/2021 season and \$0 during the 2021/2022 season because of the pandemic; Questions answered by Brian Cairo, Chief Financial Officer of Hockey Canada (26 August 2022).

⁴⁵⁵ Interview of Brian Cairo, Chief Financial Officer of Hockey Canada (24 August 2022).

⁴⁵⁶ “Safety Requires Teamwork & Safety for All” (Revised 2021-2022) at 59, online (pdf): *Hockey Canada* <<https://cdn.hockeycanada.ca/hockey-canada/Hockey-Programs/Safety/Insurance/Downloads/2022/2021-22-safety-requires-teamwork-revised-e.pdf>>.

⁴⁵⁷ The Alexander Consulting Group, “Summary of Insurance” (31 May 1989) at s II; Canadian Amateur Hockey Association, “General Liability Fund and Excess Insurance Plus Comprehensive Accident Insurance Brochure” (1986-1987 Season).

Therefore, the Risk Management Committee will charge Participants for the cost of the premiums set by the insurance company and an additional margin which is deposited into the NEF.⁴⁵⁸

The rates of insurance premiums charged to Participants remained the same from 2000 to 2017. In 2017 premiums increased as Hockey Canada decided to charge Participants for Directors and Officers Insurance where previously this expense was borne by Hockey Canada itself.⁴⁵⁹

Hockey Canada recently advised Members that the NEF is used to pay insurance premiums, deductibles, uninsured and underinsured claims, in addition to funding a wide range of safety, wellbeing and wellness initiatives, including player counselling and treatment.⁴⁶⁰ Hockey Canada maintains it has a longstanding practice of reviewing the NEF's purposes with Members annually. Hockey Canada advised that it has offered counselling services to players affected by various incidents (including injury, sexual misconduct, and post-traumatic stress disorder) not linked to active claims. Hockey Canada advised that these services could, in some cases, resolve issues before formal claims were made and offer treatment to the affected player. These expenditures were not consistently recorded in the financial statements or general ledger.⁴⁶¹ Indeed, our review of the NEF general ledger from 2014 to present does not clearly indicate that the NEF funded counselling services or treatments for Participants. If such services were indeed provided to potential claimants and funded by the NEF, it is concerning that they were not recorded in a consistent manner. We also have no indication that Members would have been advised when such services were offered.

The following table sets out the proportion of the NEF used to cover various categories of expense from 2014 to 2022.

Category of Expense	Description	Percentage of Total Expenditures paid out of NEF from 2014-2022
1. Settlements for uninsured and underinsured claims	All settlements paid out of the NEF. This amount is inclusive of deductibles paid on insured claims.	2-26%
2. Salaries	Salaries paid to four to five of Hockey Canada employees responsible for the administration of the NEF, including the Senior Manager for Insurance Member Services, and the new Director of Sport Safety.	3-6%

⁴⁵⁸ Interview of Brian Cairo, Chief Financial Officer of Hockey Canada (13 September 2022).

⁴⁵⁹ Interview of Brian Cairo, Chief Financial Officer of Hockey Canada (13 September 2022).

⁴⁶⁰ Brian Cairo, "Memo to Members: Message from Hockey Canada regarding National Equity Fund" (July 2022).

⁴⁶¹ Interview of Brian Cairo, Chief Financial Officer of Hockey Canada (13 September 2022).

3. Insurance Policies	Premiums and brokerage fees paid to maintain Hockey Canada's commercial insurance policies.	67-86%
4. Grants	Donations to various organizations, telephone helplines, support for concussion research, and funding various initiatives	1-8%
5. Professional Services	General professional services, consultant fees, licence/service fees, and all legal fees, including lawyer fees from settlements, investigations, and non-settlement related legal matters (i.e. corporate matters).	3-10%
6. Travel/Accommodations /Meals	Expenses submitted by employees with respect to activities related to the administration of the fund, including the administration of insurance and claims	0-1%
7. Reserve Adjustment	An amount set aside within the NEF for potential liabilities, adjusted for actual settlement payouts.	-14-14%*
8. Investments, Banking, and Accounting	Interest and bank fees, investment management fees, foreign exchange gain/loss.	0-1%

*Note: negative values represent adjustments to funds set aside within the NEF to pay settlements; where actual settlement payments were smaller than anticipated, the balance of the reserve is released within the NEF, thus showing as a "negative" expenditure.

From 2014 to 2022, the majority of the disbursements from the NEF are for insurance premiums (67% to 86%) so it is clear that the NEF does not operate purely as a reserve fund for uninsured or underinsured claims. Settlements for these uninsured and underinsured claims range from 2% to 26% of the total disbursements from the NEF. The reserve fund also pays the salaries of four to five Hockey Canada employees whose roles relate to or involve administering the NEF. However, these salaries represent a very small percentage (3% to 6%) of the expenses paid from the NEF in a given year.

From 1989 to 2022, the NEF covered 21 settlements for uninsured or underinsured claims.⁴⁶² 10 of the 21 settlements related to injuries and accidents in relation to which the claims exceeded

⁴⁶² Documentation provided by Brian Cairo, Chief Financial Officer of Hockey Canada (2 September 2022).

available insurance coverage and included claims related to Ontario Human Rights Tribunal complaints.⁴⁶³

The remaining 11 claims relate to sexual misconduct matters. Nine were historic sexual misconduct claims involving three perpetrators: Graham James, Gordon Stuckless and Brian Shaw. As these claims stemmed from historic events that occurred prior to 1998 and involved perpetrators Hockey Canada had identified to its insurer, they were excluded from the sexual misconduct insurance. For some of these matters, no formal civil claim was issued. Instead, the injured parties made a complaint to Hockey Canada, which the latter investigated and ultimately settled before any civil claims were commenced.⁴⁶⁴ The tenth claim, involving a historical sexual assault claim against a referee, was denied coverage by Hockey Canada's insurer because the insurer maintained that the perpetrator was known to Hockey Canada and should have been disclosed in the list of named perpetrators.

Hockey Canada settled the eleventh matter in May 2022, which concerned allegations of sexual misconduct made against players on the 2018 World Junior Team. Hockey Canada was a named Defendant in the action, along with the CHL and eight players not specifically named. We understand that Hockey Canada and its insurer continue to discuss the scope of the sexual misconduct insurance policy as it relates to its application for acts committed by players against a non-participant in an off-ice setting. With respect to the May 2022 case, there was concern that a significant amount of the claim would not be covered by insurance. Hockey Canada proceeded to discuss the case with their insurer who advised that Hockey Canada was permitted to settle the matter on its own.⁴⁶⁵

Some of the 21 settlements are subject to non-disclosure agreements. Accordingly, their terms and amounts remain confidential. While controversial more recently, the use of non-disclosure agreements or confidentiality clauses as part of a settlement agreement has been a common practice and can serve the interests of survivors who wish to retain anonymity. Other settlements are either not subject to confidentiality agreements at all, or only partially covered (e.g., not disclosing the amount).⁴⁶⁶

B. Key Observations on the NEF and Its Role Within the Risk Management Matrix

Considering the above, we make the following observations in respect of the NEF and its role within the risk management matrix.

Was Hockey Canada's use of the National Equity Fund to fund uninsured liabilities which were met by the Fund appropriate?

Yes. The establishment of reserve funds to address the risk of uninsured and underinsured claims is not only sound, but the failure to do so would be a serious oversight. It is appropriate to use NEF

⁴⁶³ Interview of Glen McCurdie, former Vice President of Insurance and Risk of Hockey Canada (12 September 2022).

⁴⁶⁴ Interview of Brian Cairo, Chief Financial Officer of Hockey Canada (6 September 2022).

⁴⁶⁵ AIG, "Email to BFL" (11 May 2022).

⁴⁶⁶ Brian Cairo, "Email to Mathieu Dompierre" (14 September 2022, 4:26 PM).

funds to address potential uninsured and underinsured liabilities for Hockey Canada and/or any participant for whose benefit the reserve is maintained. We will not be commenting on particular cases given that this review, under the Terms of Reference, is not an assessment of Hockey Canada's response to any particular incident or issue. However, we note the absence of policies or procedures governing the purposes or functions of the NEF or the process for its use (though we were provided with a signing authority document for the fund). The same applies for the IRS Fund and the Legacy Trust. This is problematic because Members have no written documentation or source informing them how the three funds are managed and how they interrelate. Moreover, the lack of written policies or procedures in this regard signals that Members (and the Board itself) have no point of reference to guide their application in particular cases or against which to assess Board decisions regarding their use and management. In other words, there is no set standard, such as a published policy, and therefore Members have little information available to them to assess the appropriateness of the criteria considered by the Board when addressing claims. Some concern has been expressed that the Board's decisions are not recorded in the minutes of Board meetings. It may be that much of the consideration of claims must be kept confidential but final decisions should be recorded even though the minutes will not disclose the details. We will consider that aspect as we prepare our final report.

Second, there is a certain level of overlap among the three funds (particularly the NEF and the IRS Fund) which is a potential source of confusion. Both the NEF and the IRS Fund are used for purposes that are not fully disclosed in the financial statements. The NEF is not used solely to accumulate funds for uninsured and underinsured claims. Hockey Canada uses the NEF to collect monies for annual insurance premiums from Participants, pay those premiums, and transfer any surplus reserve funds to the IRS Fund from time to time. The latter two uses are not reflected in the description of the purpose of the NEF disclosed in the financial statements (although the inter-fund transfers are disclosed). Presently, the balance of the NEF is significantly depleted whereas the IRS Fund contains a comparatively large balance. For its part, the IRS Fund is described as a fund to ensure future insurance rate increases are buffered whereas in fact, it is also a significant reserve fund for uninsured and underinsured claims. As explained above, this sub-fund is not disclosed on Hockey Canada's financial statements. Hockey Canada advises that Members approved the initial transfer to the sub-fund and approved each subsequent transfer. Hockey Canada also maintains that Members have many opportunities to ask questions regarding the sub-fund (including during annual meetings and special presentations on the financial statements), though we note that the sub-fund balance is not explicitly disclosed unless requested.

We make similar observations concerning the Legacy Trust within the risk management matrix. The Legacy Trust Agreement says that it was established to respond to historic claims against its beneficiaries. The Tail Coverage Agreement (which preceded the IRS Fund) provides that Hockey Canada will use the NEF first for such claims. Now Hockey Canada has adopted an informal approach that would see claims run first through the NEF, then the reserve sub-fund in the IRS Fund, then to the Legacy Trust, and finally to the remaining funds in the IRS Fund. To our knowledge, the Legacy Trust was not designed with the IRS Fund in mind and no formal policy exists to govern how Hockey Canada is to respond to claims.

C. Transparency of NEF to Membership, Players, and the Public

The second main issue is whether the purpose and use of the NEF has been sufficiently transparent. Hockey Canada has no specific policies prescribing disclosure of these matters.

i. Disclosure Provided to Members

The Tail Coverage Agreement, which we understand still applies, is the only documentation imposing specific disclosure requirements on Hockey Canada vis-à-vis Members, hockey associations, and leagues regarding the NEF.⁴⁶⁷

The Tail Coverage Agreement has three requirements, which we will consider in turn:

1. Hockey Canada must update Members on the NEF at every Annual Meeting of Hockey Canada

With respect to the first requirement, Hockey Canada provides an update on the NEF at the Annual General Meeting, insofar as Members receive information regarding its financial status. However, this update does not always address ongoing uninsured claims or recent settlements paid out of the NEF.

Hockey Canada clearly marks and segregates the NEF on the annual financial statement. The notes to the financial statements also provide an explanation of the NEF's purposes.

Hockey Canada provides a copy of the annual audited financial statement to Members at least 21 days prior to the Annual Meeting. Hockey Canada also prepares and provides Members with a supplementary document which explains the content of the financial statements in plain language to help Members better understand the financial information contained in the statements. The supplement includes discussion of inter-fund transfers and provides Members with an overview of the balance of Operating Fund, Health Benefit Trust, and NEF from 2012 to present.⁴⁶⁸ Members then approve the statements at the Annual Meeting. The audited financial statements provide a clear breakdown of the NEF's annual revenue and expenditures. The expenditures section includes a line item for "insurance claims." Hockey Canada's independent financial auditors advise that this line item accounts for the total funds paid out of the NEF annually to cover insurance deductibles and fund settlements for uninsured or underinsured claims.

The Annual Meeting minutes from 2014 to 2022 do not reveal that any discussions about the NEF took place during the Annual Meetings held during that period. Hockey Canada maintains that Members do in fact discuss the NEF as needed, and that these discussions – specifically in respect of under and uninsured claims – are held *in camera*. However, a number of Members interviewed noted that these topics were rarely discussed at length, and no Members interviewed could recall specifically what was discussed.

The CFO makes a presentation regarding inter-fund transfers from the NEF to other Pillar funds. However, the minutes provide scant information about the substance of such presentations and *in*

⁴⁶⁷ Canadian Hockey Association, "Tail Coverage Agreement" (24 May 1999) at s 2.

⁴⁶⁸ Hockey Canada, "Supplement to the 2020-2021 Audited Financial Statements".

camera discussions. Further, Hockey Canada noted that its CFO offers Members semi-annual presentations approximately two weeks before to the Spring and Winter Congresses to discuss the budget (spring) and the draft financial statements (winter). Attendance at these presentations includes Member Presidents, Executive Directors and financial officers (where applicable), giving them the chance to ask questions about Hockey Canada’s financials. No meeting minutes are taken.

2. Hockey Canada must report when new claims, settlements or judgements, or valuation of existing claims may result in changes to the NEF reserves exceeding \$500,000.00

As for this second requirement of the Tail Coverage Agreement, Hockey Canada has not adopted any disclosure procedure to report to Members when a claim, settlement or judgment exceeds \$500,000. Based on our review of the settlements paid out of the NEF, since 1999 (when the Tail Coverage Agreement was concluded), it appears that at least six matters met the threshold and thus required disclosure. Our review of Members’ meeting summaries over that period indicates that Members did not receive formal notice of these matters. However, Hockey Canada has advised that all of these discussions would occur *in camera* and that they did not keep minutes of those *in camera* portions of the meetings.⁴⁶⁹

A review of Board of Director meeting minutes from 2014 onwards reveals that the Board discussed on occasion ongoing civil actions involving Hockey Canada, as well as insurance coverage options and updates, including discussions involving sexual misconduct coverage. The Board appears to have discussed the Legacy Trust; however, the discussions appear limited to conversations about renewing the Trust Agreement and extending the division date. Again, there appear to be discussions about settlements; however, the minutes provide minimal description and some of these conversations take place *in camera*, with no accompanying notes. Still, these discussions would not satisfy the disclosure requirement under the Tail Coverage Agreement, which requires providing formal notice to Agreement signatories, i.e., the Members.

3. Hockey Canada must update each Member immediately if ongoing claims require Members to pay additional amounts to the NEF to ensure adequate funding for claims, as actuarially valued from time to time.⁴⁷⁰

The third requirement imposed by the Tail Coverage Agreement has never been triggered because, as we understand, Hockey Canada has never requested further funds from the Members to respond to any uninsured claims.

ii. *Member Perception*

Members have different perceptions of the degree of transparency related to the NEF, its function and use. Most concerning is the notion that in the view of some, but by no means all Members to whom we spoke, Hockey Canada may not have provided Members with sufficient details on inter-fund transfers, particularly in relation to the settlement of past and ongoing claims. Several Members interviewed confirmed that they knew the NEF existed, that its funding came from

⁴⁶⁹ Interview of Brian Cairo, Chief Financial Officer of Hockey Canada (13 September 2022).

⁴⁷⁰ Canadian Hockey Association, “Tail Coverage Agreement” (24 May 1999) at s 2.

annual registration fees, and that it served to settle uninsured claims. Some explained that if Members ever had questions about the NEF they could always ask the Board of Directors or the Risk Management Committee. Others noted that if a Member did not know about the NEF, their own inattention to the information provided was to blame.

In contrast, some Members noted that Hockey Canada did not readily share information on the intent or the purpose of the NEF and its use, nor on incidents in relation to which the fund was engaged. Some Members noted that they knew the NEF served to respond to historic claims, but believed it would only extend to claims linked to the named perpetrators, as opposed to “protecting” predators going forward, as they put it. Indeed, these two groups of Members cite a lack of transparency on specific cases and payments from the NEF vis-à-vis stakeholders and a lack of oversight. These Members indicate that Hockey Canada could remedy the issue by providing more information on particular claim/settlement amounts and the NEF balance – even if this were done so annually – and if the use of the NEF, particularly in relation to claim settlement, were governed by a publicly available policy.

If little is disclosed about ongoing or potential claims, and how the risk management matrix would handle these claims, Members must then flag issues with the management of the NEF and other funds without being fully aware of the facts. Said differently, Members can only raise issues if they are able to identify them. Still, it is important to be sensitive to the privacy interests of survivors and those affected by sexual misconduct, particularly where non-disclosure agreements have been put in place. We recommend that Hockey Canada take steps to provide timely disclosure of publicly available information to its Members regarding ongoing and potential claims. Once a settlement is reached, we recommend that Hockey Canada disclose all publically available information (i.e., what was provided in the claim) while respecting the restrictions of any non-disclosure agreements in force. For example, where a non-disclosure agreement only precludes the disclosure of a settlement amount, Hockey Canada could inform its members of the nature of the claim, the fact that a settlement was reached and how/when the settlement would be funded.

iii. Disclosure Provided to Players and the Public

Hockey Canada uses a portion of Participants’ annual registration fees (\$13.65 per Participant) to maintain the NEF. When participants register they are provided with a breakdown of the registration fees; however, this breakdown does not reveal the portion of the registration fees that are set aside to fund uninsured and underinsured claims.

Hockey Canada’s website has a section dedicated to Insurance Information and Resources. The website provides that each Participant pays an annual fee into the Hockey Canada Insurance Program, which covers liability insurance, accidental death and dismemberment, major medical and dental insurance, risk management and administration, directors and officer’s liability insurance and sexual misconduct liability insurance.⁴⁷¹ Notably, the website does not provide any information about the use of annual fees to fund uninsured and underinsured claims. Hockey Canada recently advised Members that \$13.65 of a Participant’s annual registration fee is

⁴⁷¹ “Learn about Hockey Canada’s Insurance Program,” online: *Hockey Canada* <<https://hockeycanada.ca/en-ca/hockey-programs/safety/essentials/insurance>>.

deposited into the NEF to maintain insurance coverage.⁴⁷² However, Members were not informed about what proportion of the \$13.65 is used to fund uninsured and underinsured claims. It does not appear that Hockey Canada has directly advised Participants about the \$13.65 deposited into the NEF every year to pay premiums, deductibles, and to cover uninsured losses.

Hockey Canada's communication structure is hierarchical. Hockey Canada provides information to its Members who then disseminate it to associations, teams, and Participants, as the case may be. Because there is no direct communication channel to Participants, Hockey Canada must rely on Members who then rely on associations and teams to share important information with Participants. This increases the possibility of knowledge gaps between individual players across Canada. For example, not all Members include a breakdown of their annual fees on their websites.

D. Best Practices for Risk Management and Reserve Funds

Risk management includes the application of management policies, procedures and practices to identify, assess, manage, monitor and communicate risk.⁴⁷³ Hockey Canada's insurance brokers and independent auditors have confirmed that it is in the best interest of the organization to maintain a fund for uninsured liabilities. They explained that the absence of a reserve fund, such as the NEF, would be a poor risk management strategy.⁴⁷⁴ This view is not controversial, and is supported by the literature.⁴⁷⁵

Reserve funds allow charities and not-for-profit organizations to fund new strategic directions, plan for capital re-investment, respond to uninsured losses and reduce the impact of market-related and sector-specific risks.⁴⁷⁶ Reserve funds can be "unrestricted," meaning that they do not have to be "restricted" for a particular use.⁴⁷⁷ The NEF is an unrestricted reserve fund, unlike Hockey

⁴⁷² Brian Cairo, "Memo to Members: Message from Hockey Canada regarding National Equity Fund" (July 2022).

⁴⁷³ Hugh Lindsay FCA CIP, "20 Questions Directors of Non-Profit Organizations Should Ask About Risk" (2009) Chartered Accountants of Canada at 4.

⁴⁷⁴ Interview of Masters Insurance Representative (24 August 2022); Interview of BDO Representative (24 August 2022); Interview of BFL (24 August 2022).

⁴⁷⁵ For example, a 2020 article from the Non-profit and Voluntary Sector Quarterly canvassed empirical data from 600 not-for-profit organizations in the United States to demonstrate that organizations with more operating reserves were less likely to reduce operating hours, lose staff, or experience difficulty acquiring supplies or vendor services during the advent of the 2019 Covid-19 Pandemic; see Miare Kim & Dyana P Mason, "Are You Ready: Financial Management, Operating Reserves, and the Immediate Impact of COVID-19 on Nonprofits" (2020) 49:6 Non-profit and Voluntary Sector Quarterly 1191, online: <<https://journals.sagepub.com/doi/10.1177/0899764020964584>>; see also Hugh Lindsay FCA CIP, "20 Questions Directors of Non-Profit Organizations Should Ask About Risk" (2009) Chartered Accountants of Canada at 16: "An organization's capacity to take opportunities, respond to urgent needs and prevent disasters all require it to have the capacity to 'finance' risk. Not-for-profit organizations frequently have limited financial resources for funding new projects and recovering from unexpected setbacks. There are essentially two ways in which they can strengthen their financial position: maintaining financial reserves, and buying insurance."

⁴⁷⁶ Grant Thornton, "Planning ahead: Improving financial health with reserves planning" (13 December 2017).

⁴⁷⁷ "Operating Reserves and Policy Examples," online: *Propel Nonprofits* <<https://www.propelnonprofits.org/resources/nonprofit-operating-reserves-policy-examples/>>.

Canada's Pillar Funds, which are internally restricted for specific uses.⁴⁷⁸ However, while the funds in the NEF are not restricted *per se*, there should exist a policy and procedure stating the purpose of the NEF and prescribing its use to ensure it remains a viable reserve.⁴⁷⁹

Merely carving out and labelling a portion of an organization's net asset balance a "reserve" does not constitute a best practice reserve. Instead, an organization's reserve fund should be a distinct pool of net assets that an organization manages to achieve a specified set of objectives.⁴⁸⁰

Hockey Canada discloses the purpose, revenue and expenditures of the NEF in its annual financial statements. However, since Hockey Canada is accountable to multiple constituents, including its Members, Participants, Sport Canada, and the general public, it must ensure the accrual and use of NEF fund is transparent. Best practices include implementing formal, written policies surrounding reserve funds that clearly articulate the purpose of the reserve and its connection to the organization.⁴⁸¹ The reserve policy should clearly describe authorization for the use of the reserve fund and outline requirements for reporting and monitoring. Without a policy or procedure, an organization runs the risk of misusing funds and depleting the reserve gradually to the point that it is no longer available when needed.

A reserve policy can be contained within an organization's other financial policies or may stand alone. Having a written and approved policy can help to ensure that the Board of Directors of Hockey Canada as well as its Members and Participants understand the authority and operational guidelines which apply to the use of the fund.⁴⁸²

It is difficult to determine how much money an organization should accrue in a reserve fund. However, the accounting firm, Grant Thornton, recommends the following four steps to quantify the appropriate target for a reserve fund:

1. Build a baseline five-year financial forecast.
 - Whether the reserve is meant to mitigate against future financial consequences or accumulate assets to execute major projects, these goals have a "multi-year time horizon". "By developing a five-year forecast management can see financial trends that are not evident in annual budgets."⁴⁸³

⁴⁷⁸ For example the Technology Fund which is to be used to fund future technologies, or the International Event Housing Fund which is to be used to host Hockey Canada's international events (see Hockey Canada, "Audited Financial Statements").

⁴⁷⁹ "Operating Reserves and Policy Examples," online: *Propel Nonprofits* <<https://www.propelnonprofits.org/resources/nonprofit-operating-reserves-policy-examples/>>.

⁴⁸⁰ Grant Thornton, "Planning ahead: Improving financial health with reserves planning" (13 December 2017).

⁴⁸¹ Grant Thornton, "Planning ahead: Improving financial health with reserves planning" (13 December 2017); Hugh Lindsay FCA CIP, "20 Questions Directors of Non-Profit Organizations Should Ask About Risk" (2009) Chartered Accountants of Canada.

⁴⁸² "Operating Reserves and Policy Examples," online: *Propel Nonprofits* <<https://www.propelnonprofits.org/resources/nonprofit-operating-reserves-policy-examples/>>.

⁴⁸³ Grant Thornton, "Planning ahead: Improving financial health with reserves planning" (13 December 2017).

2. Conduct a detailed analysis of potential risks.
 - Management needs to identify, quantify, and assign likelihoods to potential downside performance within the organization’s short-and-long-term financial plan.
3. Quantify the risks.
 - Once the risks are identified, this information can be synthesized, “by applying probability-weighted net present value adjusted averages of risk exposure across critical budget lines.”⁴⁸⁴
4. Establish the target reserves and funding approach.
 - Once an organization knows the appropriate amount of funds that should be maintained in a reserve, management is now in a position to recommend the target reserve level to the Board of Directors and determine its approach to accumulate or set aside funds for the approved amount.⁴⁸⁵

While not all organizations have written reserve fund policies, examples abound. The Shooting Federation of Canada’s (“**SFC**”) Reserve Fund Policy⁴⁸⁶ is an example of an operating reserve fund policy. It establishes that the fund serves “to provide continued funding of operations and to ensure financial stability.” Its purpose is to define the reserve fund, the intention of maintaining the fund, and the methods under which the Fund is managed. The Policy quantifies the reserve requirement, falling between six months’ (the minimum) and a year’s (the maximum) worth of standard operating revenue needed to cover the previous year’s expenses plus any contractual obligations. The quantum of the reserve is to be reviewed annually by the Board to ensure it is sufficient, and the funds are to come from unrestricted monies. The Policy further explains that the reserve can only maintain the total of funds that meet its reserve requirements, and that interest is to remain in the fund. Moreover, the Policy mandates that the reserve fund offer a meaningful contribution to strategic initiatives and that the monies should be managed to provide maximum long-term consistency and stability of return. It also requires that the SFC approve and review the parameters for managing the fund, that it provide the necessary oversight of the fund, and that it report annually to its members on the fund status and the value of the reserve requirement. Finally, the Policy states that Board approval is required for any transactions outside of the approved budget or reserve that affect the reserve fund.

Ontario Artistic Swimming (“**OAS**”) includes a short policy on reserve funds within its Finance Policy.⁴⁸⁷ It stipulates that the fund is meant to provide an internal source of funds for “situations such as an unanticipated loss in funding, delay in grant payment, or uninsured losses” – but not to replace a permanent loss of funds or to eliminate an ongoing budget gap. Additionally, it provides a minimum quantum of monies required in the fund, and provides that the Finance Committee

⁴⁸⁴ Grant Thornton, “Planning ahead: Improving financial health with reserves planning” (13 December 2017).

⁴⁸⁵ Grant Thornton, “Planning ahead: Improving financial health with reserves planning” (13 December 2017).

⁴⁸⁶ Shooting Federation of Canada, “Policy and Procedures Manual” (11 September 2020) at 155-156.

⁴⁸⁷ Ontario Artistic Swimming, “Finance Policy” (November 2021) at 3.

must review any reserve fund on an annual basis to ensure that its funds have been invested securely. Most notably, the Policy states that expenditures from the reserve fund must be approved by a two-thirds majority vote of the Board. The Executive Director must identify the need for access to the fund and confirm that the use of reserve funds is consistent with the purpose of the reserves, as set out in the Policy. The Executive Director must also examine the reason for the shortfall and the availability of other sources of funding. Finally, the Policy states that the annual budget should reflect the proposed contribution to the reserve fund and any anticipated projection of reserve fund use to cover expenses over and above identified revenues.

Another example comes from the Northern Ontario Curling Association (“**NOCA**”). The NOCA Operating Reserve Policy⁴⁸⁸ provides that the Operating reserves provide an “internal source of funds for situations such as a sudden increase in expenses, one-time unbudgeted expenses, unanticipated loss in funding, or delay in grant payments or uninsured losses” and for “one-time, nonrecurring expenses that will build long-term capacity.” They are not intended to replace permanent losses of funds nor to replace an ongoing budget gap. Similar to the OAS Policy, the NOCA Policy prescribes the minimum balance of the fund in relation to the amount needed to maintain operations for a set period, and that the quantum is to be reviewed annually and adjusted to reflect current need. However, it also notes that the quantum, sourced from unrestricted monies, must be reported to the Finance Committee and the Board, and included in the regular financial reports. The Policy then lays out a three-step process to use the fund, comprised of 1) identifying the need for funds and assessing the appropriateness of using the reserve consistent with the Policy; 2) obtaining approval from the Board by providing a description of the analysis conducted in the previous step and a plan for replenishing the reserve; and 3) reporting and monitoring on the reserve, with the Finance Chair responsible for maintaining the balance of the fund, ensuring use complies with the Policy and reporting to the Board, and that the Executive Director must maintain records of use of funds and plans for replenishment.

These examples show how a written reserve fund policy – even a short one – can improve oversight of such a fund. Hockey Canada should establish such a policy, with a particular focus on where funds are collected, how they are and can be used, what types of approvals are needed to use the funds, and how Hockey Canada must report to the Board, Members, Participants, and the public when it uses the NEF. These restrictions will ensure that the NEF has a clear purpose, that its balance is representative of the quantum needed to serve that purpose, and that the funds are only used in ways that are consistent with that purpose.

E. Conclusion

Over the course of its existence, the purpose of the NEF has changed. What began as a vehicle to fund the self-insurance Program has evolved to fund a broad range of safety, wellbeing, and wellness initiatives across Hockey Canada and its Members. It also serves as the primary asset to address under or uninsured claims. In recent years, a substantial portion of the NEF was transferred to the IRS Fund, which holds a “sub-fund” set aside for future under or uninsured claims. The NEF has funded 21 settlements linked to under and uninsured claims (11 of which relate to sexual misconduct) which represent between 2% and 26% of its total expenditures over the last eight

⁴⁸⁸ Northern Ontario Curling Association, “Operating Reserve Policy” (4 August 2016) in *Policy Directory* at 32-33.

years. Over that same period, between 67% and 86% of NEF expenditures covered insurance policies.

We turn to the questions posed to us in the Terms of Reference.

Was Hockey Canada's use of the National Equity Fund to fund uninsured liabilities which were met by the Fund appropriate?

Yes. The establishment of reserve funds to address the risk of uninsured and underinsured claims is not only sound, but the failure to do so would be a serious oversight. It is appropriate to use NEF funds to address potential uninsured and underinsured liabilities for Hockey Canada and/or any participant for whose benefit the reserve is maintained. We will not be commenting on particular cases given that this review, under the Terms of Reference, is not an assessment of Hockey Canada's response to any particular incident or issue.

Is there appropriate oversight concerning payments out of the NEF?

No. Hockey Canada has no written policy governing the NEF; however, its stated purpose is noted in the annual financial statement. Though the fund forms part of the risk management matrix, questions arise regarding what role the fund actually plays within that matrix. Indeed, some Members have criticized Hockey Canada's lack of oversight of the NEF, particularly regarding the absence of a publicly available policy governing the fund. Additionally, Hockey Canada has adopted an informal procedure for dealing with under and uninsured claims, which begins at the NEF. However, the procedure is not widely known by Members, nor has it received formal Board approval.

Is the use of the National Equity Fund sufficiently transparent within the organization and in reports to stakeholders?

No. While Hockey Canada discloses the balance of the NEF and inter-fund transfers on its audited financial statements, Members do not receive adequate information regarding these funds and their use. Hockey Canada maintains that Members discuss and have opportunities to ask questions on the NEF and its funding of under and uninsured claims. However, these discussions have occurred *in camera*, and our review of the minutes from Member meetings at which settlements, inter-fund transfers, and financial statements were discussed provide no clarity on the nature, scope and frequency of such discussions. It also appears that Members and Participants may not have been fully aware of the scope of claims the NEF would fund, namely claims linked to sexual misconduct beyond the named perpetrators. Participants, whose registration fees are the primary source of funding for the NEF, have not been adequately informed about what proportions of fees go to fund under and uninsured claims.

Like the NEF, the IRS Fund is not governed by any written policy. Its purpose stated on the annual financial statements no longer reflects its entire purpose. While the total balance of the fund is disclosed on the financial statements, it is unclear what proportion of the fund is reserved in the "sub-fund" for under and uninsured claims, and that balance is not disclosed to Members on the financial statements. In light of the fact that the NEF balance is largely depleted, it will be particularly important for Hockey Canada to codify how the IRS Fund is to interact with the NEF in respect of under and uninsured claims.

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AFFIDAVIT OF CATHERINE MACDONALD SWORN VIA VIDEO-LINK
BEFORE ME FROM THE CITY OF KAWARTHA LAKES, IN THE
PROVINCE OF ONTARIO, TO THE CITY OF TORONTO, IN THE
PROVINCE OF ONTARIO, ON JUNE 5TH, 2023, IN ACCORDANCE WITH O.
REG. 431/20, ADMINISTERING OATH OR DECLARATION REMOTELY.***

A handwritten signature in black ink, appearing to read "Caitlin Leach", written in a cursive style.

A COMMISSIONER FOR TAKING AFFIDAVITS, ETC.


CAITLIN LEACH



GOVERNANCE REVIEW

HOCKEYCANADA.CA

HOCKEY CANADA RELEASES FINAL INDEPENDENT GOVERNANCE REVIEW FROM FORMER SUPREME COURT JUSTICE THOMAS CROMWELL

NR.065.22 | November 4, 2022 |  Favourite (10)

CALGARY, Alta. – Hockey Canada is releasing the [final report from the independent third-party governance review](#), led by former Justice of the Supreme Court of Canada, Honourable Thomas Cromwell, C.C. The review, and its accompanying recommendations, are intended to provide Hockey Canada with the capacity to play its important role in making the changes in its governance model that are necessary to create the foundation upon which to rebuild the confidence of stakeholders and the public.

RELATED LINKS

- [➔ Hockey Canada Action Plan](#)
- [➔ Final Report](#)

The report provides a comprehensive review of Hockey Canada’s governance structure, systems, personnel and processes, and offers important recommendations to help improve the organization and meet industry best practices.

Hockey Canada has already taken action to implement **recommendations that were outlined in the interim report** released last month. This includes moving forward with important By-Law reforms and taking steps to ensure new leadership is in place to guide the organization following the upcoming Board elections.

The final report expands on this work by providing key recommendations on important areas including:

Board Composition & Board Process

- The recruitment of Directors for the Board of Hockey Canada needs to be fundamentally rethought. A new approach to filling these positions is needed. All stakeholders will need to work together to bring these changes about.
- Achieve more balanced gender representation on the Board of Directors so that no more than 60% of the Directors will be of the same gender.
- Ensure the Board of Directors will include at least one athlete representative (defined as a person who is currently on a national team or competing at the international level, or who was on a national team or competed at an international level within the last 8 years).
- Ensure a majority of the Directors are Independent at the time of their election.
- The Board of Directors should be the group that appoints the Board Chair, using a well-defined process and pre-defined and approved eligibility qualifications (qualities and competencies).
- Board should continue to serve without remuneration.
- Minutes should be taken at all Board, Member and committee meetings by a designated resource.
- A schedule detailing the dates that regular Board meetings and Member meetings will be held should be posted on Hockey Canada’s website.
- Board must step back and re-examine what governance model best achieves Hockey Canada’s strategic vision. It must then implement that model and periodically review it to ensure it continues to serve the best interests of the organization.

Nominating Committee (NC)

- The NC should review and update the skills matrix prior to each election cycle to ensure it reflects the skills, experience and diversity required for the Board to be successful. It should engage and consult with a reputable board recruitment firm to assist with the review of the matrix and recruit qualified candidates.
- Although the majority of the NC should be Independent, there should be at least one athlete representative (defined as a person who is currently on a national team or competing at the international level, or who was on a national team or competed at an international level within the last 8 years) on the NC, along with Member representation and Board representation.

Senior Management

- The Director of Women and Girls Hockey should be a VP-level position reporting to the CEO.
- There should be a VP of Hockey Development dedicated to the development of hockey at the grassroots level,

who should work closely with the Member Engagement Department.

- As staff is hired, sufficient onboarding should be provided to them, given the complexities of the organization.

Hockey Canada's Internal Committees

- Hockey Canada should conduct an in-depth review of its committee structure with a view to:
 - Streamlining and maintaining core committees focused on meeting the needs of the new Board;
 - Restructuring or disbanding Committees or Task Teams that have lost their relevance or that are operationally focused and perform staff functions;
 - Developing a suite of new, refreshed and robust terms of reference that clearly define each committee's mandate and role, its key duties and functions, what it is responsible for achieving and to whom it is accountable.

The recommendations outlined in the report provide important guidance on the next steps Hockey Canada should take to improve the organization. The report, and its recommendations are currently being reviewed by Hockey Canada Members and will be brought to the new Board of Directors, following their election on Dec. 17, 2022.

Hockey Canada will continue to provide public updates on the organization's work to address systemic issues in and around Canada's game.

For more information on Hockey Canada, please visit [HockeyCanada.ca](https://www.hockeycanada.ca), or follow along on [Facebook](#), [Twitter](#) and [Instagram](#).

Terms of Reference for the independent governance review:

Through the independent governance review, the Hockey Canada Board of Directors retained the Honourable Thomas Cromwell to answer the following questions:

1. Was Hockey Canada's use of the National Equity Fund to fund uninsured liabilities which were met by the Fund appropriate?

- a. Is there appropriate oversight concerning payments out of the National Equity Fund?
- b. Is the use of the National Equity Fund sufficiently transparent within the organization and in reports to stakeholders?

2. Are the organization's By-Laws concerning the constitution and operation of the Board of Directors in line with current best practices, appropriate or require amendments? In addition:

- a. Recognizing the Board's current composition, are there recommended changes to the organization's governance structure that would support and further enhance the diversity of the Board?
- b. Are current terms and term limits aligned with best practices?
- c. Does the nominating process need to be amended?
- d. Is the structure of the various standing committees and task teams, including their Terms of

Reference/mandates and reporting mechanism to the Board, appropriate?

3. Does the Board exercise an appropriate degree of oversight of senior management as compared to similar organizations, including;

- a. Is the Board's current structure, as a volunteer Board with accountability for oversight of the organization, appropriate and in the best interests of hockey in Canada?

- b. Is there a clearly defined process describing what items staff must report to the Board (policy vs. operations)?
- c. Is the reporting structure to the Board (staff and committees) comprehensive enough to ensure the work of Hockey Canada is efficient, effective, and of the highest quality?
- d. What role should the Board play in operations versus policy and strategy?
4. Is the Senior Management Team properly structured and constituted to oversee the operations of Hockey Canada, from the grassroots level to the high-performance level?
5. In the area of governance, are there any other recommendations for actions that the Board of Directors and senior management could take to improve the confidence Canadians have in Hockey Canada?

About The Honourable Thomas Cromwell, C.C.

Thomas sat on the Supreme Court of Canada from December 2008 to September 2016 and on the Nova Scotia Court of Appeal from 1997 to 2008. From 2008 until 2018, he chaired the Chief Justice of Canada's Action Committee on Access to Justice in Civil and Family Matters.

His contribution to the legal community and society as whole has been widely recognized and he has received numerous awards, including his appointment as a Companion of the Order of Canada, the highest honour of the Order of Canada in December 2017, recognizing him as one of Canada's most important voices on enhancing access to justice.

About Victoria Prince

Victoria is a Partner and National Leader for the Charities and Not-For-Profit Law Group at BLG. She counsels charities and non-profits on a wide range of issues, including corporate governance advice and training. She is a frequent speaker to the sector. Victoria has been a member of the OBA and CBA Charities and Not-For Profit law sections for many years.

About Nadia Effendi

Nadia is a Partner and Chair of the Public Law and Appellate Advocacy Group at BLG. She specializes in administrative, regulatory, constitutional, and human rights law, and has appeared before all levels of federal and provincial courts, including numerous times before the Supreme Court of Canada. She more recently served as Lead Counsel to the Honourable Louise Arbour, who was appointed to carry out an independent external *review into the Canadian Armed Forces and Department of National Defence in response to reports of harassment and sexual misconduct within Canada's military*.

Nadia is a member of the CBA Federal Courts Bench and Bar Liaison Committee, and a past president and current board member of the Association des juristes d'expression française de l'Ontario (AJEFO).

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A COMMISSIONER FOR TAKING AFFIDAVITS, ETC.

CAITLIN LEACH

Final Report

Hockey Canada Governance Review

The Honourable Thomas Cromwell, C.C.

31 October 2022

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I. EXECUTIVE SUMMARY

The Terms of Reference questions are addressed more specifically in Chapters VII to XI. Before addressing the specific Terms of Reference, we begin by providing some background on Hockey Canada and its regulatory framework, as well as some general principles with respect to the governance of not-for-profit corporations. These topics are covered in Chapters IV to VI (following an Introduction (Chapter II) and a Table of Abbreviations (Chapter III)), and set the stage for an in-depth review of the issues in the Terms of Reference.

A. Term of Reference No. 1 (Chapter VIII)

1. *Was Hockey Canada's use of the National Equity Fund to fund uninsured liabilities which were met by the Fund appropriate?*

Yes. The establishment of reserve funds to address the risk of uninsured and under-insured claims is not only sound, but the failure to do so would be a serious oversight. It is appropriate to use National Equity Fund ("NEF") funds to address potential uninsured and underinsured liabilities for Hockey Canada and/or any participant for whose benefit the reserve is maintained. We will not be commenting on particular cases given that my review, under the Terms of Reference, is not an assessment of Hockey Canada's response to any particular incident or issue.

a. Is there appropriate oversight concerning payments out of the National Equity Fund?

No. Hockey Canada has no written policy governing the NEF; however, its stated purpose is noted in the annual financial statement. Though the fund forms part of the risk management matrix, questions arise regarding what role the fund actually plays within that matrix. Indeed, some Members have criticized Hockey Canada's lack of oversight of the NEF, particularly regarding the absence of a publicly available policy governing the fund. Additionally, Hockey Canada has adopted an informal procedure for dealing with under and uninsured claims, which begins at the NEF. However, the procedure is not widely known by Members, nor has it received formal Board approval.

b. Is the use of the National Equity Fund sufficiently transparent within the organization and in reports to stakeholders?

No. While Hockey Canada discloses the balance of the NEF and inter-fund transfers on its audited financial statements, Members do not receive adequate information regarding these funds and their use. Hockey Canada maintains that Members discuss and have opportunities to ask questions on the NEF and its funding of under and uninsured claims. However, these discussions have occurred in camera, and our review of the minutes from Member meetings at which settlements, inter-fund transfers and financial statements were discussed provide no clarity on the nature, scope and frequency of such discussions. It also appears that Members and Participants may not have been fully aware of the scope of claims the NEF would fund, namely claims linked to sexual misconduct beyond the named perpetrators specifically excluded from liability insurance coverage. Participants, whose registration fees are the primary source of funding for the NEF, have not been adequately informed about what proportions of fees go to fund under and uninsured claims.

Recommendations and Conclusions:

- We recommend that Hockey Canada take steps to provide timely disclosure of publicly available information to its Members regarding ongoing and potential claims. Once a settlement is reached, we recommend that Hockey Canada disclose all publicly available information (i.e., what was provided in the claim) while respecting the restrictions of any non-disclosure agreements in force. For example, where a nondisclosure agreement only precludes the disclosure of a settlement amount, Hockey Canada could inform its Members of the nature of the claim, the fact that a settlement was reached and how/when the settlement would be funded.
- Additionally, we recommend that Hockey Canada establish a formal policy governing the NEF, with a particular focus on where funds are collected, how they are and can be used, what types of approvals are needed to use the funds, and how Hockey Canada must report to the Board, Members, Participants, and the public when it uses the NEF. These restrictions will ensure that the NEF has a clear purpose, that its balance is representative of the quantum needed to serve that purpose, and that the funds are only used in ways that are consistent with that purpose. Overall, this will improve both the oversight and the transparency of the fund.

B. Term of Reference No. 2 (Chapter VII)

2. Are the organization's By-Laws concerning the constitution and operation of the Board of Directors in line with current best practices, appropriate or require amendments?

The current By-laws are not significantly misaligned with the points of reference that we examined (i.e. Sports Canada's Governance Principles for Sport Organizations, the Canadian Sport Governance Code, Athletics Canada Athlétisme Canada, Canada Basketball, Curling Canada, Canada Soccer and Tennis Canada). However, we have several suggested changes.

a. Recognizing the Board's current composition, are there recommended changes to the organization's governance structure that would support and further enhance the diversity of the Board?

Yes. Our recommendations are the following:

- Amend the corporation's Articles to increase the maximum number of Directors from 9 to 13.
- Amend the By-laws to provide that the Board will consist of a number of Directors between the minimum and maximum number of Directors specified in the Articles, rather than prescribing a fixed number.
- Amend the By-laws to provide that no more than 60% of the Directors are of the same gender, to bring this aspect in line with the Canadian Olympic Committee ("COC") Canadian Sport Governance Code.

- Amend the By-laws to provide that the Board will include at least one athlete representative, who will be nominated by the Nominating Committee with significant input from hockey players.
- Amend the By-laws to provide that at least a majority of the Directors on the Board be persons who, at the time of their election, are independent of Hockey Canada. By “independent” we mean a person who at the time of their election as a Director is not: a) an employee of Hockey Canada; b) an officer, director or employee of any Member of Hockey Canada (a “HC Member”); c) an officer, director or employee of an organization that is a member of a HC Member (including without limitation a local Minor Hockey Association); or d) an officer, director or employee of any other hockey club, league or team.

See our additional recommendations below under “c.” respecting the nominating process.

b. Are current terms and term limits aligned with best practices?

There are no significant divergences from best practices, but the following measures would strengthen the Board’s capacity:

- Increase the Directors’ terms to up to three years from two;
- Stagger Directors’ terms so that only about one third of the Board would be up for re-election in any year;
- Increase term limit to nine consecutive years from eight (e.g. three consecutive terms of three years);
- Increase term limit of the Board Chair to six consecutive years from four to align with the new three-year term for Directors (e.g. two consecutive terms of three years).

c. Does the nominating process need to be amended?

Yes. Our recommendations are the following:

Nominating Committee

- The Nominating Committee should be comprised of up to nine individuals and that the fixed number always be an odd number.
- The Nominating Committee should be constituted as follows:
 - The majority of the committee members would be individuals who are at arm’s length from the Board (“Independents”). The Independents, who should be highly qualified and diverse, would be appointed by the Board with the assistance of a reputable board recruitment firm hired by Hockey Canada.
 - The Members of Hockey Canada, collectively, would be entitled to appoint up to two individuals to serve on the Nominating Committee.

- At least one member of the Nominating Committee would be an athlete representative, who would be appointed by the Board of Hockey Canada with significant input from hockey's athletes.
- At least one and up to two Directors of the Hockey Canada Board would be appointed by the Board to serve on the Nominating Committee. A Director who is up for re-election in the next election cycle would not be eligible to serve on the Nominating Committee.
- Update or replace the Nominating Committee Terms of Reference to revise its composition and how its members are appointed and to better define the committee's role and duties.

Nominating Process

- Review and, if required, update the Board Matrix to ensure it reflects the skills, experience and diversity elements that are needed on the Hockey Canada Board; this can be put into effect immediately and should be done annually.
- For each election cycle (including the 2022 election), that the Nominating Committee use the Board Matrix as a tool to support the call for nominations and to articulate clearly the specific skills and competencies being sought for the Board positions to be filled.
- We strongly encourage the Nominating Committee to engage and consult with a reputable board recruitment firm to assist it with the review of the Matrix and recruitment of qualified candidates to serve as Directors. That firm could be the same recruitment firm retained by Hockey Canada to assist with the recruitment of candidates for the Nominating Committee.
- Members (along with the general public and the Nominating Committee) should continue to have the right to propose candidates for election as Directors. However, none of the names proposed (including those proposed by the Members) should automatically appear on the final ballot. Instead, the Nominating Committee should evaluate all candidates proposed and create a short-list of nominees. Only candidates who qualify and can demonstrate that they possess the skills, competencies, experience and qualities identified by the Nominating Committee (using the Matrix) should be nominated by the Nominating Committee.
- Amend the By-laws to provide that all persons proposed for nomination to positions of elected Directors be submitted to the Nominating Committee, who will have the authority to vet and create a short list of candidates to be placed on the election ballot. That includes amending and removing all language in the By-laws and the Nominating Committee Terms of Reference that states or suggests that all nominations of candidates proposed by the Members shall be included in the final ballot for the election of the Directors and the Board Chair. In that regard, we understand that the Members of Hockey Canada have already approved By-law amendments to that effect at a meeting of the Members held on October 15, 2022. That process of vetting, evaluating and short-listing candidates should

be done having regard to the Board Matrix. We recommend that this approach be implemented for the current election cycle and all future ones.

- The Members should be entitled to receive regular communications from the Nominating Committee on its recruitment work and given an opportunity to provide comments. The Board should also be entitled to receive such reports and given an opportunity to provide comments.
- The Nominating Committee, as part of its right to vet and create a short list of qualified candidates, should have the authority and discretion to determine the number of nominees whose names will be included on the final election ballot, which number could be equal to or exceed the number of Directors positions available on the Board. In either case, in accordance with the *Canada Not-for-profit Corporations Act*, SC 2009, c 23 (“CNCA”), the Members must elect the proposed candidates by ordinary resolution.

Board Chair

- Amend the By-laws to provide that the Directors (and not the Members) have the right to appoint the Board Chair.
- Revise and update the current “Chair of the Board Terms of Reference” to ensure they are current and include a list of qualities and minimum competencies required of the Board Chair. Such a list should be created and used as part of the current nomination process for the new transition Board Chair.

Appointed Directors

- Amend the By-laws to provide that the Board may appoint additional Directors within the legal limits imposed by the CNCA, rather than limiting the option to only one additional Director.
- d. Is the structure of the various standing committees and task teams, including their Terms of Reference/mandates and reporting mechanism to the Board, appropriate?*

Hockey Canada’s standing committees generally align with the types of standing committees that one would expect in a large not-for-profit organization, namely the Audit and Finance Committee, the Governance Committee, the Human Resources Committee, the Nominating Committee and the Risk Management Committee.

However, we have several recommended changes:

- Divide the Audit and Finance Committee into two separate committees: an Audit Committee, and a Finance Committee.
- Adopt new terms of reference for each of the new Audit Committee and Finance Committee.

- Reassess the current duties of the Human Resources Committee and reallocate relevant duties to other committees or staff, with a view to disbanding the Human Resources Committee.
- Enhance the role of the Risk Management Committee to include receiving regular reports from staff and advising the Board on any material government investigations, litigation, contractual disputes, or legal matters. That role should be entrenched in the terms of reference for the Committee.
- Have one member of the Governance Committee be someone who is not a Director and who is independent from other provincial and local hockey associations.
- Have the Governance Committee take over the following responsibilities from the Human Resources Committee: establishing self-assessment tools for Directors and the Board, ensuring there is proper orientation, support and continuing education for the Directors, and ensuring there is an annual evaluation of the performance of individual Directors and the Board as a whole. To help support the Governance Committee with those functions, we recommend that Hockey Canada retain the services of a reputable governance consultant who can serve as a resource person and advisor, as needed.
- Assign to the Governance Committee responsibility for matters relating to Board ethics and Director conduct.
- Formally dissolve the Program Standards Committee, which has been inactive for approximately four years, and repeal its terms of reference. Remove from the By-laws all references to the Program Standards Committee.
- Maintain the Female Hockey Policy Committee, which plays a critical role in advancing a clearly defined strategic plan objective and initiative.
- Have the Board, in consultation with the Chief Executive Officer (“CEO”), re-evaluate all Task Teams and their respective Terms of Reference and Charters to determine whether they exist for a specific and short-term function related to the strategic plan and the Board’s functions. If they do not, we recommend that Hockey Canada reconstruct these Task Teams into operational committees or other forms of working groups.
- Amend the By-laws to remove all language that provides for the Members’ right to approve the financial statements and to instead provide that the Directors shall be the ones responsible for approving them.
- Ensure minutes are taken and kept for all meetings of Members, Forums and Congresses. Hockey Canada should designate a resource person and/or secretary who can assist with minute taking and preparation of reports to Members, as needed.
- Conduct an in-depth review of the overall committee structure with a view to:
1) streamlining and maintaining core committees focused on meeting the needs of the new Board; 2) restructuring or disbanding Committees or Task Teams that have lost their

relevance or that are operationally focused and perform staff functions; and 3) developing a suite of new, refreshed and robust terms of reference that clearly define each committee's mandate and role, its key duties and functions, what it is responsible for achieving, and to whom it reports and is accountable.

- Amend the By-laws to remove details of any particular committee structure and instead include only general language that provides for the Board's authority to establish and disband committees and working groups as needed.
- Adopt a consistent form of report for Standing Committees and Task Teams that is clear, concise and impactful, and focused on providing information to Directors that is directly related to the strategic objectives of Hockey Canada and not on operational details. The form of report should be streamlined and organized in a way that allows all Standing Committees and Task Teams to report to the Board in a consistent way, with themes that are focused on strategic outcomes and effectiveness, and assist the Board in carrying out its functions and fiduciary oversight.

C. Term of Reference No. 3 (Chapter IX)

3. *Does the Board exercise an appropriate degree of oversight of senior management as compared to similar organizations?*

No. The roles of senior management and the Board are not clearly defined nor distinguished. This, at times, leads to the Board involving itself too deeply in day-to-day operations. Moreover, the reporting relationship, particularly regarding the transfer of key information, is informal and unstructured. The Board should follow the example of the Comparator Associations by putting in place policies to formalize and clarify these gaps, and should look to increase efficiency in its Board and Committee processes.

a. *Is the Board's current structure, as a volunteer Board with accountability for oversight of the organization, appropriate and in the best interest of hockey in Canada?*

Yes and No. Volunteer boards (rather than compensated boards) are standard practice in the not-for-profit sector. With more clearly defined roles and functions, increasingly efficient Board and committee processes, and an increase in the number of Directors sitting on the Board, Hockey Canada can reduce the time commitment required of its directors, and thus attract even more qualified and diverse candidates. This, in turn, will help Hockey Canada maintain and pursue its strategic vision.

b. *Is there a clearly defined process describing what items staff must report to the Board (policy vs. operations)*

No. Hockey Canada lacks policies and procedures governing what senior management is required to report to the Board, when, and in what format. The Board should work to create clear reporting

guidelines and policies to ensure the upward flow of information key to the Board's role, while filtering out information of an operational nature.

- c. Is the reporting structure to the Board (staff and committees) comprehensive enough to ensure the work of Hockey Canada is efficient, effective, and of the highest quality?*

No. See above under "b" respecting the need to develop a reporting policy.

- d. What role should the Board play in operations versus policy and strategy?*

The Board must choose its governance model, which will dictate the degree to which the Board involves itself in policy decisions vis-à-vis operational decisions. Strategic decisions are linked to the organization's strategic plan, and involve long term, big picture decisions about its growth and direction. On the other hand, operational decisions in the short and medium term are how the organization carries out its strategic decisions in the short and medium term.

The Board must choose a governance model that allows the corporation to implement its strategic plan. Though the governance model best suited for Hockey Canada may change over time, and the Board is responsible for determining what model works best for the organization, we recommend for the time being a model that falls somewhere between a management board and a policy board.

The Board must reassess its governance model regularly in order to ensure it remains the most effective to implement the corporation's strategic vision. In doing so, it must reinforce the roles of management and of the Board through communication, policies and training/orientation.

Recommendations and Conclusions:

- The Board must reassess its governance model with a view to selecting and implementing a model that will best help achieve the strategic vision of the organization. In our view, for the time being, Hockey Canada's Board will be best served by a model that falls somewhere between a policy board and a management board.
- Beyond developing a statement of roles and policies, the Board must actively manage and reinforce the line between itself and management through clear and consistent communication with senior management. This can also be done via comprehensive training and orientation. Indeed, following the last election cycle, the Hockey Canada Board received comprehensive orientation in which the role of the Board was distinguished from that of senior management. We recommend that Hockey Canada continue this practice, particularly as the Board re-evaluates its governance structure and its relationship with senior management.
- We do not recommend moving to a board that is compensated.
- Hockey Canada has advised that the Audit and Finance Committee currently provides quarterly reports to the Board on the required remittances and payments for which directors are personally liable that have been paid. Similarly, they advised that the Board receives a formal financial report at each Board meeting. We recommend that the Board evaluate its

needs from each area of senior management and implement a reporting practice commensurate with the quantity and type of information needed from each area.

- Hockey Canada advised that the Executive Assistant to the Board maintains a list of action items from Board meetings. Having a process in place to follow up on action items flagged in relation to senior management's reports is indeed essential. We recommend that the Board continue this practice, and that it adopt a practice or procedure of following up on items regularly (for example, noting action items from one Board meeting to the agenda for the following meeting).
- We understand that Hockey Canada has begun implementing key alignment tools for Board reporting and discussion, including an Initiative Tracker, a Calendar of Commitments, and the Hockey Canada Scorecard (to track the organization's progress across all areas of business, including organizational development, continued financial stability and Member engagement). We also understand that Hockey Canada has developed a number of templates for Board reporting, including the Initiative Charter (all initiatives must be chartered and approved), an approved PowerPoint Template, approved Task Team and Working Group templates, and an upcoming Word Template. We recommend that Hockey Canada continue to develop and use tools of these kinds to improve the flow of key communication to the Board in all areas. Further, we recommend that the Board formalize the use of these tools across the organization (e.g., through a policy) for increased consistency in Board reporting, which is intimately linked to transparent, effective and efficient decision making.
- We recommend that board training include the role of the board vis-à-vis the role of management, with a focus on the governance style adopted by the board and examples of what that means in practice.

D. Term of Reference No. 4 (Chapter X)

4. *Is the Senior Management Team properly structured and constituted to oversee the operations of Hockey Canada, from the grassroots level to the high-performance level?*

We believe that some changes are needed. We recommend that:

- The job descriptions be updated regularly to reflect the current management structure, and that each member of the Senior Leadership team be reminded of their roles and responsibilities on a regular basis.
- As it recruits the CEO, the Board identify the most important needs of the organization in order to engage a President/CEO who can successfully pursue those matters.
- The duties and responsibilities associated with the role of President/CEO be better defined.
- The By-laws be amended to remove the reference to the Chief Operating Officer and Chief Business Development Officer positions, and to modify the definition of President.

- Hockey Canada replace the Director Women & Girls position with a senior leadership position which would be responsible for women's hockey (Vice President Women & Girls).
- Hockey Canada divide the Senior Vice President Hockey Operations & Development position in order to have one position responsible for hockey development (Vice President Hockey Development) and one person responsible for national teams (Vice President Hockey Operations).

E. Term of Reference No. 5 (Chapter XI)

5. *In the area of governance, are there any other recommendations for actions that the Board of Directors and senior management could take to improve the confidence Canadians have in Hockey Canada?*

We recommend that:

- The current directors retire from office when their current terms expire at the December 17th annual meeting of Members and not put their name forward for re-election.
- Hockey Canada in the current election cycle and with the assistance of the nominating committee put in place a Board and Board Chair who agree to serve for only one year.
- The new directors and the Members should as soon as possible revise the Board structure and nominations process in line with my recommendations so that the new structure is in place for the 2023 election year.
- The Board should retain a top-notch board-recruiting firm. That firm should assist Hockey Canada with revising the skills matrix for directors and the Chair of the Board, revising the constitution and mode of appointment of the Nominating Committee and assist with populating both that committee and the Board. All of this should be in place for elections for the full Board and the Chair of the Board in 2023.
- The current system of weighted voting, like the current nominating process, has not produced the sort of Board that Hockey Canada needs. We believe that shifting to a system where each Member has the same number of votes, for the election of the Directors, coupled with the changes to the nominating process that we have recommended, will provide the most likely path to meaningful change. This will require the approval by both the Board and the Members at duly constituted meetings, and the filing of Articles of Amendment and revisions to the By-laws. We therefore recommend that the Board recommend to the Members this amendment to the voting structure and then make necessary changes to the governing documents if the amendments are approved.
- We recommend that Hockey Canada consider expanding the duties of the Senior Vice President Legal/General Counsel to include those of a Chief Risk Officer, who would also be responsible for identifying, considering and assisting in mitigating risks the organization, and the sport generally, are facing.

II. INTRODUCTION

Hockey Canada engaged me on August 3, 2022 to conduct an independent and impartial review of its governance.¹ This is my third and final report setting out my conclusions and recommendations.

As the Terms of Reference make clear, this review is about Hockey Canada’s governance, not its handling of any particular incident or issue. I have not evaluated the appropriateness of Hockey Canada’s settlement of individual claims or made specific suggestions about how to change what has been described as a toxic culture in the sport. This does not mean, however, that my review is not responsive to these matters. Good governance is the foundation of everything that the organization does. It ensures that the organization can handle claims appropriately and can lead the change for which so many have called in a transparent and accountable way. Adoption of my recommendations will ensure that Hockey Canada has this essential foundation firmly in place.

Good governance does more than ensure sound operating practices and appropriate capacity for change. It also sees to it that the organization establishes, maintains and enhances stakeholder and public confidence. “Confidence” – trust or belief in the powers, trustworthiness or reliability of the organization – relates directly to some key principles of good governance.

As we describe in Chapter VI, the *Canada Not-for-profit Corporations Act*, SC 2009, c 23 (“CNCA”) provides a framework for accountable and transparent governance. These elements are especially important for corporations in the not-for-profit sector because they must establish and maintain a high level of public confidence in order to succeed. It follows that accountability and transparency are not just important within the organization’s internal governance; they are also key elements of the organization’s relationship with stakeholders and the broader public.

Confidence takes time to build, but can be quickly lost. Hockey Canada’s recent experience is testament to that. Parliamentarians, Hockey Canada’s members (“**Members**”), sponsors, Participants (defined below) and many others have been vocal in expressing that they have lost confidence in the organization. At the root of this loss of confidence is concern about good governance and good governance will be at the root of rebuilding that confidence.

The 89-day timeline has been challenging, considering the extensive scale and depth of the review, but with much assistance and sustained effort I have met the October 31 deadline. I gratefully acknowledge the assistance that I have received from Hockey Canada and the many other groups and persons who have responded to my requests for information and assistance. The remarkable team at Borden Ladner Gervais LLP that has assisted me, led by Nadia Effendi and Victoria Prince and including Sylvie Lalonde, Melanie Laframboise, Paige Miltenburg, Sandrine Mainville, Mathieu Dompierre, Erica McLachlan, Julia Martschenko, Julie Peacock-Singh and Vincenza Carrera, has risen to the challenges posed by the scope of and timelines for this review. I also wish to thank Larrass Translations for their assistance in translating the report.

¹ My Terms of Reference have been made public and can be found here: <<https://www.hockeycanada.ca/en-ca/news/thomas-cromwell-to-lead-hockey-canada-governance-review-corp-2022>>.

To give some sense of the scope of this undertaking, the review team and I have:

- Interviewed more than 80 individuals resulting in over 60 meetings and many follow-up emails, including with current and former members of Hockey Canada’s Board of Directors and committees, current and former Hockey Canada employees, representatives of the Members of Hockey Canada, representatives of hockey associations and leagues, representatives of comparator National Sport Organizations as well as the Canadian Olympic Committee, the auditors for Hockey Canada, representatives of Sport Canada, experts and other individuals with knowledge of the history of Hockey Canada, hockey generally, and/or sports governance;²
- Made numerous requests for information to Hockey Canada resulting in over a thousand documents, including minutes of Hockey Canada Board of Directors and Committees meetings, officers meetings and Members meetings (such as annual and semi-annual general meetings and Member forum meetings) as well as financial statements and ledgers related to the National Equity Fund (“NEF”), all of which have been reviewed;
- Reviewed the governance, including relevant documents, of other comparator National Sport Organizations to determine best practices;
- Researched sport legal and policy framework and best practices regarding governance and reserve funds;
- Reviewed written submissions and documents provided by Hockey Canada Members, additional stakeholders and others; and
- Prepared the September 30 interim report, the October 10 memorandum to the Hockey Canada Board of Directors and this report.

The Executive Summary that precedes this Introduction sets out an overview of my conclusions and recommendations. Implementing the changes that I recommend will require Members and the Board of Directors to work together differently than they have in the past.

In particular, the recruitment of Directors for the Board of Hockey Canada (the “**Board**” or “**Board of Directors**”) needs to be fundamentally rethought and this will require the support and assistance of the membership. Several Members have expressed their loss of confidence in Hockey Canada’s leadership. But ultimately the Members control who are in these leadership positions. A new approach to filling these positions is urgently needed.

Hockey Canada has a complex mandate and a large budget. These factors alone mean that there is a high bar for the quality of leadership necessary to pursue the vision, mission and objects of the organization and to ensure healthy and productive relationships with stakeholders. In addition, there is the challenge of bringing about significant cultural change. Such change typically requires modification of traditional – perhaps ingrained – approaches and attitudes. This sort of change is difficult to bring about and often gives rise to strong resistance. Leadership of an organization with

² See Appendix A for the list of all individuals who were interviewed.

such a complex mandate in urgent need of significant cultural change is an enormously challenging task.

There is no doubt that Hockey Canada has been served by Directors who are passionate about hockey, deeply committed to the organization's mission, vision and values and who donate large – even unreasonable – amounts of time and energy to the organization's governance. However, the complexity of the organization's leadership challenges have outgrown the responsive capacity of the present board recruitment and election processes. In short, the current board nomination process has not provided Hockey Canada with the wide range, depth and diversity of experience, both professional and personal, that the board collectively requires to govern this complex organization and to lead significant cultural change.

During the review, stakeholders raised several issues and challenges they believe Hockey Canada, and the sport generally, were facing, which were outside the scope of this review and I was not able to consider. However, I wish to make a note of these issues so that Hockey Canada and its broader constituency may consider them as part of their future efforts to effect change. These include: the toxic culture of the sport and the requirements for broader culture change, the additional support required for women's hockey, the eligibility criteria for Hockey Canada Members, the support, or lack thereof, afforded to para hockey, the relationship between Hockey Canada and the Canadian Hockey League/Canadian Junior Hockey League and the challenges with respect to the "Residential Restriction Rule" as well as the Major Junior path (also referred to as the "Canadian Development Model") versus the NCAA path. While I have not, and could not, address these matters directly, I believe that the strengthening of the governance of Hockey Canada that I propose will provide the foundation on which these issues will be addressed.

Implementing my recommendations will require strong support and openness to change on the part of the membership, Participants and stakeholders. Hockey Canada alone will not be able to achieve all the changes required. Indeed, it is just one entity in the web of organizations and entities that have a role to play in hockey in this country. Furthermore, the average player, parent, coach, trainer, volunteer or official is more likely to come into direct contact with those organizations than Hockey Canada. Change will require support and implementation at all levels of hockey across the country. Hockey Canada has an important leadership role to play, but it cannot by itself bring about the change for which so many are calling.

It is also time for other entities and stakeholders to reflect on their own roles and responsibilities. Some who have been quick to announce their loss of confidence in Hockey Canada have been slow to acknowledge their own past contributions to its troubles. The underlying causes of the current crisis are not of recent origin. The Members have controlled who is on the Board. Sport Canada, as recently as June 2022, gave Hockey Canada a top rating for some aspects of governance (such as board structure, composition and development, dispute resolution, financial strategy and control and risk management) in its Report Card process. It is not my role to point fingers or assign responsibility. I will simply observe that many could have done more to address the issues sooner. It is now time for the whole hockey community, including all those under the Hockey Canada umbrella, its stakeholders and Sport Canada to work together to make our game the safe and inclusive sport that it ought to be. My hope is that the governance recommendations that I make in this review will provide Hockey Canada with the capacity to play its important role in making

the changes that are so urgently needed. But it will not be able to do this alone. All stakeholders will have to work together to bring these changes about.

Hockey Canada is at a crossroads. I believe that if it commits itself to the fundamental governance reform that I recommend, it will have a solid foundation upon which to rebuild the confidence of stakeholders and the public and be well-positioned to achieve its mission to “Lead, Develop and Promote Positive Hockey Experiences.”

Ottawa, Ontario

October 31, 2022

III. TABLE OF ABBREVIATIONS/GLOSSARY

Abbreviation	Complete word, phrase or definition
Athletics Canada	Athletics Canada Athlétisme Canada
Board or Board of Directors	Board of directors of Hockey Canada
CAHA	Canadian Amateur Hockey Association
Canada Basketball	Canada Basketball
Canada Soccer	The Canadian Soccer Association Incorporated L'Association canadienne de soccer incorporée
CBDO	Chief Business Development Officer
CEO	Chief Executive Officer
CFO	Chief Financial Officer
CHL	Canadian Hockey League
CNCA	<i>Canada Not-for-profit Corporations Act, SC 2009, c 23</i>
COC	Canadian Olympic Committee
COC Code	Canadian Sport Governance Code
Comparator Associations	Five National Sport Organizations promoting and regulating an amateur sport in Canada on a nationwide basis, notably Athletics Canada, Canada Basketball, Curling Canada, Canada Soccer and Tennis Canada
COO	Chief Operating Officer
CMO	Hockey Canada Chief Medical Officer
Co-operators	Co-operators General Insurance Company
Crawford	Crawford & Company
CSP	Canadian Sport Policy
Curling Canada	Canadian Curling Association
Director of Finance	Director, Financial Services

Abbreviation	Complete word, phrase or definition
Director Women & Girls	Director, Women & Girls Hockey
DSO	Director of Sanctions and Outcomes
ED HCF	Executive Director, Hockey Canada Foundation
External Candidate	An individual who is interested in being nominated for a position of elected Director by the Chair of the Nominating Committee
FHP Committee	Female Hockey Policy Committee
HEO	Hockey Eastern Ontario
HNO	Hockey Northwestern Ontario
IF	International Federation
IIHF	International Ice Hockey Federation
ITP	Independent Third Party
IRS Fund	Insurance Rate Stabilization Fund
Legacy Trust	Participants Legacy Trust Fund
Members	Provincial, regional or territorial associations/federations that manage and foster amateur hockey within their geographic regions and have the responsibility to represent their constituents. The 13 Members of Hockey Canada currently are: British Columbia Hockey, Hockey Alberta, Hockey Saskatchewan, Hockey Manitoba, Hockey Northwestern Ontario, Ontario Hockey Federation, Hockey Eastern Ontario, Hockey Québec, Hockey New Brunswick, Hockey Nova Scotia, Hockey Prince Edward Island, Hockey Newfoundland and Labrador, and Hockey North. These Members have certain rights and obligations under Hockey Canada's constituting documents
MHA	Minor Hockey Association
NEF	National Equity Fund
NSF	National Sport Federation
NSO	National Sport Organization

Abbreviation	Complete word, phrase or definition
NOCA	Northern Ontario Curling Association
OAS	Ontario Artistic Swimming
OHF	Ontario Hockey Federation
OSIC	Office of the Sport Integrity Commissioner
OTP	Own the Podium
OWHA	Ontario Women's Hockey Association
Participant	All players, coaches, referees, assistant coaches, trainers, managers and volunteers of Hockey Canada and its Members, including local associations and teams
PASA	<i>Physical Activity and Sport Act, RSC 2003 c. 2</i>
PCH	Federal Department of Canadian Heritage
Program	National Equity Fund Insurance Program
P/TSO	Provincial/Territorial Sport Organization
RCAAA	Registered Canadian Amateur Athletic Association
SDRCC	Sport Dispute Resolution Centre of Canada
SFAF	Sport Funding and Accountability Framework
SFC	Shooting Federation of Canada
SSP	Sport Support Program
SVP Operations & Development	Senior Vice President Hockey Operations & Development
SVP Operations	Senior Vice President Strategy, Operations & Brand
Task Team	Task Teams are struck to undertake a specific task or project
Tennis Canada	The Canadian Tennis Association L'Association canadienne de tennis
U7	Under seven years of age
U21	Under 21 years of age

Abbreviation	Complete word, phrase or definition
UCCMS	<i>Universal Code of Conduct to Prevent and Address Maltreatment in Sport</i>
VP BD&P	Vice President Business Development & Partnerships
VP Events & Properties	Vice President Events & Properties
VP Member Engagement	Vice President Member Engagement
VP PC&I	Vice President, People Culture & Inclusion
VP Sport Safety	Vice President of Sport Safety
WJC	World Junior Championship

IV. HOCKEY CANADA BACKGROUND

A. Introduction

Hockey Canada (formerly, Canadian Hockey Association and Canadian Amateur Hockey Association) is a not-for-profit corporation continued under and governed by the *Canada Not-for-Profit Corporations Act*, SC 2009, c 23 (“CNCA”). Hockey Canada is also a Registered Canadian Amateur Athletic Association (“RCAAA”), a designation under the *Income Tax Act*, RSC 1985, c 1 (5th Supp).³

Hockey Canada is the national, self-governing body for amateur hockey, including men, women, and para hockey, across the country.⁴ The not-for-profit corporation “oversees the management of programs in Canada from entry-level to high-performance teams and competitions, including world championships and the Olympic Winter Games.”⁵ Hockey Canada also represents Canada internationally within the International Ice Hockey Federation (“IIHF”).⁶

Not-for-profit corporations like Hockey Canada have members, directors and officers. The various roles of these persons is discussed in more detail in Chapter VI. Hockey Canada has only one class of Members.⁷ The Members of Hockey Canada are the different provincial, regional or territorial associations/federations who are “empowered to manage and foster amateur hockey within their geographic region and have the responsibility to represent their constituents.”⁸ The Members of Hockey Canada are often referred to as “branches”. They are the following: BC Hockey, Hockey Alberta, Hockey Saskatchewan, Hockey Manitoba, Hockey Northwestern Ontario, Ontario Hockey Federation, Hockey Eastern Ontario, Hockey Québec, Hockey New Brunswick, Hockey PEI, Hockey Nova Scotia, Hockey Newfoundland and Labrador, and Hockey North.

Hockey Canada’s Board of Directors is composed of nine Directors, including the Chair of the Board, who are elected by the Members and up to one Director appointed by the elected Directors. Directors serve without remuneration.⁹

³ Hockey Canada’s status as an RCAAA will be further explained in Chapter V.

⁴ “Hockey Canada 2020-21 Annual Report” (last visited 21 August 2022) at 5, online (pdf): *Hockey Canada* <<https://cdn.hockeycanada.ca/hockey-canada/Corporate/About/Downloads/2020-21-annual-report-e.pdf>>; “Hockey Canada By-Laws, Regulations and History” (May 2022), s 2.2, online (pdf): *Hockey Canada* <<https://cdn.hockeycanada.ca/hockey-canada/Corporate/About/Downloads/2022-23-bylaws-e.pdf>>.

⁵ “Hockey Canada 2020-21 Annual Report” (last visited 21 August 2022) at 5, online (pdf): *Hockey Canada* <<https://cdn.hockeycanada.ca/hockey-canada/Corporate/About/Downloads/2020-21-annual-report-e.pdf>>.

⁶ “Hockey Canada 2020-21 Annual Report” (last visited 21 August 2022) at 5, online (pdf): *Hockey Canada* <<https://cdn.hockeycanada.ca/hockey-canada/Corporate/About/Downloads/2020-21-annual-report-e.pdf>>; “Hockey Canada By-Laws, Regulations and History” (May 2022), s 2.3, online (pdf): *Hockey Canada* <<https://cdn.hockeycanada.ca/hockey-canada/Corporate/About/Downloads/2022-23-bylaws-e.pdf>>.

⁷ “Hockey Canada By-Laws, Regulations and History” (May 2022), s 8.1, online (pdf): *Hockey Canada* <<https://cdn.hockeycanada.ca/hockey-canada/Corporate/About/Downloads/2022-23-bylaws-e.pdf>>.

⁸ “Find contact information for your provincial or regional Member,” online: *Hockey Canada* <<https://www.hockeycanada.ca/en-ca/corporate/contact/branches>>.

⁹ “Hockey Canada By-Laws, Regulations and History” (May 2022), s 39.1, online (pdf): *Hockey Canada* <<https://cdn.hockeycanada.ca/hockey-canada/Corporate/About/Downloads/2022-23-bylaws-e.pdf>>.

Finally, Hockey Canada’s Corporate Officers include the Chief Executive Officer (“CEO”), President and Chief Operating Officer (“COO”), Chief Financial Officer (“CFO”), and Chief Business Development Officer (“CBDO”). The by-laws also permit the CEO, with the approval of the Board, to appoint other Officers.¹⁰

B. History

One can get a general sense of the evolution of Hockey Canada’s organization by looking at some key dates.

1914	On December 4, 1914, the Canadian Amateur Hockey Association (“CAHA”) was “formed to oversee the amateur [hockey] game at a national level.” ¹¹ From 1914 through to 1997, local hockey associations became Members of CAHA. ¹²
1930	The IIHF began sponsoring annual international hockey tournaments. ¹³
1950s	Canada performed poorly at the 1954 World Hockey Championships and in the 1956 Olympics, with rising sentiment that Canada had been beaten at its “own game” by the Soviet Union. ¹⁴ Prior to the 1956 Olympic games, Canada had usually been the world champion in Hockey. ¹⁵
1960	Canada suffered another disappointing loss at the 1960 Olympics in Squaw Valley.
1961	Parliament passed Bill C-131, an <i>Act to Encourage Fitness and Amateur Sport</i> , to “encourage, promote and develop fitness and amateur sport in Canada”, paving the way for the federal government to enter into cost-sharing arrangements with the provinces and territories and to provide funding to volunteer-driven national sports organizations. ¹⁶

¹⁰ “Hockey Canada By-Laws, Regulations and History” (May 2022), s 40.11, online (pdf): *Hockey Canada* <<https://cdn.hockeycanada.ca/hockey-canada/Corporate/About/Downloads/2022-23-bylaws-e.pdf>>.

¹¹ “Hockey Canada By-Laws, Regulations and History” (May 2022) at 177, online (pdf): *Hockey Canada* <<https://cdn.hockeycanada.ca/hockey-canada/Corporate/About/Downloads/2022-23-bylaws-e.pdf>>; “Learn about the history of Hockey Canada” (last visited 21 August 2022), online: *Hockey Canada* <www.hockeycanada.ca/en-ca/corporate/history>.

¹² “Hockey Canada By-Laws, Regulations and History” (May 2022) at 180, online (pdf): *Hockey Canada* <<https://cdn.hockeycanada.ca/hockey-canada/Corporate/About/Downloads/2022-23-bylaws-e.pdf>>.

¹³ House of Commons, Task Force on Sports for Canadians, *Report of the task force on sports for Canadians* (1969) at 29.

¹⁴ House of Commons, Subcommittee on the Study of Sport in Canada of the Standing Committee on Canadian Heritage, *Sport in Canada: Leadership, Partnership and Accountability; Everybody’s Business*, 36th Parl, 1st Sess (December 1998) at Part II (Chair: Dennis Mills).

¹⁵ House of Commons, Task Force on Sports for Canadians, *Report of the task force on sports for Canadians* (1969) at 29.

¹⁶ Lucie Thibault & Jean Harvey, *Sport Policy in Canada* (Ottawa: University of Ottawa Press, 2013) at 13; House of Commons, Subcommittee on the Study of Sport in Canada of the Standing Committee on Canadian Heritage, *Sport in Canada: Leadership, Partnership and Accountability; Everybody’s Business*, 36th Parl, 1st Sess (December 1998) at Part II (Chair: Dennis Mills).

	Under the legislation, the Minister of National Health and Welfare was given the power to make grants to any agency, organization or institution carrying on activities in the field of fitness or amateur sport. ¹⁷ The Department of National Health and Welfare carried out these responsibilities through the new Fitness and Amateur Sport Program. ¹⁸
1961-1968	<p>Pride in Canadian sport at the international level was low. Up until then, in the eyes of the IIHF, Canada was merely one member with two delegates, with the weight of membership strength in Europe.¹⁹ There was increasing sentiment that Canada needed a strong, national team to represent the nation on the world stage.²⁰</p> <p>Financing a national team remained an obstacle. As a solution, the Hockey Foundation was created to raise funds through corporate donations, obtaining government grants via the CAHA, and from the revenues brought in by games in which the National Team took part.²¹</p>
1969	<p>The <i>Report of the Task Force on Sports in Canada</i> (the “Task Force Report”) was tabled in the House of Commons, setting the course for the government’s emerging role in sport policy.</p> <p>The Task Force Report recommended the creation of a non-profit corporation to be known as Hockey Canada, for the purpose of managing and financing the National hockey teams of Canada, and thus to organize and develop Canada’s representation in international competition.²²</p> <p>The Task Force Report also recommended the creation of a non-profit corporation to be known as Sport Canada, to provide “a focus for the administration, support and growth of sport in Canada”.²³</p>

¹⁷ Library of Parliament, Legal and Social Affairs Division, *Sport Canada and the Public Policy Framework for Participation and Excellence in Sport* (23 January 2020) at 1, online: *Parliament of Canada* <https://lop.parl.ca/sites/PublicWebsite/default/en_CA/ResearchPublications/202012E>.

¹⁸ Library of Parliament, Legal and Social Affairs Division, *Sport Canada and the Public Policy Framework for Participation and Excellence in Sport* (23 January 2020) at 1, online: *Parliament of Canada* <https://lop.parl.ca/sites/PublicWebsite/default/en_CA/ResearchPublications/202012E>.

¹⁹ House of Commons, Task Force on Sports for Canadians, *Report of the task force on sports for Canadians* (1969) at 29.

²⁰ House of Commons, Task Force on Sports for Canadians, *Report of the task force on sports for Canadians* (1969) at 30.

²¹ House of Commons, Task Force on Sports for Canadians, *Report of the task force on sports for Canadians* (1969) at 30.

²² House of Commons, Task Force on Sports for Canadians, *Report of the task force on sports for Canadians* (1969) at 30; John Barnes, *Sports and The Law in Canada*, 2nd ed (Toronto and Vancouver: Butterworths Canada Ltd, 1988) at 34.

²³ House of Commons, Task Force on Sports for Canadians, *Report of the task force on sports for Canadians* (1969) at 75.

1971	The Federal Government created two new directorates for its Fitness and Amateur Sport Program – Recreation Canada and Sport Canada – the latter tasked with developing competitive sport. ²⁴
1981	On May 1, 1981, an application to incorporate under the name Canadian Amateur Hockey Association was made under part 2 of the <i>Canada Corporations Act</i> . Letters Patent were accordingly issued. ²⁵
1995	On February 1, 1995, Supplementary Letters Patent were issued to the CAHA. This changed the organization’s name to Canadian Hockey Association. ²⁶
1998	In 1998, the CAHA and Hockey Canada merged into one organization, “bringing every aspect of Canadian hockey under one umbrella.” ²⁷
2014	On June 10, 2014 and further to the coming into force of the <i>Canada Not-for-profit Corporations Act</i> , Hockey Canada was continued under that Act, by way of Articles of Continuance. ²⁸

C. Mission, vision and values

Hockey Canada’s mission statement is to: “Lead, Develop and Promote Positive Hockey Experiences.”²⁹ Its vision is to be “World Sport Leaders”.³⁰ Hockey Canada’s values include “making hockey more than scoring goals and winning games.”³¹ More specifically, Hockey Canada states that it believes in:

- A positive hockey experience for all participants, in a safe, sportsmanlike environment;
- The development of life skills which will benefit participants throughout their lives;
- The values of fair play and sportsmanship, including the development of respect for all people by all participants;

²⁴ Library of Parliament, Legal and Social Affairs Division, *Sport Canada and the Public Policy Framework for Participation and Excellence in Sport* (23 January 2020) at 1, online: *Parliament of Canada* <https://lop.parl.ca/sites/PublicWebsite/default/en_CA/ResearchPublications/202012E>.

²⁵ Consumer and Corporate Affairs Canada, “Canadian Amateur Hockey Association Letters Patent” (1 May 1981).

²⁶ Industry Canada, “Canadian Amateur Hockey Association Supplementary Letters Patent” (1 February 1995).

²⁷ “Learn about the history of Hockey Canada” (last visited 21 August 2022), online: *Hockey Canada* <www.hockeycanada.ca/en-ca/corporate/history>.

²⁸ Industry Canada, “Hockey Canada Association Articles of Continuance” (10 June 2014).

²⁹ “Mandate & Mission – Who is Hockey Canada?” (last visited 21 August 2022), online: *Hockey Canada* <www.hockeycanada.ca/en-ca/corporate/about/mandate-mission>.

³⁰ “Mandate & Mission – Who is Hockey Canada?” (last visited 21 August 2022), online: *Hockey Canada* <www.hockeycanada.ca/en-ca/corporate/about/mandate-mission>.

³¹ “Hockey Canada 2020-21 Annual Report” (last visited 21 August 2022) at 8, online (pdf): *Hockey Canada* <<https://cdn.hockeycanada.ca/hockey-canada/Corporate/About/Downloads/2020-21-annual-report-e.pdf>>.

- Hockey opportunities for all people regardless of age, gender, colour, race, ethnic origin, religion, sexual orientation, or socio-economic status and in both official languages;
- The importance for participants to develop dignity and self-esteem;
- Instilling the values of honesty and integrity in participants at all times;
- The promotion of teamwork, and the belief that what groups and society can achieve as a whole is greater than that which can be achieved by individuals;
- The country of Canada, its tradition in the game of hockey, and the proud and successful representation of this tradition around the world;
- The value of hard work, determination, the pursuit of excellence and success in all activities; and
- The benefits of personal and physical well-being.³²

D. Purposes

Hockey Canada's purposes have remained consistent throughout its history. Although Hockey Canada's current purposes are formulated differently than the objects set out in the 1981 Letters Patent, the substance of the purposes has not changed significantly. As listed in Hockey Canada's 2014 Articles of Continuance, and its 2022-2023 By-Laws, the purposes of Hockey Canada are to:

- (a) Regulate amateur hockey in Canada and establish uniform playing rules;
- (b) Promote the sport of amateur hockey in Canada, on a nationwide basis;
- (c) Oversee a structure of Branches [a term often used to describe Hockey Canada's Members], Clubs, Associations, Leagues and Teams involved in amateur hockey;
- (d) Deliver a training program that brings promising athletes from the grassroots level to national and international levels through various qualifying competitions;
- (e) Manage national teams to participate in international competitions;
- (f) Stage and sanction regional, national, and international competitions and sanction local and Member competitions;
- (g) Act as Canadian representative on the IIHF;
- (h) Provide a training and certification program for coaches and officials, and provide training programs for other hockey development programs; and

³² "Mandate & Mission – Who is Hockey Canada?" (last visited 21 August 2022), online: *Hockey Canada* <www.hockeycanada.ca/en-ca/corporate/about/mandate-mission>.

- (i) Carry out fundraising activities and redistribute funds for local Clubs and Member organizations.³³

E. Main operations and business

Hockey Canada’s operations essentially deal with all aspects of “organized hockey”.³⁴ Based on Hockey Canada’s mission, vision, values and purposes, its current by-laws, and its recent budget and annual reports, we understand Hockey Canada’s main operations and business lines to be composed of four categories: regulating amateur hockey in Canada, growing and developing the game, representing Canada on the world stage, and business development.

i. Regulating amateur hockey in Canada

Hockey Canada oversees hockey in Canada at all levels: it oversees a complex vertical and horizontal structure of Members, clubs, associations, leagues and teams, all involved in amateur hockey across the country.

Hockey Canada’s role is to establish uniform playing rules and set standards for its Members and all stakeholders under its umbrella. Hockey Canada accomplishes this through the requirement in its by-laws that its Members must adhere to and observe Hockey Canada’s by-laws, regulations, playing rules, policies and related decisions. Failure to do so could result in termination of membership.³⁵ Hockey Canada also requires its Members to conduct and control hockey within their own geographical region in the same manner.³⁶ In addition, all registered Participants of Hockey Canada or any of its Members, which include but are not limited to any players, coaches, trainers, clubs, teams, associations, leagues and parents, must also adhere to and observe the playing rules and standards set by Hockey Canada and Hockey Canada’s Members.³⁷

As discussed below, while Hockey Canada’s By-laws clearly lay out its powers to regulate and enforce principles, standards and rules, some representatives of the Board and membership to whom we have spoken have indicated that enforcement often does not occur and that this is due, in part, to the practical difficulties associated with enforcement. It has been stated in some interviews that the Directors do not want to exert undue control, in part because it is the Members who elect them and also because the sanctions for non-compliance are limited and severe (e.g. suspension and expulsion). Some Members have expressed the view that Hockey Canada is just one layer in a complex structure, where each Member and association is its own entity, which makes it difficult for Hockey Canada to have a high degree of influence and control at every level.

³³ Industry Canada, “Hockey Canada Association Articles of Continuance” (10 June 2014); “Hockey Canada By-Laws, Regulations and History” (May 2022), s 4.1, online (pdf): *Hockey Canada* <<https://cdn.hockeycanada.ca/hockey-canada/Corporate/About/Downloads/2022-23-bylaws-e.pdf>>.

³⁴ “Hockey Canada 2020-21 Annual Report” (last visited 21 August 2022) at 3, online (pdf): *Hockey Canada* <<https://cdn.hockeycanada.ca/hockey-canada/Corporate/About/Downloads/2020-21-annual-report-e.pdf>>.

³⁵ “Hockey Canada By-Laws, Regulations and History” (May 2022), ss 7.1, 9.2, 18.1, online (pdf): *Hockey Canada* <<https://cdn.hockeycanada.ca/hockey-canada/Corporate/About/Downloads/2022-23-bylaws-e.pdf>>.

³⁶ “Hockey Canada By-Laws, Regulations and History” (May 2022), s 11.1, online (pdf): *Hockey Canada* <<https://cdn.hockeycanada.ca/hockey-canada/Corporate/About/Downloads/2022-23-bylaws-e.pdf>>.

³⁷ “Hockey Canada By-Laws, Regulations and History” (May 2022), ss 14.1, 14.2, online (pdf): *Hockey Canada* <<https://cdn.hockeycanada.ca/hockey-canada/Corporate/About/Downloads/2022-23-bylaws-e.pdf>>.

These issues are creating inconsistencies across the country in the way the game of hockey is delivered.

ii. Growing and developing the game

Hockey Canada coordinates a vast array of development programs, aimed at recruiting and retaining new players, shaping the next generation, and developing talent.

Hockey Canada offers programs, camps and resources in relation to kids and youth hockey, female hockey, men and women's para hockey,³⁸ coaching, and officiating. It also offers mentorship, school and safety programs, as well as adult recreational hockey. More specifically, Hockey Canada coordinates players' skills camps, player development and regional centres, the National Coach Certification Program, the Hockey Canada Officiating Program, the Hockey Canada Safety Program, Hockey University, Dreams Come True, Esso Fun Days and The First Shift, which all "serve as a catalyst for growing the game."³⁹

In addition, Hockey Canada organizes domestic championships, including the Allan Cup, the Centennial Cup, the Esso Cup, the Telus Cup and the National Women's Under-18 Championship, as well as high-performance championships and events, such as the World Junior A Challenge, the Para Hockey Cup, the Rivalry Series and the World Under-17 Hockey Challenge. When awarded by the IIHF, Hockey Canada also delivers the IIHF World Junior Championship, the IIHF Women's World Championship and the IIHF U18 Women's World Championship.

From what we have observed, some Members' understanding of how the roles under the Hockey Canada umbrella are divided appears to differ from its legal mandate. According to them, Hockey Canada's main focus and mandate remain on high performance athletes, while the Members focus on developing young players with the aim of the player reaching the next level and to instill a lifelong love of the game. We also heard from many of the individuals we interviewed that Hockey Canada needs to get more involved with grassroots hockey. There was also a recognition that Hockey Canada's focus on high-performance responds to external constraints (such as government funding requirements) and that high performance hockey is what funds grassroots hockey.

iii. Representing Canada on the world stage

Hockey Canada is responsible for Canada's national teams, competing at international levels. Hockey Canada organizes international competitions held in Canada and serves as the Canadian representative in the IIHF.

³⁸ Hockey Canada indicated that support is provided to the Women's para hockey in the form of a grant from the Hockey Canada Foundation, though we understand that some stakeholders have expressed concerns over the program: Karissa Donkin, "Equity on ice" (25 October 2022), online: [CBC <https://www.cbc.ca/newsinteractives/features/equity-on-ice>](https://www.cbc.ca/newsinteractives/features/equity-on-ice).

³⁹ "Hockey Canada 2020-21 Annual Report" (last visited 21 August 2022) at 21, online (pdf): [Hockey Canada <https://cdn.hockeycanada.ca/hockey-canada/Corporate/About/Downloads/2020-21-annual-report-e.pdf>](https://cdn.hockeycanada.ca/hockey-canada/Corporate/About/Downloads/2020-21-annual-report-e.pdf).

iv. *Business development*

Through sponsorship and licensing partnerships, Hockey Canada promotes the sport of hockey in Canada and raises a significant amount of money to finance Hockey Canada's operations. Some corporate brands sponsor Hockey Canada to gain the right to use some of Hockey Canada's intellectual property. Through these sponsorship agreements, Hockey Canada receives a financial investment, while the corporate brands receive the benefit of having their product linked to hockey, a sport to which many Canadians have an emotional connection. In addition, Hockey Canada monetizes its intellectual property through licensing agreements. Some corporate brands receive the right to use Hockey Canada's intellectual property on their products, sell these products to consumers, and then pay royalties to Hockey Canada. For example, a company produces replicas of official team jerseys, and other companies use Hockey Canada's logo on mugs, hockey pucks, hockey nets, and so on.

Hockey Canada also raises money through its organization of various events and competitions, as well as through the sale of merchandise.

Hockey Canada's marketing efforts are also focused on recruitment and retention of players: campaigns are created with the aim of bringing kids into the game of hockey, as well as inspiring young players by creating the feeling that they are "part of something bigger."⁴⁰

Hockey Canada operates hand-in-hand with the Hockey Canada Foundation, a registered charity, "to provide secure, sustainable, long-term funding to support the future development of the game."⁴¹ This review will not address the role or operation of the Hockey Canada Foundation.

For the year ending on June 30, 2021, Hockey Canada had total revenues of \$61.902 million dollars, with operating revenues of \$33.669 million. These operating revenues derive mainly from marketing (\$20.138 million), government grants (\$5.653 million) and revenue from national events and camps and national teams (\$3.4 million). Hockey Canada receives \$23.80 per player from its Members: \$3 is a registration fee which is allocated exclusively to Hockey Canada's general operations (programming, facilities and staff) and \$20.80 is an insurance fee which we discuss further below. As a result of the pandemic, the registration fee was reduced to \$1.50 during the 2020-2021 season and to \$0 during the 2021-2022 season.

As a result of recent events, several of Hockey Canada's sponsors and corporate partners – including Bauer, Nike, Canadian Tire, Tim Hortons, Scotiabank, Telus, Chevrolet Canada, Sobeys and Esso – have paused or reduced sponsorship funding, with some completely severing ties with Hockey Canada.⁴²

⁴⁰Interview of Dana Gladstone (7 September 2022); Interview of Brian Cairo (30 August 2022).

⁴¹ "Hockey Canada 2020-21 Annual Report" (last visited 21 August 2022) at 26, online (pdf): *Hockey Canada* <<https://cdn.hockeycanada.ca/hockey-canada/Corporate/About/Downloads/2020-21-annual-report-e.pdf>>.

⁴² Graeme Bruce, "Tracking the fallout of the Hockey Canada scandal" (7 October 2022), online: *CBC* <<https://www.cbc.ca/news/canada/hockey-canada-leadership-change-pressure-1.6608506>>; "Canadian Tire ends Hockey Canada partnership; PM Justin Trudeau suggests starting a new federation" (6 October 2022), online: *The Athletic* <<https://theathletic.com/3664547/2022/10/06/canadian-tire-hockey-canada-sponsorship/>>; "Which corporate sponsors have paused or pulled their support for Hockey Canada?" (updated 12 October 2022), online: *CTV News*

Hockey Canada operates a number of segregated funds, including the National Equity Fund, the Health and Benefit Trust and the various Pillar funds. The total value of these funds as of June 30, 2021 was \$119.120 million. These are discussed in more detail below.

Hockey Canada has offices in Calgary, Toronto and Ottawa and employs approximately 120 full-time equivalent employees.

v. *Sources of funding, revenue and expenses*

As the NSO for the sport of hockey in Canada, Hockey Canada receives funding from a variety of sources. From 2017 to 2021, the most significant sources of revenue were the following:

- Marketing revenues, including sponsorship revenue, video content sales, championship photo sales, broadcast rights, licensing rights, merchandising revenue and hangtag sales represented 21% to 36% of annual revenues;
- When Canada hosted international hockey events (ex: the Women’s World Championships, the revenues from hosting these international events generally represented 3% to 37% of annual revenues);⁴³
- Insurance premiums for Participants collected from Members (that is, \$20.80 per Participant) represented 10 to 23% of annual revenues, although these are largely “flow through” revenue because the money collected is used mainly to pay annual premiums for the insurance coverage;⁴⁴ and
- Funding revenues include federal government grants from Sport Canada and Own the Podium, as well as other non-governmental funding agencies. In addition, these revenues are comprised of grants from the Hockey Canada Foundation. Altogether, funding revenue represented between 7 to 12% of annual revenues.

<https://www.ctvnews.ca/sports/which-corporate-sponsors-have-paused-or-pulled-their-support-for-hockey-canada-1.6098822>>; “Nike suspending sponsorship relationship with Hockey Canada” (7 October 2022), online: *Sportsnet* <<https://www.sportsnet.ca/hockey/article/nike-suspending-sponsorship-relationship-with-hockey-canada/>>; “A list of the Hockey Canada sponsors pulling their support” (updated 11 October 2022), online: *The Globe and Mail* <<https://www.theglobeandmail.com/canada/article-hockey-canada-sponsors/>>; Bianca Bharti, “Canadian Tire permanently cuts ties with Hockey Canada over sexual assault allegations,” (6 October 2022), online: *Financial Post* <<https://financialpost.com/news/retail-marketing/canadian-tire-cuts-ties-hockey-canada>>.

⁴³ In 2020, the percentage was only 3%.

⁴⁴ In the past, the amounts collected from Members for insurance premiums were greater than the actual premiums paid annually. This was done to build a buffer against potential rate increases. Over the last 5 years, the annual premiums have increased significantly, even surpassing the annual levies collected from Members. Thus, while these premium levies from Members represented up to 24% of revenues from 2017 to 2021, they largely consisted of flow-through revenues, leaving Hockey Canada to subsidize the cost of insurance for its Members.

For the same period of 2017 to 2021, the most significant categories of expenses for the organization were the following:

- Administration, comprised primarily of salaries, benefits and human resources related costs, represented 23% to 39% of annual expenses;
- Hosting international events and tournaments represented 5% to 29% of annual expenses;
- National Teams (formerly represented in reports/financial statements as “High Performance”), which included the cost of managing and transporting the various national hockey teams to international tournaments, represented 11% to 27% of annual expenses; and
- Insurance premiums paid to Hockey Canada’s insurer represented 9% to 17% of annual expenses, being the tail end of “flow through” revenue used mainly to pay annual insurance premiums for the insurance coverage.

As the figures above show, certain sources that generated a significant amount of revenue for Hockey Canada had correspondingly significant levels of expenditures. Taking this into account, the main contributors for 2017 to 2021 were marketing (21 to 36% of gross annual revenues⁴⁵), levies for insurance premiums*⁴⁶ (10% to 23% of gross annual revenues), investment income (4% to 18% of gross annual revenues), funding revenue (7% to 12% of gross annual revenues). In 2017 and 2019, international event hosting brought in significant net revenues (30% and 37% of gross annual revenues, respectively).

vi. Member funding

The funding received by Members generally comes from the following sources: Hockey Canada, provincial government support grants⁴⁷, registration/assessment fees, sponsorships and annual distributions from the CAHA Participants Legacy Trust (“**Legacy Trust**” – described later in this report).

A large portion of Members’ funding comes from registration and assessment fees (upwards of 70%) and development programming (e.g., player camps, coaching clinics, high performance camps), while Hockey Canada revenue, provincial government funding and distributions from the Legacy Trust generally make up less than a quarter of their annual funding combined. Nevertheless, smaller Members have indicated that Hockey Canada revenue can make up a significant part of their annual operations budgets (similar to the Legacy Trust Distributions for certain Members discussed below). Many of these smaller Members indicate that Hockey Canada

⁴⁵ It was impossible to indicate what proportion of net revenues these line items represented, as Hockey Canada’s financial statements featured net operating losses in one or more year examined.

⁴⁶ In 2021, the cost of insurance premiums exceeded the amounts collected from Member, resulting in a net loss.

⁴⁷ According to Members, generally this funding comes with conditions. For example, provincial governments might require that Members provide them with minutes from annual general meetings, a copy of the most recent By-laws, a copy of the audited financial statements, their corporate structure, and proof that certain initiatives/policies be put in place).

revenue goes to fund grassroots hockey and development programs. Members receive funding from Hockey Canada in two ways. This funding does not come with conditions.

First, through its Branch Support Pillar Fund, Hockey Canada distributes to each Member an equal share of the realized income from the investments of this Fund, on an annual basis. This first category of funding is strategic. However, as the distributions will vary depending on the earnings generated from the Fund each year, Hockey Canada advises Members not to account for this distribution in its operations moving forward. For example, the total Branch Support Pillar Fund payments reached \$1,001,505 (or \$77,038.87 for each Member) in 2017-2018, and \$1,428,578 in 2020-2021 (or \$109,890.60 for each Member). However, these distributions only reached \$485,579 in 2018-2019 and \$618,019 in 2019-2020, or \$37,352.25 and \$47,539.94 per Member, respectively. Most Members have advised that the average annual distributions fall within \$50,000 to \$100,000.

Second, Members receive from Hockey Canada shares from the proceeds of events hosted in Canada (such as the Women's World Championship and the World Junior Championship ("WJC")). The revenues generated from these are split among the IIHF, the Canadian Hockey League ("CHL") (whose players participate), Hockey Canada, and Members. The Member hosting the event – i.e., the Member governing the geographic region where the event takes place – will receive a larger share of the event revenues, while all other Members receive an equal share. For certain Members, funding received for hosted events represent a significant portion of their annual funding. For example, the 2019 WJC generated \$17,725,571 in profit. Both the IIHF and participating national teams earned 15% shares of the revenues over \$15,000,000, such that the IIHF received \$408,836, and \$408,386 was split between the participating national teams. The remaining \$16,907,900 was split as follows. Approximately \$4,200,000 was moved to Hockey Canada's International Pillar Fund (to pay required annual rights fees to the IIHF, which are due even in non-hosting years), leaving \$12,707,900 to be split among Hockey Canada (50% – \$6,353,950), the CHL (35% – 4,447,765) and the Members (15% – \$1,906,185). From the Members' 15% share, \$200,000 was provided to the Member hosting the event, leaving \$1,706,185 to be split among all Members. The Host member received 25% of that amount (\$426,546, or \$626,546 total) (in addition to the \$200,000 noted above) and the rest was divided evenly among the remaining Members (\$106,637 for each). From each of the Member's share, each Member deducted \$17,751.48 to transfer to the Technology Pillar Fund (\$230,769 in total) and \$33,502.27 to help fund the Member Engagement Department (\$435,530 in total). Thus, the Host Member received \$575,292.48, while the other Members each received \$55,382.81. Hockey Canada advised that the share percentage of the WJC revenues generally remains the same from year to year.

Members also receive a number of indirect financial benefits subsidized or paid for by Hockey Canada. For example, Hockey Canada organizes coaching certification courses to help train and certify coaching staff for Members. Hockey Canada also hosts Spring Programming, which covers the cost of organizing and running various national hockey championships in which Members send teams to play. In the 2022-2023 budget, Hockey Canada allocated approximately \$4,547,000 for Member Support, including nearly \$1,486,000 for events such as the Telus, Centennial, Alan and Esso Cups, \$2,322,000 for Member engagement activities such as coach training and certification, officiating, recruitment, and the Skills Academy. While Participants from various Members play in these tournaments and attend these events, Members themselves do not fund them.

Occasionally, Hockey Canada will also provide Members with financial support related to various ongoing initiatives. For example, Hockey Canada provided \$193,200 in 2019-2020 to Members who were “early adopters” of the half-visor/facemask initiative for players. Similarly, Hockey Canada provided grants totalling \$540,000 in each of 2016-2017, 2017-2018 and 2018-2019 to Members for the U7 Cross-Ice/Initiation Program.

Despite Hockey Canada’s position that it advises Members not to budget for Branch Support Pillar Fund payments to cover operations, many Members advised that they budget all funds (or revenue) from Hockey Canada to operations, with some adding that any such unused funds are rolled into a restricted use fund to offer growth and development programs at the Member-level. Certain larger Members advised that funds received from Hockey Canada are internally restricted to strategic initiatives, and as such do not fund operations. Members confirmed that the funding they receive from Hockey Canada is not tied to any particular conditions, and that Members have no influence as to the amounts they will receive in a given year (though, Members have, at times, agreed to use the funds from Hockey Canada for specific projects or initiatives). Certain Members indicated during our interviews that they would welcome conditions tied to funding, for example, requiring the implementation of certain safe sport initiatives. Still, they acknowledged that certain members might have more difficulty meeting the conditions of funding, depending on the specific conditions required in a given year.

Finally, an additional source of funding for Members is the annual distributions from the income earned on the principal balance of the Legacy Trust. As we describe below in Chapter VIII, the Legacy Trust was settled in 1999 for the benefit of Members who had contributed to Hockey Canada’s former self-funded insurance program from 1986 to 1995⁴⁸. These annual distributions do not relate to funding potential or actual liabilities nor risk management, though the Trust instrument does permit trustees to transfer a certain amount of funds to deal with late-reported claims relating to events that occurred from 1986 to 1995. While certain officers within Hockey Canada serve as its trustees, the Legacy Trust does not belong to Hockey Canada. Accordingly, Legacy Trust distributions do not feature on Hockey Canada’s financial statements. Members receive annual distributions from the trust proportionate to their contributions levels to the former Self-Insurance Program. For example, the earnings distributed to the beneficiaries from the Legacy Trust in 2019 totalled \$318,931. From that amount, the OHF had the highest share, at 20.76% (\$66,210), followed by Hockey Alberta at 17.39% (\$55,462) and BC Hockey at 16.27% (\$51,890). The Members who received the lowest number of distributions were Hockey Québec (0.56% – \$1,786), Hockey PEI (1.21% – \$3,859) and HNO (1.53% – \$4,879). A third party trust firm, who manages the trust fund investments, makes these distributions.

⁴⁸ The Members that contributed to the self-insurance program were the British Columbia Amateur Hockey Association, the Alberta Amateur Hockey Association (now Hockey Alberta), the Saskatchewan Amateur Hockey Association (now Saskatchewan Hockey), the Manitoba Amateur Hockey Association (now Hockey Manitoba), the Thunder Bay Amateur Hockey Association (now Hockey Northwestern Ontario), the Ontario Hockey Federation, the Ottawa and District Hockey Association (now Hockey Eastern Ontario), the Prince Edward Island Hockey Association (now Hockey PEI), the New Brunswick Amateur Hockey Association (now Hockey New Brunswick), the Nova Scotia Hockey Association (now Hockey Nova Scotia), the Newfoundland and Labrador Hockey Association (now Hockey Newfoundland and Labrador), the Fédération Québécoise de Hockey sur Glace (now Hockey Québec) and the Canadian Hockey League; see Canada Hockey Association, “Trust Agreement” (1 June 1999) at s 1.1(b).

F. The organization of hockey in Canada

As will be discussed in Chapter V, the regulation of sport and physical activity falls under the shared jurisdiction of the federal and provincial governments. The federal jurisdiction generally concerns matters of national and international affairs, such as national and international level sport. The provinces and territories have exclusive jurisdiction within their territory over significant aspects of sport, and each of them has the power to adopt its own policies and programs as it sees fit, as long as it does not infringe on the exclusive jurisdiction of the federal government.⁴⁹

This means that, in addition to Hockey Canada’s regulation at the national level, hockey is also regulated by Provincial/Territorial Sport Organizations (“**P/TSOs**”). These P/TSOs are self-governing, non-for-profit organizations that are recognized by their provincial/territorial governments as the governing body for their sport in the province. For example, the Government of Ontario, through the Ministry of Tourism, Culture and Sport, recognizes the following P/TSOs for hockey: Ontario Hockey Federation (“**OHF**”), Hockey Eastern Ontario (“**HEO**”), Hockey Northwestern Ontario (“**HNO**”) and Ontario Women’s Hockey Association (“**OWHA**”). The first three P/TSOs are Members of Hockey Canada, while OWHA is one of OHF’s seven members.

In addition to Hockey Canada and the 13 P/TSOs (or Members), thousands of Minor Hockey Associations (“**MHA**”) have been created from coast to coast.⁵⁰ These associations are composed of various teams, which teams are themselves composed of players, coaches, and support staff. Hockey in Canada is also divided into various levels, including Junior hockey, Minor hockey and Senior hockey. Junior Hockey is itself divided into four tiers: Major Junior, which is governed by the CHL, Junior A, Junior B and Junior C. Minor hockey is divided into age categories, going from U7 to U21.

The following statistics highlight the number of stakeholders involved under the Hockey Canada umbrella.⁵¹ For the 2020-2021 season, there were 1,645 MHAs across the country (which include Minor Hockey Associations, Female Hockey Associations, and Para Hockey organizations), for a total of 413,891 players. For the same year, for all the other categories that are not considered “associations” from an organization standpoint (e.g. Major Junior, Junior A, Senior Hockey, etc.) there were 1,217 teams and clubs for a total of 105,354 players. In addition, there are thousands of other Participants, including coaches, trainers, officials and other volunteers.

This myriad of organizations, associations, leagues, teams, and Participants, of varying sizes, with different resources and in different regions, results in a variety of ways of operating, but it also means that the responsibility for developing the sport of hockey in accordance with good

⁴⁹ Lucie Thibault & Jean Harvey, *Sport Policy in Canada* (University of Ottawa Press, 2013) at 46.

⁵⁰ “Hockey Canada 2020-21 Annual Report” (last visited 25 August 2022) at 19, online (pdf): *Hockey Canada* <<https://cdn.hockeycanada.ca/hockey-canada/Corporate/About/Downloads/2020-21-annual-report-e.pdf>>.

⁵¹ These statistics were provided by Hockey Canada on August 31, 2022 and were generated by the Hockey Canada registration platform. However, it was mentioned that “the quality of HCR data is not yet perfect and there are inconsistencies with data provided by [the] Members across Canada.” It should also be mentioned that these statistics were affected by the COVID-19 pandemic, and that while the number of MHAs has not changed materially, the number of Participants was higher for the 2018-2019 season.

governance principles lies with multiple parties. Moreover, a lack of clarity around organizational structure and authority can result in uncertainty.

V. HOCKEY CANADA'S REGULATORY FRAMEWORK

There is a legal framework that applies to Hockey Canada because it is a not-for-profit corporation as well as a Registered Canadian Amateur Athletic Association (“RCAAA”). The first section of this Chapter will briefly outline this legal framework (A), which is also discussed in more detail in Chapter VI. In addition, there is a legal and policy framework that applies to Hockey Canada because it is a national sports organization (“NSO”) that receives government funding, which is detailed in the second section of this Chapter (B).

A. The legal framework from a governance perspective

i. *Introduction*

The key elements of the legal framework for Hockey Canada governance are found in federal legislation, in the corporation’s articles, in its by-laws and in legal principles developed by the courts over the years. We will provide a brief overview of these key elements of the legal framework for governance.

ii. *Registered Canadian Amateur Athletic Association under the Income Tax Act*

Hockey Canada is an RCAAA. An RCAAA is a “Canadian amateur athletic association” that has applied to the Canadian Revenue Agency for registration, has been registered and whose registration has not been revoked.⁵² Under the *Income Tax Act*, RSC 1985, c 1 (5th Supp), a “Canadian amateur athletic association” is defined as an association that:

- (a) was created under any law in force in Canada;
- (b) is resident in Canada;
- (c) has no part of its income payable to, or otherwise available for the personal benefit of, any proprietor, member or shareholder of the association unless the proprietor, member or shareholder was a club, society or association the primary purpose and primary function of which was the promotion of amateur athletics in Canada;
- (d) has the promotion of amateur athletics in Canada on a nationwide basis as its exclusive purpose and exclusive function; and
- (e) devotes all of its resources to that purpose and function.⁵³

Under paragraph 149(1)(g) of the *Income Tax Act*, an RCAAA is exempt from income tax under Part I. RCAAAs can also issue official donation receipts for income tax purposes for gifts they receive from corporations or individuals.

⁵² *Income Tax Act*, RSC 1985, c 1 (5th Supp), s 248(1) “registered Canadian amateur athletic association.”

⁵³ *Income Tax Act*, RSC 1985, c 1 (5th Supp), s 149.1(1) “Canadian athletic amateur association.”

While an RCAA is effectively treated the same as a registered charity from a tax perspective, it remains a not-for-profit corporation from a corporate perspective.

iii. *Not-for-profit corporation under the Canada Not-for-profit Corporations Act*

The *Canada Not-for-profit Corporations Act*, SC 2009, c 23 (“CNCA”) provides the foundation of the legal framework for Hockey Canada’s governance. Among other things it establishes key duties for directors. The CNCA provides that directors are to “manage or supervise the management of the activities and affairs” of the corporation.⁵⁴ The CNCA also sets out the duties and rights of members. All of these duties and rights are discussed further in Chapter VI.

Hockey Canada is also a soliciting corporation within the meaning of the CNCA. In brief, a corporation is designated as a soliciting corporation when it has received more than \$10,000 in income from public sources in a single financial year.⁵⁵ Since soliciting corporations receive public funds, they must meet additional CNCA requirements to ensure sufficient transparency and accountability for that income, such as complying with specific requirements for public accountants and financial review, and sending financial statements and the report of the public accountant to the Director appointed by the Minister of Innovation, Science and Industry in accordance with the CNCA.⁵⁶

B. Specific legal and policy framework for National Sport Organizations

i. *Introduction*

Since Hockey Canada is the NSO for the sport of hockey, it has to abide by certain requirements to be recognized as such. NSOs – sometimes referred to as National Sport Federations (“NSFs”) – are the national governing bodies for certain sports in Canada. These organizations serve many important functions, including:

- “governing all aspects of a sport within Canada;
- managing their high performance programs;
- selecting and managing their national teams;
- implementing national initiatives to develop and promote their sport;
- sanctioning national level competitions and tournaments;
- providing professional development for coaches and officials in their sport; and,

⁵⁴ *Canada Not-for-profit Corporations Act*, SC 2009, c 23, s 124.

⁵⁵ *Canada Not-for-profit Corporations Act*, SC 2009, c 23, s 2(5.1); [Canada Not-for-profit Corporations Regulations, SOR/2011-223](#), s 16(d).

⁵⁶ See e.g. *Canada Not-for-profit Corporations Act*, SC 2009, c 23, ss 172(1), 176(1); “Requirements for soliciting corporations under the *Canada Not-for-profit Corporations Act* (NFP Act)” (last visited 13 September 2022), online: [Government of Canada <https://www.ic.gc.ca/eic/site/cd-dgc.nsf/eng/cs05011.html>](https://www.ic.gc.ca/eic/site/cd-dgc.nsf/eng/cs05011.html).

- proposing and supporting bids for international competitions in Canada.”⁵⁷

An NSO has no particular status unless it is recognized by Sport Canada⁵⁸ under a contribution agreement.⁵⁹ To be eligible to apply for such a contribution agreement, an organization must first meet certain criteria, such as being a federally or provincially incorporated not-for-profit organization and in good standing, and being affiliated with the International Federation (“IF”) for its sport and recognized by the IF as the governing body for the sport or discipline in Canada.⁶⁰ This means that Sport Canada will only enter into a contribution agreement with one NSO per sport. Details of funding under the contribution agreement with Hockey Canada are discussed below.

As Marianne Saroli and Patrice Brunet have said in their book, *Le Droit du Sport au Québec et au Canada*, as there is only one NSO per sport, it is particularly important that the by-laws provide for an open democratic process that allows for a smooth and transparent exchange of ideas and change of directors.⁶¹ In addition, because of the exclusive role that the NSO has within its sport, it plays a significant role in the lives of the athletes, who will be impacted by the decisions the NSO makes. Good governance practices thus become especially important.⁶²

ii. Legislation

Although Canada is constituted as a confederation that divides lawmaking power between the provincial legislatures and the federal Parliament, the *Constitution Act, 1867*⁶³ does not specifically refer to sports. This has led each level of government to enact legislation reflective of its constitutional authority.⁶⁴ Primary responsibility for the development and participatory aspects of sport are governed by private and community agencies which fall under the jurisdiction of the provinces under sections 92 (property and civil rights) and 93 (education) of the *Constitution Act, 1867*.⁶⁵ Provincial legislation may fund sports programs and projects from the general tax base or through revenues generated from approved lotteries and similar gambling operations.⁶⁶ The federal Parliament may supplement this support, provided that it does not interfere with matters under

⁵⁷ “National Sport Organizations” (last visited 13 September 2022), online: *Government of Canada* <<https://www.canada.ca/en/canadian-heritage/services/sport-organizations/national.html>>.

⁵⁸ Sport Canada, a branch in the federal Department of Canadian Heritage (“PCH”), is the agency through which the Government of Canada is involved in high-performance sport.

⁵⁹ Marianne Saroli & Patrice Brunet, *Le Droit du Sport au Québec et au Canada* (Montréal: Éditions Yvon Blais, 2018) at 30.

⁶⁰ “Sport Funding Framework” (last modified 14 July 2022), online: *Government of Canada* <<https://www.canada.ca/en/canadian-heritage/services/funding/sport-support/accountability-framework.html>>.

⁶¹ Marianne Saroli & Patrice Brunet, *Le Droit du Sport au Québec et au Canada* (Montréal: Éditions Yvon Blais, 2018) at 31.

⁶² Marianne Saroli & Patrice Brunet, *Le Droit du Sport au Québec et au Canada* (Montréal: Éditions Yvon Blais, 2018) at 31.

⁶³ *Constitution Act, 1867* (UK), 30 & 31 Vict, c 3, s 91, reprinted in RSC 1985, Appendix II, No 5.

⁶⁴ John Barnes, *The Law of Hockey* (Markham: LexisNexis Canada Inc, 2010) at 24.

⁶⁵ John Barnes, *The Law of Hockey* (Markham: LexisNexis Canada Inc, 2010) at 24.

⁶⁶ John Barnes, *The Law of Hockey* (Markham: LexisNexis Canada Inc, 2010) at 30.

provincial jurisdiction. More generally, whenever a matter has the potential to be of national or international interest, such as national sport programs, federal authorities may claim jurisdiction.⁶⁷

The sporting objectives of the Government of Canada are declared in the *Physical Activity and Sport Act*, RSC 2003, c 2 (“**PASA**”). This legislation also established the Sport Dispute Resolution Centre of Canada (“**SDRCC**”), whose mission is to provide the Canadian sport community with information, expertise and assistance regarding the prevention and resolution of sports-related disputes. The purpose of PASA is “to modernize the legislative framework that supports [sports] programs and to give formal expression to general policies adopted in 2002.”⁶⁸

The legislation also provides that the objectives of the Government of Canada’s policy regarding sport are:

- (a) to increase participation in the practice of sport and support the pursuit of excellence in sport; and
- (b) to build capacity in the Canadian sport system.⁶⁹

The role of Sport Canada is based on these two objectives.⁷⁰

iii. *Applicable policies*

This section outlines the various policies, codes and agreements that Hockey Canada must abide by as an NSO.

1. The Canadian Sport Policy

The Government of Canada, through Sport Canada, created the Canadian Sport Policy, which was initially developed in 2002, and renewed/expanded in 2012 (the “**CSP 2012**”). This CSP 2012 was officially endorsed by federal, provincial and territorial ministers responsible for sport, physical activity and recreation on June 27, 2012.⁷¹ The CSP 2012 set direction for the period of 2012-2022 and is presently set to be renewed in February 2023.⁷²

⁶⁷ John Barnes, *The Law of Hockey* (Markham: LexisNexis Canada Inc, 2010) at 25, citing the *Constitution Act, 1867* (UK), 30 & 31 Vict, c 3, reprinted in RSC 1985, Appendix II, No 5, s 91.

⁶⁸ John Barnes, *The Law of Hockey* (Markham: LexisNexis Canada Inc, 2010) at 23.

⁶⁹ *Physical Activity and Sport Act*, RSC 2003, c 2, s 4(2); see also John Barnes, *The Law of Hockey* (Markham: LexisNexis Canada Inc, 2010) at 23.

⁷⁰ Interview with Sport Canada (15 September 2022).

⁷¹ “Canadian Sport Policy 2012” (27 June 2012), online (pdf): *Sport Information Resource Centre* <https://sirc.ca/wp-content/uploads/files/content/docs/Document/csp2012_en.pdf>.

⁷² “Canadian Sport Policy Renewal (2023-2033),” online: *Sport Information Resource Centre* <<https://sirc.ca/canadian-sport-policies/>>.

As briefly mentioned above, because of the multi-level governance in sport, the CSP 2012 was designed to provide a framework for intergovernmental cooperation in sport in Canada.⁷³ More specifically, the CSP 2012 is a “roadmap that gives general direction to the major stakeholders in the Canadian sport system while providing the necessary flexibility for governments and non-governmental organizations to fulfill their individual mandates and responsibilities”.⁷⁴

The CSP 2012 has five overall goals (introduction to sport, recreational sport, competitive sport, high performance sport, and sport for development), each of which has different objectives. By way of example, for high performance sport and competitive sport, these objectives notably include:

- All participants in Canadian competitive sport adhere to a code of ethics and code of conduct; and
- Key stakeholders have the organizational capacity, i.e. governance, human and financial resources, to achieve system objectives.⁷⁵

The monitoring of the organizations’ compliance with the objectives set out in the 2012 CSP is done through the conditions attached to funding from Sport Canada, as detailed below.

2. The Sport Funding and Accountability Framework

Sport Canada has established several funding programs as part of its mission.⁷⁶ One of these programs is the Sport Support Program (“SSP”), which “distributes funding to national sport organizations [such as Hockey Canada], national multisport service organizations [such as Own the Podium and the Canadian Olympic Committee], Canadian sport centres and other non-governmental organizations that provide direct services and programs for athletes, coaches and other sport participants”.⁷⁷

The tool used to identify which organizations are eligible to receive Sport Canada contributions under the SSP is the Sport Funding and Accountability Framework (“SFAF”). The SFAF is used by the federal government to allocate funding to “organizations that have demonstrated through specific program objectives that they are contributing to the federal government’s policy

⁷³ Library of Parliament, Legal and Social Affairs Division, *Sport Canada and the Public Policy Framework for Participation and Excellence in Sport* (23 January 2020) at 2, online: *Parliament of Canada* <https://lop.parl.ca/sites/PublicWebsite/default/en_CA/ResearchPublications/202012E>.

⁷⁴ Library of Parliament, Legal and Social Affairs Division, *Sport Canada and the Public Policy Framework for Participation and Excellence in Sport* (23 January 2020) at 2, online: *Parliament of Canada* <https://lop.parl.ca/sites/PublicWebsite/default/en_CA/ResearchPublications/202012E>.

⁷⁵ “Canadian Sport Policy 2012” (27 June 2012) at 11-13, online (pdf): *Sport Information Resource Centre* <https://sirc.ca/wp-content/uploads/files/content/docs/Document/csp2012_en.pdf>.

⁷⁶ They are the Athlete Assistance Program, the Hosting Program and the Sport Support Program.

⁷⁷ Library of Parliament, Legal and Social Affairs Division, *Sport Canada and the Public Policy Framework for Participation and Excellence in Sport* (23 January 2020) at 5, online: *Parliament of Canada* <https://lop.parl.ca/sites/PublicWebsite/default/en_CA/ResearchPublications/202012E>.

priorities”.⁷⁸ In other words, it is through the SFAF that the federal government is aiming to steer organizations towards achieving its policy priorities, such as the ones established in the CSP 2012.

Prior to being considered for funding through the SSP, organizations must proceed through the SFAF process. As part of this process, NSOs are asked to develop a multi-year needs-based funding application according to the Contribution Guidelines for National Sport Organizations.⁷⁹

Sport Canada assesses the data collected to ensure the funding model can be applied fairly and consistently across all eligible organizations. Different factors are used to differentiate organizations for the purposes of allocation funding, such as the complexity and scope of the sport. After completing this funding application and the assessment stage, organizations are provided with their assessment score, which determines their Reference-Level.⁸⁰

Before an NSO starts receiving funding from Sport Canada, it is required to sign a contribution agreement which defines the roles and responsibilities of each party. Once an NSO is able to receive funding, it remains accountable to Sport Canada and must abide by its standards on governance, safety in sport and other areas. This is supervised by Sport Canada through a monitoring process, which includes the Sport Canada Governance Report Card system, described below.⁸¹ We understand that this monitoring process is currently being modernized, with the intent of having a continuous, proactive and systematic approach to managing risk from a Sport Canada perspective.⁸² We welcome this modernizing as NSOs are more likely to comply with conditions in their contribution agreement if the monitoring process is more robust.

Pending these changes, it is interesting to note the conclusions in the article “*An Assessment of Sport Canada’s Sport Funding and Accountability Framework, 1995–2004*” referred to by the authors Lucie Thibault and Jean Harvey in their book, *Sport Policy in Canada*, where it was suggested that there were no consequences or penalties for not meeting accountability standards. As well, they found that, if NSOs did not meet the standards, Sport Canada would provide additional funding to assist them in achieving their goal.⁸³

In addition, during the Canadian Heritage Standing Committee on July 26, 2022, it was highlighted that Sport Canada does not currently have a process that allows it to verify if the NSOs abide by the obligations set out in their contribution agreement. In fact, as Mr. Peter Julian, member of the Standing Committee, pointed out, “[as] long as an organization says that it did everything it was supposed to, it gets the funding”. He continued by saying that “Sport Canada doesn’t have a

⁷⁸ Lucie Thibault & Jean Harvey, *Sport Policy in Canada* (Ottawa: University of Ottawa Press, 2013) at 109.

⁷⁹ “Sport Funding Framework” (last modified 14 July 2022), online: *Government of Canada* <<https://www.canada.ca/en/canadian-heritage/services/funding/sport-support/accountability-framework.html>>.

⁸⁰ “Sport Funding Framework” (last modified 14 July 2022), online: *Government of Canada* <<https://www.canada.ca/en/canadian-heritage/services/funding/sport-support/accountability-framework.html>>.

⁸¹ Sport Canada’s Governance Report Card is a tool that Sport Canada developed to monitor how sport organizations contribute to key Sport Canada and Government of Canada priorities.

⁸² “Sport Funding Framework” (last modified 14 July 2022), online: *Government of Canada* <<https://www.canada.ca/en/canadian-heritage/services/funding/sport-support/accountability-framework.html>>.

⁸³ Lucie Thibault & Jean Harvey, *Sport Policy in Canada* (Ottawa: University of Ottawa Press, 2013) at 114.

verification process”, to which Michel Ruest, senior director in charge of programs at Sport Canada, answered: “That’s what we are in the process of setting up.”⁸⁴

3. Sport Canada Governance Report Card

The Governance Report Card (the “**Report Card**”) is another tool that Sport Canada developed to monitor how funded national organizations, including NSOs, contribute to key Sport Canada and Government of Canada priorities. The Report Card was intended to evaluate collective progress of sport organizations to help them “grow and improve together [...] towards the creation of an optimal sport environment for all”.⁸⁵ It is comprised of two phases:

The **first phase** of the Report Card, issued in 2019, evaluated progress on measures to promote sport integrity, diversity and inclusion, and communication and engagement. The goal was to offer insight on how sport organizations operate, while providing sport organizations with a clear set of expectations and guidance on how to grow and take action to meet them.

The **second phase** of the Report Card, released in 2021, focuses on good governance principles. This evaluation of governance focuses on how decision-making is conducted and how internal systems of checks and balances are upheld.⁸⁶

The Phase 2 evaluation centred on nine elements:

1. Board Structure
2. Board Role and Responsibility
3. Board Composition
4. Board Development
5. Conflict of Interest
6. Dispute Resolution
7. Financial Strategy and Control
8. Strategic Planning
9. Risk Management

The development of the criteria associated with each element came from a review of governance standards at the domestic level (SFAF, NSF Enhancement Initiative Deloitte Assessment Tool, *Canada Not-for-profit Corporations Act*, etc.) and at the international level (England, Ireland, Australia, European Union), as well as from consultation with internal staff, clients, and experts.⁸⁷

⁸⁴ House of Commons, Standing Committee on Canadian Heritage, *Minutes of Proceedings*, 44th Parl, 1st Sess, No 40 (26 July 2022) at 17 (Peter Julian & Michel Ruest).

⁸⁵ Government of Canada, Canadian Heritage, “Report Card Phase II Information Session: Webinar for Sports Organizations,” PowerPoint Presentation (10 November 2020) at 4.

⁸⁶ Government of Canada, Sport Canada, “2022 Sport Canada Report Card – Phase 2 Open Intake Results” (June 2022) at 3.

⁸⁷ Government of Canada, Canadian Heritage, “Report Card Phase II Information Session: Webinar for Sports Organizations,” PowerPoint Presentation, Government of Canada (10 November 2020) at 9.

As part of the evaluation process, sport organizations were asked to provide evidence for each of these nine elements. Organizations then received a numeric score with a score summary statement of their level of progress.

Organizations are encouraged to use the results of the Report Card to prepare upcoming funding applications to Sport Canada. Although the results do not affect the amount of Reference-Level funding an organization receives, the results may lead to the redirection of resources to identified gaps. In other words, it could influence how funding is to be used by a recipient organization.

Generally, the Report Card provides a solid basis upon which NSOs can strive to implement best practices in the area of governance. We note, however, that the context of our governance review and the methodology we adopted differ from those relating to the Report Card evaluations. In addition to the documents and information received by Hockey Canada on all the elements of the review's terms of reference, we considered information provided to us by other stakeholders and conducted interviews with those stakeholders (including current and former Members of Hockey Canada's Board of Directors and committees, current and former Hockey Canada employees, representatives of the Members of Hockey Canada and experts as described above in the introduction). These all informed the recommendations and opinions expressed in this report.

4. Contribution agreement

The contribution agreement (or funding agreement) is the contract entered into between Sport Canada and the funded NSO that specifies the terms and conditions pursuant to which the NSO receives funding from the government of Canada, which terms and conditions are linked to the goals of the CSP 2012. The contribution agreements are used by Sport Canada to ensure that organizations are attuned to the expectations of society and the government of Canada.⁸⁸

This agreement (which can include various amendments) also lays out the different sources of funding received by an NSO. In fact, the Reference-Level funding allocated through the SFAF is not the only source of funding an NSO can receive from the Government of Canada. Other sources of funding include the Enhanced Excellence and Next Gen funding (which are based on recommendations received from Own the Podium, as detailed below), the funding to support gender equity and safety in sport initiatives, the hosting of international tournaments, etc.

For the 2020-2021 season, Hockey Canada received the following funding from the Government of Canada:⁸⁹

PCH Funding - Reference-Level	\$1,831,100
PCH Funding - Enhanced Excellence (Own the Podium)	\$1,911,000
PCH Funding - Next Generation Initiative (50%)	\$275,000

⁸⁸ Interview with Sport Canada (15 September 2022).

⁸⁹ Hockey Canada, "Amendment to the Contribution Agreement" (5 August 2020); Hockey Canada, "Amendment to the Contribution Agreement," (25 March 2021); and Hockey Canada, "Contribution Agreement" (26 November 2019).

PCH-Funding - Gender Equity and Safety in Sport	\$143,000
PCH Funding - COVID-19 Emergency Support Fund	\$993,541
Canadian Heritage (Hosting Program) (IIHF Women’s World Championship 2021)	\$500,000
Canadian Heritage (Hosting Program) (2021 IIHF Ice Hockey U20 World Championship)	\$200,000

It is understood that, although the level of funding received by each NSO differs according to a variety of factors (such as the number of participants in the sport), the core requirements in the contribution agreement are the same for all NSOs,⁹⁰ including:

- To include the Universal Code of Conduct to Prevent and Address Maltreatment in Sport (“UCCMS”) into their organizational policies and procedures;
- To provide the individuals affiliated with the organization with access to an independent third party to address harassment and abuse allegations;
- To have discipline and appeal procedures in place that include access to an independent dispute resolution through the SDRCC (Sport Dispute Resolution Centre of Canada);
- To take measures conducive to creating a workplace free from harassment, abuse and discrimination; and
- To disclose any incident of harassment, abuse or discrimination that could compromise the programming’s chances of success or the NSO’s ability to carry out any of the terms and conditions of the agreement.

This last requirement, which has applied to every NSO since 2018,⁹¹ has two purposes: first, to ensure that the NSO has established and enforces policies on maltreatment and, second, to verify that the complainants have access to an independent third party to review complaints and conduct investigations or that they are directed to the competent authorities.⁹²

NSOs are also required to submit two types of reports during the term of their contribution agreement:

- **Interim reports** are submitted during the project and provide the results of the activities the NSO has undertaken for a specific period. In addition, they include a status report on the work to be accomplished and updated revenue and expense reports; and

⁹⁰ House of Commons, Standing Committee on Canadian Heritage, *Minutes of Proceedings*, 44th Parl, 1st Sess, No 38, No 38 (20 June 2022) at 26-27 (Hon Pascale St-Onge); Interview with Sport Canada (15 September 2022).

⁹¹ Janyce McGregor, “Hockey Canada clarifies incidents reported to Sport Canada after discrepancy at committee” (8 August 2022), online: *CBC* <<https://www.cbc.ca/news/politics/hockey-canada-reported-incidents-discrepancy-1.6544543>>.

⁹² House of Commons, Standing Committee on Canadian Heritage, *Minutes of Proceedings*, 44th Parl, 1st Sess, No 38, No 38 (20 June 2022) at 22 (Hon Pascale St-Onge).

- A **final report** is submitted at the end of the project and provides the results of the activities the NSO has undertaken for the duration of the project.⁹³

According to recent announcements made by the Minister of Sport, Sport Canada will make changes to contribution agreements with organizations that will meet the new eligibility requirements of the SFAF by April 1, 2023. The goal of this modernization is to ensure that sport organizations receiving federal funding meet specific governance, accountability and safe sport standards.⁹⁴

More specifically, during her appearance before the Canadian Heritage Standing Committee on June 20, 2022, the Minister of Sport mentioned that she intends to make sure that all sport organizations become signatories of the Office of the Sport Integrity Commissioner (“**OSIC**”), which is the new independent safe sport mechanism which is responsible for administering the UCCMS, as described below.⁹⁵ As we discuss further below, on October 27, 2022, Hockey Canada advised that it had become a full signatory to the OSIC mechanism.

If NSOs do not meet the requirements set out in the contribution agreement, Sport Canada may provide enhanced monitoring or, in certain circumstances, freeze the funding until the conditions imposed have been met.⁹⁶ Sport Canada has done so a number of times in the past, including for Hockey Canada in June 2022.

On June 16, 2022, Hockey Canada was advised by Sport Canada that the Department of Canadian Heritage would initiate a recipient compliance audit to confirm that no public funds were used in any part of the proceedings related to the alleged incident involving the 2018 Canadian men’s junior hockey team, and more specifically, to the settlement paid. Sport Canada also mentioned that all funding decisions would be held until Hockey Canada discloses the recommendations of improvement provided by a third-party law firm hired to investigate the alleged incident in 2018. Furthermore, decisions for certain categories of funding related to the Men’s National Team (which does not include the Reference-Level funding) would be held until the reception of the compliance audit results.⁹⁷

Finally, on June 22, 2022, two days after Hockey Canada appeared before the Canadian Heritage Standing Committee, it was announced that the Minister of Sport decided to freeze all federal funding until the organization was able to meet two conditions: not only would Hockey Canada

⁹³ “Application Guidelines – National Sport Organization” (last modified 12 July 2022), online: *Government of Canada* <<https://www.canada.ca/en/canadian-heritage/services/funding/sport-support/national-organization/application-guidelines.html>>; see also Hockey Canada, “Reporting Requirements” in “Contribution Agreement” (30 March 2020) at Annex D.

⁹⁴ Canadian Heritage, News Release, “Government of Canada provides update and announces action on safe sport” (12 June 2022), online: *Government of Canada* <<https://www.canada.ca/en/canadian-heritage/news/2022/06/government-of-canada-provides-update-and-announces-action-on-safe-sport.html>>.

⁹⁵ House of Commons, Standing Committee on Canadian Heritage, *Minutes of Proceedings*, 44th Parl, 1st Sess, No 38, No 38 (20 June 2022) at 24 (Hon Pascale St-Onge).

⁹⁶ Sport Canada, Written Response to Interview Questions (16 September 2022).

⁹⁷ Letter from Vicky Walker (Director General, Sport Canada) to Tom Renney (Chief Executive Officer, Hockey Canada) (16 June 2022).

have to disclose the recommendations of improvement as mentioned above, they would also have to become signatories to the OSIC.⁹⁸

5. The Canadian Sport Governance Code

In 2019, the Canadian High Performance Sport Strategy identified the importance of a governance code for the sports system.⁹⁹ For this reason, the Canadian Olympic Committee (“COC”) convened a working group with the sport community to support and accelerate the development of this fundamental part of the Canadian sport system.¹⁰⁰

The Canadian Sport Governance Code (the “COC Code”) was introduced to the national community in November 2020 with consultation taking part through the first half of 2021. It is intended for all NSOs representing sports on the Olympic Program. Its purpose is to “improve organizational performance by encouraging NSOs to upgrade governance practices through the adoption of revisions to by-laws and other structural mechanisms.”¹⁰¹ These governance best practices pertain notably to board composition (including athlete representation), independence of directors, proper orientation for board members, committees, risk management and transparency.

Section G of the COC Code (Implementation) provides that “to make this a success for the sport system, each NSO will be encouraged and supported if needed to make necessary changes to its by-laws and take such other steps as may be required so that the NSO is in compliance with the [COC Code] on or before December 31, 2022”.¹⁰²

Despite this language, we have been advised by Hockey Canada and COC representatives that the COC Code is not intended to be mandatory, but is rather a guide concerning best governance practices for NSOs.¹⁰³ This clarification was communicated to the NSOs during two calls that the COC hosted in December 2020 and January 2021. However, the COC also advised the NSOs that they were encouraged to adopt it nonetheless, as compliance could eventually become mandatory.

Hockey Canada’s position regarding the implementation of the COC Code within their organization is that, while having some changes imposed on them may be convenient, they favoured a more organic approach in order to achieve the underlying objectives of the COC Code without being mandated by by-laws (for example, as it relates to equal gender representation on the Board). It also took issue with matters related to the election of the Chair of the Board as well

⁹⁸ Rick Westhead, “Federal government freezing Hockey Canada’s funding” (22 June 2022), online: *TSN* <<https://www.tsn.ca/federal-government-freezing-hockey-canada-s-funding-1.1816169>>.

⁹⁹ “2019 Canadian High Performance Sport Strategy” (last modified 27 May 2019) at 18, online (pdf): *Government of Canada* <<https://www.canada.ca/content/dam/pch/documents/services/sport-policies-acts-regulations/HighPerSportStrat-eng.pdf>>.

¹⁰⁰ “Canadian Sport Governance Code” (April 2021), online: *Canadian Olympic Committee – NSO Sharing Centre* <<https://nso.olympic.ca/canadian-sport-governance-code/>>.

¹⁰¹ “Canadian Sport Governance Code” (April 2021) at 1, online: *Canadian Olympic Committee – NSO Sharing Centre* <https://nso.olympic.ca/wp-content/uploads/2021/09/Canadian_Sports_Governance_Code.pdf>.

¹⁰² “Canadian Sport Governance Code” (April 2021) at 9, section G.2, online: *Canadian Olympic Committee – NSO Sharing Centre* <https://nso.olympic.ca/wp-content/uploads/2021/09/Canadian_Sports_Governance_Code.pdf>.

¹⁰³ Hockey Canada, Board of Directors, *Minutes of Meeting* (held on 25-27 March 2021); see also Hockey Canada, Board of Directors, *Minutes of Meeting* (held on 4 May 2021).

as athlete representation on the Board. Further, Hockey Canada expressed that some other changes were just not well suited for their organization, such as making the financial statements and minutes of Member meetings available to the public. Although Hockey Canada has achieved considerable financial success over the years, Hockey Canada is concerned that being seen as an organization with “deep pockets” could create some negative implications. For example, this could have an effect on their bargaining power with respect to the settlement of lawsuits, and this could also influence the amount of money that sponsors would be willing to offer in the future. This is not to mention the fact that the media could use this information to depict a negative image of the organization. According to Hockey Canada, providing minutes of Member meetings to the general public potentially raises similar concerns. We do note, however, that three of the four Comparator Associations discussed further below in this report¹⁰⁴, namely Canada Basketball, Curling Canada and Canada Soccer, publish their financial statements on their website. This is also true for the COC.

We note further that, as discussed above, Hockey Canada is a soliciting corporation under the CNCA and is thus required to send financial statements and the report of the public accountant to the Director appointed by the Minister of Innovation, Science and Industry in accordance with the CNCA. We inquired of Hockey Canada if these filings had been made. We understand that Hockey Canada recently filed the financial statements for the years ending June 30, 2014 to June 30, 2021 inclusive.

The COC also prepared the Good Governance Framework, which links the principles outlined in the COC Code to the Sport Canada Governance Report Card Matrix.¹⁰⁵ This Framework serves as a complement to the COC Code, developed to support the latter’s implementation, and provides additional context and understanding of good governance practices and the provisions of the COC Code.¹⁰⁶

We note that other jurisdictions have adopted a more stringent approach to ensure that organizations meet established standards, such as the United Kingdom (UK), as well as the province of Quebec:

- The *Code for Sports Governance*, launched in 2016, sets out the levels of transparency, diversity and inclusion, accountability and integrity that are required from those organizations who seek – and are in receipt of – UK Government and National Lottery

¹⁰⁴ The Comparator Associations are the NSOs that were selected by Hockey Canada because they have a mandate and membership structure that are comparable to that of Hockey Canada.

¹⁰⁵ “Canadian Sport Governance Code” (April 2021), online: *Canadian Olympic Committee – NSO Sharing Centre* <<https://nso.olympic.ca/canadian-sport-governance-code/>>; see also “Good Governance Framework: a Guide for Implementing the Canadian Code of Governance” (23 September 2021), online: *Canadian Olympic Committee* <<https://nso.olympic.ca/wp-content/uploads/2021/10/Good-Governance-Framework-Sept-2021-1.pdf>>.

¹⁰⁶ “Good Governance Framework: a Guide for Implementing the Canadian Code of Governance” (23 September 2021), online: *Canadian Olympic Committee* <<https://nso.olympic.ca/wp-content/uploads/2021/10/Good-Governance-Framework-Sept-2021-1.pdf>>.

funding from UK Sport and/or Sport England. The Code achieves flexibility by adopting a tiered approach to requirements;¹⁰⁷

- The *Code of Governance for Québec Sport and Recreation Non-Profit Organizations (NPOs)* is one of the requirements of the financial assistance programs and agreements of the ministère de l'Éducation sport and recreation sector. Organizations are classified by levels of requirements (minimum, medium, high) based on the funding they receive from the government and their annual budget.¹⁰⁸

6. The Universal Code of Conduct to Prevent and Address Maltreatment in Sport

The UCCMS, which was developed by the Canadian Centre for Ethics in Sport in consultation with Sport Canada in 2019, is “the core document that sets harmonized rules to be adopted by sport organizations that receive funding from the Government of Canada to advance a respectful sport culture that delivers quality, inclusive, accessible, welcoming and safe sport experiences”.¹⁰⁹ In fact, Sport Canada has made the inclusion of the UCCMS into organizational policies and procedures of federally funded sport organizations by April 1, 2021, a condition of funding.

In response to this, Hockey Canada had built the UCCMS into their own *Maltreatment, Bullying and Harassment Protection and Prevention Policy*, which took effect in October 15, 2020.

Following a review process led by the SDRCC, version 6.0 of the UCCMS was published by the SDRCC on May 31, 2022 and is effective no later than November 30, 2022.¹¹⁰ On September 28, 2022, the Hockey Canada Board has approved the *Policy regarding the Adoption of the Universal Code of Conduct to Prevent and Address Maltreatment in Sport*, which confirms that, as of October 1, 2022, Hockey Canada has adopted the UCCMS as a standalone policy.

The UCCMS applies to all *participants* as determined by the *adopting organization*.¹¹¹ The UCCMS defines “adopting organization” as an organization that has adopted the current version of the UCCMS, as amended.¹¹² This means that it is the responsibility of the organization to determine which participants are covered by the UCCMS. These “participants” can include,

¹⁰⁷ “A Code for Sports Governance,” online: *UK Sport* <<https://www.uk sport.gov.uk/resources/a-code-for-sports-governance>>.

¹⁰⁸ *Code of Governance for Québec Sport and Recreation Non-Profit Organizations (NPOs)* (May 2021) online: *Gouvernement du Québec* <http://www.education.gouv.qc.ca/fileadmin/site_web/documents/loisir-sport/Code_gouvernance_OBNL_ANG.pdf>.

¹⁰⁹ “The UCCMS,” online: *Office of the Sport Integrity Commissioner* <<https://sportintegritycommissioner.ca/uccms>>.

¹¹⁰ “The UCCMS,” online: *Office of the Sport Integrity Commissioner* <<https://sportintegritycommissioner.ca/uccms>>.

¹¹¹ “Universal Code of Conduct to Prevent and Address Maltreatment in Sport, Version 2022 (6.0)” (31 May 2022) at s 4.1, online (pdf): *Office of the Sport Integrity Commissioner* <<https://sportintegritycommissioner.ca/files/UCCMS-v6.0-20220531.pdf>>.

¹¹² “Universal Code of Conduct to Prevent and Address Maltreatment in Sport, Version 2022 (6.0)” (31 May 2022) at Appendix I, online (pdf): *Office of the Sport Integrity Commissioner* <<https://sportintegritycommissioner.ca/files/UCCMS-v6.0-20220531.pdf>>.

without limitation, athletes, coaches, officials, volunteers, administrators, directors, employees, trainers, parents/guardians, etc., according to the policies of the adopting organization.¹¹³

The UCCMS applies to any of the prohibited behaviours listed in the document,¹¹⁴ including psychological, physical and sexual maltreatment, neglect, grooming, boundary transgressions, discrimination, subjecting a participant to the risk of maltreatment, and aiding and abetting. Moreover, these prohibited behaviours must have occurred in situations that are covered by the UCCMS – for example, within an adopting organization’s environment and/or when the participant alleged to have committed a prohibited behaviour was engaging in an adopting organization’s activities.¹¹⁵

Much of the UCCMS is directed at the protection of participants in a sport and does not deal with governance or requirements for sports organizations themselves. In addition to providing a list of prohibited behaviours, it offers a framework for determining appropriate sanctions against such prohibited behaviour.

The UCCMS also provides for various reporting obligations depending on the particular circumstances of the situation. For example, an adult participant who knew or ought to have known of a participant’s prohibited behaviour toward another person must report such conduct; however, a participant is not obligated to report an instance of prohibited behaviour to which they were personally subject.¹¹⁶ “Reporting” is defined in the UCCMS as “the provision of information by a participant or by any person to an independent authority designated by the adopting organization to receive reports regarding prohibited behaviour. [...]”¹¹⁷ If the NSO has become a Program Signatory, as defined below, this “independent authority” would be the OSIC.

As for public disclosure, the UCCMS provides the following at section 8:

- 8.1 In order to uphold the purpose and principles of the UCCMS, a searchable database or registry of *Respondents* whose eligibility to participate in sport has in some way been restricted shall be maintained and shall be publicly available, subject to applicable laws. The database or registry shall include sufficient information to provide context to the applicable sanction pursuant to the provisions contained in the UCCMS. *Adopting*

¹¹³ “Universal Code of Conduct to Prevent and Address Maltreatment in Sport, Version 2022 (6.0)” (31 May 2022) at Appendix I, online (pdf): *Office of the Sport Integrity Commissioner* <<https://sportintegritycommissioner.ca/files/UCCMS-v6.0-20220531.pdf>>.

¹¹⁴ “Universal Code of Conduct to Prevent and Address Maltreatment in Sport, Version 2022 (6.0)” (31 May 2022) at section 4.3, online (pdf): *Office of the Sport Integrity Commissioner* <<https://sportintegritycommissioner.ca/files/UCCMS-v6.0-20220531.pdf>>.

¹¹⁵ “Universal Code of Conduct to Prevent and Address Maltreatment in Sport, Version 2022 (6.0)” (31 May 2022) at section 4.3 and section 5, online (pdf): *Office of the Sport Integrity Commissioner* <<https://sportintegritycommissioner.ca/files/UCCMS-v6.0-20220531.pdf>>.

¹¹⁶ “Universal Code of Conduct to Prevent and Address Maltreatment in Sport, Version 2022 (6.0)” (31 May 2022) at section 5.11.1 a), online (pdf): *Office of the Sport Integrity Commissioner* <<https://sportintegritycommissioner.ca/files/UCCMS-v6.0-20220531.pdf>>.

¹¹⁷ “Universal Code of Conduct to Prevent and Address Maltreatment in Sport, Version 2022 (6.0)” (31 May 2022) at Appendix I (Definitions), (q), online (pdf): *Office of the Sport Integrity Commissioner* <<https://sportintegritycommissioner.ca/files/UCCMS-v6.0-20220531.pdf>>.

Organizations are responsible for collaborating with one or more organizations maintaining such a registry.

- 8.2 Further details of the results of a UCCMS enforcement process, for example a summary or redacted decision or summary or redacted investigation report, may also be publicized in a manner consistent with the purpose and principles of the UCCMS, as well as applicable law.

7. Office of the Sport Integrity Commissioner

On July 6, 2021, the SDRCC was mandated by the Government of Canada to establish and deliver an independent safe sport mechanism, for which the main objective was to implement the UCCMS for federally funded sport organizations.¹¹⁸ This led to the creation of the OSIC.

Prior to the creation of the OSIC, each NSO established its own process for dealing with complaints of abuse. For the signatories, the new national organization is meant to provide greater consistency across sports when it comes to investigations, sanctions, policies and education.¹¹⁹

7.1 OSIC complaint process

The OSIC’s main responsibilities include overseeing a complaint intake process and conducting preliminary assessments and investigations.¹²⁰ More specifically, the OSIC is responsible for receiving and addressing complaints submitted through its online intake form. When it receives a complaint, the OSIC proceeds with an initial review and preliminary assessment of the complaint to ensure it is complete and to determine how it should move through the process (such as determining if provisional measures are warranted).

Then, the OSIC determines how to proceed with the complaint (such as referring it to an independent investigation or, if the parties agree, move to mediation). If a complaint proceeds to an investigation, the independent investigator produces a report and determines whether a violation of the UCCMS took place.

After reviewing the report, the Sport Integrity Commissioner makes a recommendation regarding its contents and recommends a sanction if warranted. Those recommendations are transferred to the Director of Sanctions and Outcomes (“**DSO**”), who considers the Commissioner’s recommendation and makes a decision, which could include imposing a sanction.¹²¹

¹¹⁸ Government of Canada, Canadian Heritage, News release, “Minister Guilbeault Announces New Independent Safe Sport Mechanism,” (6 July 2021) online: <<https://www.canada.ca/en/canadian-heritage/news/2021/07/minister-guilbeault-announces-new-independent-safe-sport-mechanism.html>>.

¹¹⁹ The OSIC serves as the central hub within Abuse-Free Sport. It operates independently to receive complaints about alleged violations of the UCCMS. See “Home,” online: *Abuse-Free Sport* <<https://abuse-free-sport.ca/>>.

¹²⁰ “Home,” online: *Office of the Sport Integrity Commissioner* <<https://sportintegritycommissioner.ca/>>.

¹²¹ “Process Overview,” online: *Office of the Sport Integrity Commissioner* <<https://sportintegritycommissioner.ca/process/overview>>.

7.2 Service agreement

To be able to retain the services of the OSIC, organizations (NSOs, multi-sport organizations or other sport organizations) must become “Program Signatories” and sign a service agreement with the SDRCC.

Under version 17.1 of the service agreement, Program Signatories have various obligations, such as (i) adopting the UCCMS on a standalone basis,¹²² (ii) ensuring that complaint management, reporting, investigation and adjudication of matters under UCCMS are directed to the OSIC (or the DSO, as applicable),¹²³ (iii) obtaining each UCCMS participant’s consent for being subject to the UCCMS,¹²⁴ and (iv) fully cooperating in good faith as part of all applicable procedures related to the administration and enforcement of the UCCMS.¹²⁵

It should be noted that the service agreement currently does not impose on the OSIC an obligation to notify the NSO when a participant files a complaint. The NSO will only be notified on a need-to-know basis, for example if provisional measures, such as an interim suspension, must be undertaken. Therefore, a NSO may never be aware that one of its participants has filed a complaint.

iv. Own the Podium

Own the Podium (“**OTP**”) was originally created in 2010 to prepare Canadian athletes to reach medal finishes at the 2010 Olympic Winter Games in Vancouver. Its purpose is not to develop governance-related policies, but rather to provide “the technical analysis required to determine Canadian podium targets for Olympic and Paralympic Games and for making investment recommendations for the allocation of excellence dollars provided by the national funding parties.”¹²⁶ In other words, OTP provides expert recommendations to Sport Canada¹²⁷ and other system funders, to support the needs of sport programs and athletes demonstrating podium potential at Olympic and Paralympic Games.¹²⁸

The funding assessment is primarily focused on High Performance strategies. Each year, the NSOs are asked to provide submission documents according to OTP’s Review Submission Expectations. For example, the 2021 Winter Sport Review Submission Expectations required NSOs to provide, notably, a High Performance Plan, performance objectives for the 2022 Olympic Games, a medal prospects list for 2022, a podium gap assessment, and an outline of the 2026 High Performance Plan framework.

¹²² Office of the Sport Integrity Commissioner Service Agreement, section 5 a).

¹²³ Office of the Sport Integrity Commissioner Service Agreement, section 5 b).

¹²⁴ Office of the Sport Integrity Commissioner Service Agreement, section 5 c).

¹²⁵ Office of the Sport Integrity Commissioner Service Agreement, section 5 i).

¹²⁶ “Funding,” online: *Own the Podium* <<https://www.ownthepodium.org/en-CA/Funding>>.

¹²⁷ In the contribution agreements between NSOs and Sport Canada, the funding resulting from the OTP recommendation is called “Enhanced Excellence.”

¹²⁸ “Advancing the Sport System” (last modified 20 April 2021), online: *Government of Canada* <<https://www.canada.ca/en/canadian-heritage/services/role-sport-canada/advancing-sport-system.html>>.

In 2020–2021, following a recommendation by OTP to Sport Canada, Hockey Canada received Enhanced Excellence and Next Generation Initiative support (\$1,911,000 and \$275,000 respectively) from the federal government to support its national team for the 2022 and 2026 Olympic and Paralympic Games. The terms and conditions of this funding are provided in Hockey Canada’s 2020–2021 contribution agreement and related amendments. For a better understanding of what these documents provide in terms of requirements, we refer the reader to the Contribution Agreement section above.

VI. THE GOVERNANCE OF NOT FOR PROFIT CORPORATIONS

A. What is “governance”?

The term “governance” has many definitions. The word generally describes the practices and procedures used by the leaders of an organization to allocate authority and oversight responsibility for decision-making and operational activities.¹²⁹ A number of factors, such as the organization’s mission and purposes, applicable legislative and regulatory requirements, and industry-wide policies and standards, influence the organization’s governance practices and structure.

The board of directors of a not-for-profit corporation is ultimately and legally responsible for governing the corporation. The board’s duty to govern is described generally in the *Canada Not-for-profit Corporations Act*, SC 2009, c 23 (“**CNCA**”) as the duty to “manage or supervise the management of the activities and affairs of a corporation.”¹³⁰ A board of directors who understands that duty (as well as the functions and responsibilities that flow from it) and ensures that the board and corporation have the tools and resources necessary to effectively carry it out, will usually be said to exercise good governance. “Good governance is also about achieving desired results in a manner consistent with organizational values and accepted social norms.”¹³¹ In the context of a national sport community, those values and norms are intrinsically linked to the people who form that community. “Sport governance must meld the passion and dedication of volunteers into a focused governance team, operating with integrity and striving to enhance the experiences of the participants, and the performance and reputation of the sport.”¹³²

B. A framework for good governance

Although not-for-profit organizations are subject to different legislative and regulatory requirements that affect the manner in which they are governed, the general governance principles that apply from one sector to another are fundamentally the same. The paragraphs that follow discuss three key principles of a solid framework for good governance that the board of directors of every not-for-profit organization should ensure are entrenched in their governance practices and procedures. Those principles are the following:¹³³

- (i) **Board’s role**: the organization clearly defines and communicates what the board’s role, duties and functions are as the governing body;¹³⁴
- (ii) **Board quality**: the organization has a robust recruitment, nominations and elections process for director candidates that includes selection criteria based on skills, experience, diversity and qualities, and offers board

¹²⁹ C Sorokin et al, *Nonprofit Governance and Management*, 3rd ed (Chicago: American Bar Association, 2011).

¹³⁰ *Canada Not-for-profit Corporations Act*, SC 2009, c 23, s 124.

¹³¹ Sport Canada, *Pursuing Effective Governance in Canada’s National Sport Organizations* (November 2011) at 1.

¹³² Sport Canada, *Pursuing Effective Governance in Canada’s National Sport Organizations* (November 2011) at 1.

¹³³ Anne Corbett & James M Mackay, *Guide to Good Governance: Not-for-Profit and Charitable Organizations*, 2nd ed (September 2013) at 2-3.

¹³⁴ Anne Corbett & James M Mackay, *Guide to Good Governance: Not-for-Profit and Charitable Organizations*, 2nd ed (September 2013) at 2-3.

orientation and continuing education programs to enhance the board's collective knowledge and effectiveness;¹³⁵ and

- (iii) **Board structure and processes**: the organization has well-established structures and processes that inform how the organization expects the board to conduct its work, including the role of officers, the role of committees, and processes for calling and holding meetings.¹³⁶

i. Principle 1 – Board role, duties and functions

The directors will not properly exercise their governance role and duties unless they know what the board's role is as the governing body of the organization and understand what their individual duties are as a director serving on the board. In addition, the directors must understand how their role differs from the role of the CEO and other management staff. Certain of these roles are explored within the paragraphs that follow. The roles relating to the board's oversight of senior management – an issue outlined expressly in our Terms of Reference – will be discussed in Chapter IX.

1. **Statutory duty to manage or supervise the management of the corporation and other statutory duties in general**

Pursuant to section 124 of the CNCA, the directors of a not-for-profit corporation shall “manage or supervise the management of the activities and affairs” of the corporation. The term “activities” includes “any conduct of a corporation to further its purpose and any business carried on by a body corporate”, and affairs “means the relationships among a corporation, its affiliates and the directors, officers, shareholders or members of those bodies corporate.”¹³⁷ This duty will be explored in detail in Chapter IX.

2. **Board takes responsibility for its own governance**

The board must determine how it will govern the organization, and how it will supervise or manage the organization's senior management. These obligations flow from the board's underlying governance purpose is to “guide the corporation in meeting its objects.”¹³⁸

Chapter IX will expand on these crucial elements, and will describe examples of the various governance styles a board can adopt.

¹³⁵ Anne Corbett & James M Mackay, *Guide to Good Governance: Not-for-Profit and Charitable Organizations*, 2nd ed (September 2013) at 2-3.

¹³⁶ Anne Corbett & James M Mackay, *Guide to Good Governance: Not-for-Profit and Charitable Organizations*, 2nd ed (September 2013) at 2-3.

¹³⁷ [Canada Not-for-profit Corporations Act](#), SC 2009, c 23, s 2(1).

¹³⁸ Anne Corbett & James M Mackay, *Guide to Good Governance: Not-for-Profit and Charitable Organizations*, 2nd ed (September 2013) at 70.

3. Board responsibilities and functions

From the statutory duties described above flow a number of board responsibilities and functions. Although each board's responsibilities and functions may vary slightly in practice according to their preferred governance model, some responsibilities and functions form the core of the board's contribution to the management of the corporation.

As Chapter IX details below, these responsibilities include:

- Approving a strategic plan;
- Overseeing operational performance;
- Overseeing financial assets and resources;
- Establishing the organization's tolerance for risk and supervising the risk management process; and
- Hiring and overseeing the performance of the CEO.

4. Fiduciary and other duties of individual directors

As described above, the board assumes certain collective roles. Directors should also be mindful of their individual duties and responsibilities that flow simply from being a director for any not-for-profit corporation. These are detailed below.

Fiduciary duty

It is entrenched in common law principles that directors stand in a fiduciary relationship to the corporation they serve.¹³⁹ As such, directors are ultimately responsible for the operations of the corporation. As mentioned above, the directors' primary duty is to manage or supervise the management of the activities and affairs of the corporation, which is now codified in most modern not-for-profit legislation, including the CNCA. A fiduciary duty requires that the fiduciary (in this instance, the director) act with absolute loyalty toward the other party (in this instance, the corporation) in managing the latter's affairs. That duty encompasses not only a wide range of board responsibilities and functions, but also a number of directors' individual duties.

Standard of care

Pursuant to paragraph 148(1)(b) of the CNCA, in exercising their powers and discharging their duties, a director shall "exercise the care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances." This standard of care is an objective one,¹⁴⁰ which results in the same exposure to liability for the same actions, despite different levels of knowledge and experience. If a director or officer does not meet the appropriate standard of care when

¹³⁹ *Canadian Aero Service Ltd. v. O'Malley*, [1974] S.C.R. 592; *London Humane Society (Re)*, 2010 ONSC 5775.

¹⁴⁰ Burke-Robertson, Carter & Man, *Corporate and Practice Manual for Charities and Not-for-Profit Corporations* (Toronto: Thomson Reuters Canada, 2022) at § 9:3 (Proview).

exercising their legal duties, then they are exposed to personal liability. The diligence requirement of directors requires them to take the time to be “familiar with all aspects of the corporation’s operations through attending board meetings and reviewing the minutes of missed board meetings.”¹⁴¹

On a related note, the business judgment rule was developed in the context of for-profit corporations, but it has been applied in the context of not-for-profit corporations.¹⁴² “The ‘business judgment rule’ has been developed as a type of lens by which the applicable standard of care will be examined by courts”.¹⁴³ In brief, “the business judgment rule states that a director will not be held liable for mistakes made after an honest and good faith evaluation of the decision.”¹⁴⁴ A director’s evaluation may include reliance on financial statements of the corporation or a report of a person whose profession lends credibility to a statement made by that person.¹⁴⁵ The Supreme Court of Canada commented as follows: “Directors may find themselves in a situation where it is impossible to please all stakeholders. [...] There is no principle that one set of interests – for example the interests of shareholders – should prevail over another set of interests. Everything depends on the particular situation faced by the directors and whether, having regard to that situation, they exercised business judgment in a responsible way.”¹⁴⁶

Duty to avoid conflicts of interest

The general legal duty to avoid conflicts of interest is reflected in the statute’s provisions setting a high bar for directors with respect to avoidance of and disclosure of conflicts of interest. Directors are required to avoid situations where their private interests conflict with those of the corporation,¹⁴⁷ except where the corporation has knowledge of this conflict of interest and has provided their consent to allow this conflict of interest, pursuant to section 141 of the CNCA.¹⁴⁸

The Sport Canada Report Card sets out a number of recommended practices that should be followed to obtain an “excellent” grade in relation to conflicts of interest.¹⁴⁹ First, the Board should revisit its independence at every meeting. The organization should have a conflict of interest policy, available in both official languages, which includes a process for managing Board involvement in any decisions in which there exists a real, potential or perceived conflict. Such

¹⁴¹ Burke-Robertson, Carter & Man, *Corporate and Practice Manual for Charities and Not-for-Profit Corporations* (Toronto: Thomson Reuters Canada, 2022) at § 9:15 (Proview).

¹⁴² Burke-Robertson, Carter & Man, *Corporate and Practice Manual for Charities and Not-for-Profit Corporations* (Toronto: Thomson Reuters Canada, 2022) at § 9:9 (Proview); *Goertz v Condominium Plan No. 98SA12401*, 2018 SKCA 41 at paras 57-58; *Ottawa Humane Society v Ontario Society for the Prevention of Cruelty to Animals*, 2017 ONSC 5409 at paras 6, 37-39.

¹⁴³ Burke-Robertson, Carter & Man, *Corporate and Practice Manual for Charities and Not-for-Profit Corporations* (Toronto: Thomson Reuters Canada, 2022) at § 9:9 (Proview).

¹⁴⁴ Burke-Robertson, Carter & Man, *Corporate and Practice Manual for Charities and Not-for-Profit Corporations* (Toronto: Thomson Reuters Canada, 2022) at § 9:9 (Proview).

¹⁴⁵ *Canada Not-for-profit Corporations Act*, SC 2009, c 23, s 149(1).

¹⁴⁶ *BCE Inc v 1976 Debentureholders*, 2008 SCC 69 at paras 83—84.

¹⁴⁷ *London Humane Society (Re)*, 2010 ONSC 5775 at para 20.

¹⁴⁸ Burke-Robertson, Carter & Man, *Corporate and Practice Manual for Charities and Not-for-Profit Corporations* (Toronto: Thomson Reuters Canada, 2022) at § 9:10 (Proview).

¹⁴⁹ Sport Canada, *Report Card Phase 2 Matrices and Glossary*, Government of Canada (undated), at 2.4.1.

conflicts should be regularly noted on a register, and the organization should establish whistleblower protections to prevent retaliatory behaviour. Moreover, there should be a clear commitment to ongoing external consultation at regular intervals in regards to managing conflicts of interest.¹⁵⁰

Duty to act honestly and in good faith

Directors must act in good faith at all times.¹⁵¹ To ensure honest dealings with the corporation, “a director must disclose to the corporation the entire truth in his or her dealings as a director.”¹⁵² The duty to act in good faith also “requires that the directors consider the best interests of the corporation as a whole rather than allowing one sectional interest of the corporation to prevail over others”¹⁵³, “and, in doing so, must take into account all relevant factors.”¹⁵⁴

Duty to act in the best interests of the corporation

The “best interests in a not-for-profit corporation are linked to the mission, vision, values and accountabilities of the corporation. Therefore, acting in the best interests of a mission-based not-for-profit corporation, means fulfilling the mission, moving towards the vision, adhering to core values, and discharging accountabilities.”¹⁵⁵

Although the members elect the directors of a not-for-profit organization, the directors must act primarily in the best interests of the corporation as a whole. The organization exists for its purposes, mission and vision and occasionally that may mean that “the best interests of the corporation will not always be consistent with the best interests of the members.”¹⁵⁶ Similarly, the interests of the members may also differ from the interests of other stakeholders and the public. As an example, there may be circumstances where a corporation requires that additional funds be collected from members in order to pursue the corporation’s purpose. Evidently, members may not wish to pay additional membership fees to the corporation because this reduces their own financial resources. “The challenge for the board is to resolve conflicts in a manner that reflects the best interests of the corporation and at the same time maintains the support of the [stakeholders]”, which must be done in a way that “each party can be said to have been fairly treated. [...] A decision on how to achieve this balance is made on a case-by-case basis as current

¹⁵⁰ Sport Canada, *Report Card Phase 2 Matrices and Glossary*, Government of Canada (undated), at 2.4.1.

¹⁵¹ *London Humane Society (Re)*, 2010 ONSC 5775 at para 18.

¹⁵² Burke-Robertson, Carter & Man, *Corporate and Practice Manual for Charities and Not-for-Profit Corporations* (Toronto: Thomson Reuters Canada, 2022) at § 9:13 (Proview).

¹⁵³ Burke-Robertson, Carter & Man, *Corporate and Practice Manual for Charities and Not-for-Profit Corporations* (Toronto: Thomson Reuters Canada, 2022) at § 9:13 (Proview).

¹⁵⁴ Anne Corbett & James M Mackay, *Guide to Good Governance: Not-for-Profit and Charitable Organizations*, 2nd ed (September 2013) at 91.

¹⁵⁵ Anne Corbett & James M Mackay, *Guide to Good Governance: Not-for-Profit and Charitable Organizations*, 2nd ed (September 2013) at 10.

¹⁵⁶ Anne Corbett & James M Mackay, *Guide to Good Governance: Not-for-Profit and Charitable Organizations*, 2nd ed (September 2013) at 10; see also Peter Dey & Sarah Kaplan, “360° Governance: Where are the Directors in a World in Crisis?” (2021) at 30, online (pdf): *Rotman School of Management University of Toronto* <<https://www.rotman.utoronto.ca/FacultyAndResearch/ResearchCentres/LeeChinInstitute/Sustainability-Research-Resources/360-Governance-Report>>.

circumstances and exigencies require but should always be done in the best interests of the organisation over the longer term.”¹⁵⁷

Case law confirms that in considering what is in the best interests of the corporation, directors may (and should) “look to the interests of, inter alia, shareholders, employees, creditors, consumers, governments and the environment to inform their decisions.”¹⁵⁸ Fostering healthy and trustworthy relationships with stakeholders is arguably in the best interests of a corporation.¹⁵⁹

That said, directors do have “a responsibility to ensure that the corporation fulfills its [...] purposes and, in this regard, [have] a responsibility to ensure that the membership does not impose its own priorities over the stated purposes of the corporation or restrict the provision of services to a narrow segment of the community served by the corporation.”¹⁶⁰

Duty of confidentiality

The general rule of confidentiality means “all matters and discussions in a boardroom are confidential.”¹⁶¹ Some not-for-profit corporations, primarily those that are publicly funded, operate in an open and transparent manner. In this case, directors “must respect the confidentiality of matters that are not, or will not be, disclosed to the public.”¹⁶²

Duty of obedience and solidarity

Under subsection 148(2) of the CNCA, a director has a duty to comply with all applicable acts and regulations, and the corporation’s governing documents such as articles and by-laws. A director must also assist in implementing valid corporate decisions.¹⁶³ Furthermore, subsection 148(3) of the CNCA states that directors of not-for-profit corporations must verify the lawfulness of the articles and the purpose of the corporation.

¹⁵⁷ Peter Dey & Sarah Kaplan, “360° Governance: Where are the Directors in a World in Crisis?” (2021) at 30, online (pdf): *Rotman School of Management University of Toronto* <<https://www.rotman.utoronto.ca/FacultyAndResearch/ResearchCentres/LeeChinInstitute/Sustainability-Research-Resources/360-Governance-Report>>; see also *BCE Inc v 1976 Debentureholders*, 2008 SCC 69 at para 84.

¹⁵⁸ *BCE Inc v 1976 Debentureholders*, 2008 SCC 69 at para 40; also cited in *Pruner v Ottawa Hunt and Golf Club, Limited*, 2014 ONSC 6272 at para 40.

¹⁵⁹ See e.g. Peter Dey & Sarah Kaplan, “360° Governance: Where are the Directors in a World in Crisis?” (2021) at 11, online (pdf): *Rotman School of Management University of Toronto* <<https://www.rotman.utoronto.ca/FacultyAndResearch/ResearchCentres/LeeChinInstitute/Sustainability-Research-Resources/360-Governance-Report>>.

¹⁶⁰ *The Campaign for the Inclusion of People who are Deaf and Hard of Hearing v Canadian Hearing Society*, 2018 ONSC 5445 at para 34.

¹⁶¹ Anne Corbett & James M Mackay, *Guide to Good Governance: Not-for-Profit and Charitable Organizations*, 2nd ed (September 2013) at 91.

¹⁶² Anne Corbett & James M Mackay, *Guide to Good Governance: Not-for-Profit and Charitable Organizations*, 2nd ed (September 2013) at 91.

¹⁶³ Burke-Robertson, Carter & Man, *Corporate and Practice Manual for Charities and Not-for-Profit Corporations* (Toronto: Thomson Reuters Canada, 2022) at § 9:16 (Proview).

The duty of obedience also includes the duty of solidarity. A director “who is opposed to a decision of the Corporation that has been validly taken has a duty to respect and adhere to that decision.”¹⁶⁴ Directors who speak publicly against a decision validly taken by the board are, in effect, violating their fiduciary duty to the corporation.

5. Directors may rely on information provided by management, professionals and others

As mentioned above, the standard of care applicable to the actions of directors is one of reasonable diligence. A director will be considered to have acted with reasonable diligence if they rely on “financial statements of the corporation represented to the director by an officer of the corporation or in a written report of the public accountant of the corporation fairly to reflect the financial condition of the corporation” or “a report of a person whose profession lends credibility to a statement made by that person.”¹⁶⁵ The reliance on these resources must be done in good faith.¹⁶⁶ In other words, directors “are entitled to assume that those on whom they rely, particularly officers and senior management, have performed their duties honestly.”¹⁶⁷

6. The respective roles of the board and management

Regardless of how a board chooses to govern, a board should ensure that it “draw[s] the line between the board’s role and management’s role”¹⁶⁸. The board and management should both have clear knowledge of their roles, as well as the governance structures and processes in place.¹⁶⁹ This topic is discussed further below in Chapter IX.

7. The respective roles of the board and members

Members may play a more limited role¹⁷⁰ than directors and officers within a not-for-profit corporation, but their role is nevertheless meaningful and powerful.¹⁷¹ For example, subsections 128(3) and 130(1) of the CNCA provide that members elect and may remove the directors of a not-for-profit corporation. Pursuant to subsection 197(1), members approve any fundamental change to the corporation. Similarly, section 152 provides that members are responsible for confirming, amending or rejecting any proposal by directors to make, amend, or repeal any by-law

¹⁶⁴ Anne Corbett & James M Mackay, *Guide to Good Governance: Not-for-Profit and Charitable Organizations*, 2nd ed (September 2013) at 92.

¹⁶⁵ [Canada Not-for-profit Corporations Act](#), SC 2009, c 23, s 149(1).

¹⁶⁶ [Canada Not-for-profit Corporations Act](#), SC 2009, c 23, s 149(2).

¹⁶⁷ Anne Corbett & James M Mackay, *Guide to Good Governance: Not-for-Profit and Charitable Organizations*, 2nd ed (September 2013) at 93.

¹⁶⁸ Anne Corbett & James M Mackay, *Guide to Good Governance: Not-for-Profit and Charitable Organizations*, 2nd ed (September 2013) at 34.

¹⁶⁹ Anne Corbett & James M Mackay, *Guide to Good Governance: Not-for-Profit and Charitable Organizations*, 2nd ed (September 2013) at 70.

¹⁷⁰ [The Campaign for the Inclusion of People who are Deaf and Hard of Hearing v Canadian Hearing Society](#), 2018 ONSC 5445 at para 34: “the role of a member of a not-for-profit corporation is limited to approving the annual financial statements and the auditor”.

¹⁷¹ Anne Corbett & James M Mackay, *Guide to Good Governance: Not-for-Profit and Charitable Organizations*, 2nd ed (September 2013) at 10.

that regulates the activities or affairs of the corporation. Members are also entitled to receive the annual financial statements pursuant to subsection 172(1) of the CNCA and appoint the public accountant pursuant to subsection 181(1).

Although members have important duties, they “do not have a formal consultative function or authority in relation to proposed policies of the corporation. Any consultative role depends entirely on a discretionary decision of the board of directors of the corporation to invite such consultation.”¹⁷²

Members also have important rights. Pursuant to subsection 162(1) of the CNCA, members are entitled to notice of, and to attend, the annual meeting of members. Section 163 also allows for a member who is eligible to vote at an annual meeting of members to make a proposal. Members may also, pursuant to subsection 152(6), propose to make, amend or repeal a by-law.

Members have significant rights to information. Members have rights to copies of financial statements under sections 172 and 175 of the CNCA and to access the statements under subsection 174(2) for examination purposes. Additionally, section 22 sets out provisions for access to the corporate records by a member, a member’s personal representative and a creditor of the corporation.

More generally, practitioners in the field of not-for-profit corporations have commented that “one of the most fundamental rights of members is their right to rely on the integrity of the by-laws and charter or articles of the corporation and to expect that the corporation and its directors will similarly respect the requirements of those documents.”¹⁷³ This stems from the fact that the relationship between the directors of a not-for-profit corporation and its members is “contractual in nature.”¹⁷⁴ The contractual relationship is established and governed by the corporation’s constating documents.¹⁷⁵ As such, the terms of the contract will vary from one corporation to another. At a minimum, the contractual relationship between the corporation and the members places an obligation on directors and members to “comply with the terms of the contract,”¹⁷⁶ in other words, to comply with all incorporation documents and by-laws.¹⁷⁷

¹⁷² [*The Campaign for the Inclusion of People who are Deaf and Hard of Hearing v Canadian Hearing Society*](#), 2018 ONSC 5445 at para 35.

¹⁷³ Burke-Robertson, Carter & Man, [*Corporate and Practice Manual for Charities and Not-for-Profit Corporations*](#) (Toronto: Thomson Reuters Canada, 2022) at § 7:16 (Proview).

¹⁷⁴ Donald J Bourgeois, [*The Law of Charitable and Not-for-Profit Organizations*](#), 5th ed (Toronto: LexisNexis Canada, 2016) at 232; [*Senez v Montreal Real Estate Board*](#), [1980] 2 SCR 555 at 566.

¹⁷⁵ Donald J Bourgeois, [*The Law of Charitable and Not-for-Profit Organizations*](#), 5th ed (Toronto: LexisNexis Canada, 2016) at 234.

¹⁷⁶ Donald J Bourgeois, [*The Law of Charitable and Not-for-Profit Organizations*](#), 5th ed (Toronto: LexisNexis Canada, 2016) at 251.

¹⁷⁷ [*Canada Not-for-profit Corporations Act*](#), SC 2009, c 23, s 148(2).

ii. *Principle 2 – Board quality*

1. Board size

The appropriate size for a board of directors depends on a number of factors, such as the amount of work to be done, which varies according to the projects in progress and issues facing the organization. Similarly, the need to have directors who possess specific skills and expertise can also affect the number of directors required. The CNCA requires that a corporation have at least one director, while soliciting corporations (such as Hockey Canada) must have a minimum of three, at least two of whom are not officers or employees of the corporation or its affiliates.¹⁷⁸ However, the board should be sufficiently large to enable the directors to get the work done well, but not so large that meaningful discussion becomes difficult.¹⁷⁹

While organizations must determine the board size that best suits their particular needs, the effectiveness of a board is not a function of its size. Much more crucial to board success are the dedication and skill of its individual members.¹⁸⁰

2. Board composition – skills, experience, diversity (equity seeking groups) and personal qualities

Directors have both a duty to manage the organization and a duty to operate it by ensuring that it has activities that carry out its objects.¹⁸¹ Inherently, one of the critical functions of the board of directors is to ensure that it works in an effective and efficient manner while recognizing and accounting for different backgrounds, cultural and personal experiences, interests and personalities.¹⁸²

Certain fundamental skills, such as financial literacy, legal and governance experience, are vital to a board of directors.¹⁸³ Other skills may become relevant, or even required, depending on the particular situation unique to each entity.

Specialized skills are not the only way boards can acquire desired or required qualities; experience and knowledge in which the board requires assistance or performs a governance role are equally important.¹⁸⁴

Further, boards should comprise individuals who possess qualities desirable from board members. At a minimum, a director's fiduciary duties require them to show integrity, loyalty, honesty and

¹⁷⁸ [Canada Not-for-profit Corporations Act](#), SC 2009, c 23, s 125.

¹⁷⁹ Anne Corbett & James M Mackay, *Guide to Good Governance: Not-for-Profit and Charitable Organizations*, 2nd ed (September 2013) at 118.

¹⁸⁰ Burke-Robertson, Carter & Man, [Corporate and Practice Manual for Charities and Not-for-Profit Corporations](#), (Toronto: Thomson Reuters Canada, 2022) at § 8:13 (Proview).

¹⁸¹ Donald J Bourgeois, [The Law of Charitable and Not-for-Profit Organizations](#), 5th ed (Toronto: LexisNexis Canada, 2016) at 163.

¹⁸² Donald J Bourgeois, [The Law of Charitable and Not-for-Profit Organizations](#), 5th ed (Toronto: LexisNexis Canada, 2016) at 163.

¹⁸³ Anne Corbett & James M Mackay, [Guide to Good Governance](#), 3rd ed (OHA) at 137.

¹⁸⁴ Anne Corbett & James M Mackay, [Guide to Good Governance](#), 3rd ed (OHA) at 137.

good faith.¹⁸⁵ Still, other qualities may also be desirable for an efficient and effective board of directors; these may include:

- The ability to work in a team;
- A commitment to the workload required;
- The absence of apparent conflicts;
- Leadership potential; and
- The ability to think strategically and communicate effectively.¹⁸⁶

In the recent past, much emphasis has been placed on ensuring the board reflects the diversity of the community it serves, including demographic, cultural, linguistic, economic, geographic, gender, and ethnic factors.¹⁸⁷ Research “often shows that more diversity on boards brings value to firms by increasing the diversity of experience and improving board monitoring.”¹⁸⁸ Moreover, it is beneficial for a board to consider both social and professional diversity, which can involve looking beyond the typical CEO or CFO pool for board candidates.¹⁸⁹ Equally important to the notion of diversity is cognitive diversity, which refers to the differences in individuals’ “knowledge, views, and perspectives, as well as in how they approach problems and perceive, process, and interpret information”.¹⁹⁰ Yet, diversity alone is no guarantee of board success; board culture is the key factor that can compliment diversity to help the board meet its objectives.¹⁹¹

3. Recruitment, nominations and election processes

Board success begins with its recruitment and nominations. These processes are the means by which the organization identifies individuals that can best complement the required skills, qualities

¹⁸⁵ Anne Corbett & James M Mackay, *Guide to Good Governance*, 3rd ed (OHA) at 137.

¹⁸⁶ Anne Corbett & James M Mackay, *Guide to Good Governance*, 3rd ed (OHA) at 137.

¹⁸⁷ Anne Corbett & James M Mackay, *Guide to Good Governance*, 3rd ed (OHA) at 137.

¹⁸⁸ Peter Dey & Sarah Kaplan, “360° Governance: Where are the Directors in a World in Crisis?” (2021) at 35, online (pdf): *Rotman School of Management University of Toronto* <<https://www.rotman.utoronto.ca/FacultyAndResearch/ResearchCentres/LeeChinInstitute/Sustainability-Research-Resources/360-Governance-Report>>.

¹⁸⁹ Stephanie J Creary, et al, “When and Why Diversity Improves Your Board’s Performance” (27 March 2019), online: *Harvard Business Review* <<https://hbr.org/2019/03/when-and-why-diversity-improves-your-boards-performance>>.

¹⁹⁰ Jared Landaw, “Maximizing the Benefits of Board Diversity: Lessons Learned From Activist Investing” (2020): online: *Harvard Law School Forum on Corporate Governance* <<https://corpgov.law.harvard.edu/2020/07/14/maximizing-the-benefits-of-board-diversity-lessons-learned-from-activist-investing/>>.

¹⁹¹ Stephanie J Creary, et al, “When and Why Diversity Improves Your Board’s Performance” (27 March 2019), online: *Harvard Business Review* <<https://hbr.org/2019/03/when-and-why-diversity-improves-your-boards-performance>>; Jared Landaw, “Maximizing the Benefits of Board Diversity: Lessons Learned From Activist Investing” (2020): online: *Harvard Law School Forum on Corporate Governance* <<https://corpgov.law.harvard.edu/2020/07/14/maximizing-the-benefits-of-board-diversity-lessons-learned-from-activist-investing/>>.

and traits of its leading figures. Indeed, recruitment, nomination and election best practices for directors should be consistent with recruiting a skilled, independent and qualified board.¹⁹²

Every organization must determine the method to appoint or elect its directors. Typically, members will elect new directors at the annual general meeting, and incumbent directors retire at the meeting where the election takes place.¹⁹³ As the rules can vary from one statute to another, it is important to be familiar with the rules of the incorporating legislation to ensure that the desired method of election and/or appointment of directors complies with the law.¹⁹⁴ For example, the CNCA requires that members elect directors by ordinary resolution.¹⁹⁵ Additionally, an organization's articles may permit its directors to appoint one or more additional directors until the close of the next annual general meeting, so long as the total number of directors so appointed does not exceed one third of the number of directors elected at the previous annual general meeting.¹⁹⁶ Moreover, a director cannot hold office unless they were present at the meeting when the election or appointment took place and did not refuse the position, or they consented to hold office as director in writing before the election or within the prescribed time or has acted as director since the election or appointment.¹⁹⁷

Whatever the electoral or appointment process the organization chooses for its board members, it should outline the process clearly in its by-laws and board policies. The court may order a new election of the directors where the election process is not followed. This new election would proceed unless it was shown that doing so would cause irreparable harm.¹⁹⁸

Given the importance of skills and qualities of a board, best practices for board recruitment require that the board play an appropriate role in its succession and the director recruitment process.¹⁹⁹ The board must understand its responsibility in assuring the quality of board succession, and should establish a committee to oversee the process on its behalf.²⁰⁰ Moreover, establishing eligibility criteria and developing a matrix of skills/experience/diversity with reference to board needs and stakeholder accountability should remain a priority. To do so, key steps would include maintaining an inventory of current board members' skills and experience, surveying current members' intentions with respect to term renewals, and considering board and individual director evaluation results.²⁰¹

¹⁹² Anne Corbett & James M Mackay, *Guide to Good Governance*, 3rd ed (OHA) at 140.

¹⁹³ Burke-Robertson, Carter & Man, *Corporate and Practice Manual for Charities and Not-for-Profit Corporations* (Toronto: Thomson Reuters Canada, 2022) at § 8:16 (Proview).

¹⁹⁴ Burke-Robertson, Carter & Man, *Corporate and Practice Manual for Charities and Not-for-Profit Corporations* (Toronto: Thomson Reuters Canada, 2022) at § 8:16 (Proview).

¹⁹⁵ *Canada Not-for-profit Corporations Act*, SC 2009, c 23, s 128(3).

¹⁹⁶ *Canada Not-for-profit Corporations Act*, SC 2009, c 23, s 128(8).

¹⁹⁷ *Canada Not-for-profit Corporations Act*, SC 2009, c 23, s 128(9).

¹⁹⁸ Burke-Robertson, Carter & Man, *Corporate and Practice Manual for Charities and Not-for-Profit Corporations* (Toronto: Thomson Reuters Canada, 2022) at § 8:16 (Proview); see e.g. *Bose v. Bangiya Parishad Toronto*, 2019 ONSC 5625.

¹⁹⁹ Anne Corbett & James M Mackay, *Guide to Good Governance*, 3rd ed (OHA) at 140-141.

²⁰⁰ Anne Corbett & James M Mackay, *Guide to Good Governance*, 3rd ed (OHA) at 141.

²⁰¹ Anne Corbett & James M Mackay, *Guide to Good Governance*, 3rd ed (OHA) at 141.

Other steps may include: determining an appropriate recruitment strategy and considering a variety of means to identify board candidates; requiring prospective candidates to complete an application form; conducting personal background and criminal reference checks; ensuring candidates know what is expected of a director; ensuring that only board-recommended candidates are presented at the annual general meeting for election (subject to members' statutory rights); disclosing candidate information to members in advance of the annual meeting; and disclosing the recruitment, nomination and election process to members.²⁰²

Organizations should also ensure that the minimum statutory qualifications for directors set out in the applicable legislation are met.²⁰³ Under the CNCA, directors must be individuals who are not less than 18 years of age, have not been found unable to manage their property or declared incapable by a court in Canada or in another country, and are not undischarged bankrupts.²⁰⁴

4. Director term, renewal and limits

The CNCA provides that a director may hold office for a term of not more than four years,²⁰⁵ but it does not prescribe any limit on the number of terms that a director may serve, either consecutively or otherwise. Nevertheless, an organization's by-laws and policies should include Board renewal strategies, such as limits on the number of terms that a Director can serve on the Board, which ensures that fresh perspectives and different ideas are considered and debated.²⁰⁶ At the same time, the organization must plan carefully and stagger the directors' terms to ensure that the term of all the directors will not all end at the same time. Such a practice, along with other continuity strategies are vital to sustaining organizational memory and stability.²⁰⁷

5. Board education

The quality of a board depends in part on the orientation processes in place for new directors as well as ongoing education for the full board.²⁰⁸ Directors must not only know the affairs of the organization they serve; they must also know the board's governance processes and their individual rights, duties and obligations as board members.²⁰⁹ Boards must conduct mandatory orientation sessions and provide their directors with access to continuous education, which may include encouraging directors to attend education programs relevant to their roles.²¹⁰ Attendance and participation in education sessions should form part of director evaluations and consideration with respect to term renewal. To obtain an "excellent" grade on the Sport Canada Report Card for board orientation and development, organizations should clearly outline the Board orientation

²⁰² Anne Corbett & James M Mackay, *Guide to Good Governance*, 3rd ed (OHA) at 141.

²⁰³ Burke-Robertson, Carter & Man, *Corporate and Practice Manual for Charities and Not-for-Profit Corporations* (Toronto: Thomson Reuters Canada, 2022) at § 8:8 (Proview).

²⁰⁴ *Canada Not-for-profit Corporations Act*, SC 2009, c 23, s 126(1).

²⁰⁵ *Canada Not-for-profit Corporations Act*, SC 2009, c 23, s 128(3); *Canada Not-for-profit Corporations Regulations* SOR/2011-223, s 28(1).

²⁰⁶ Sport Canada, *Pursuing Effective Governance in Canada's National Sport Organizations* (November 2011) at 10.

²⁰⁷ Sport Canada, *Pursuing Effective Governance in Canada's National Sport Organizations* (November 2011) at 10.

²⁰⁸ Anne Corbett & James M Mackay, *Guide to Good Governance*, 3rd ed (OHA) at 142.

²⁰⁹ Anne Corbett & James M Mackay, *Guide to Good Governance*, 3rd ed (OHA) at 142.

²¹⁰ Anne Corbett & James M Mackay, *Guide to Good Governance*, 3rd ed (OHA) at 142.

process and ensure that Board development initiatives are comprehensive. Doing so helps the organization maintain specific knowledge, skills and abilities.²¹¹ These development initiatives and activities should be organized so as to raise the Board's performance level.²¹²

6. Board evaluation

Evaluations form an important part of continuous maintenance and improvement of the governance process, and as such, should be undertaken at a point in the board's year at which the information distilled from the evaluation may be acted upon.²¹³ Boards should first determine which areas would be subject to evaluation, such as individual director performance, collective board performance, chair performance and committee evaluations. In doing so, it should consider the purpose of the evaluation, who completes the evaluation, whether the process is anonymous, how results will be shared and what processes exist to ensure the results can be acted upon.²¹⁴

iii. *Principle 3 – Board structure and processes*

1. Board leadership/Officers

The officers of a not-for-profit corporation form its leadership. The CNCA gives directors broad power “to designate the offices of the corporation, appoint officers, specify duties and delegate to them powers to manage the activities and affairs of the corporation” (with certain exceptions).²¹⁵ In order to ensure effective board leadership, a board should put in place a “process for determining board officer recruitment and selection, terms of office and succession planning.”²¹⁶

It is also important to ensure a separation between the role of the CEO and the role of the chair of the board.²¹⁷ The board's chair is responsible for the board's governance, represents the board within the organization and is the public spokesperson for the board.²¹⁸ The chair's role and the qualities required of the board chair should be clearly described, and their term renewals should not be automatic.²¹⁹

²¹¹ Sport Canada, Report Card Phase 2 Matrices and Glossary, Government of Canada (undated), at 2.3.4.

²¹² Sport Canada, Report Card Phase 2 Matrices and Glossary, Government of Canada (undated), at 2.3.4.

²¹³ Anne Corbett & James M Mackay, *Guide to Good Governance*, 3rd ed (OHA) at 144.

²¹⁴ Anne Corbett & James M Mackay, *Guide to Good Governance*, 3rd ed (OHA) at 144.

²¹⁵ Anne Corbett & James M Mackay, *Guide to Good Governance: Not-for-Profit and Charitable Organizations*, 2nd ed (September 2013) at 156.

²¹⁶ Anne Corbett & James M Mackay, *Guide to Good Governance: Not-for-Profit and Charitable Organizations*, 2nd ed (September 2013) at 156.

²¹⁷ Anne Corbett & James M Mackay, *Guide to Good Governance: Not-for-Profit and Charitable Organizations*, 2nd ed (September 2013) at 157.

²¹⁸ Anne Corbett & James M Mackay, *Guide to Good Governance: Not-for-Profit and Charitable Organizations*, 2nd ed (September 2013) at 158.

²¹⁹ Anne Corbett & James M Mackay, *Guide to Good Governance: Not-for-Profit and Charitable Organizations*, 2nd ed (September 2013) at 157.

2. Board committees

Board committees are typically established to provide assistance to the board and to help the board “in the fulfillment of its governance role”. In other words, “committees support and supplement the board, but do not supplant the work of the board.” Committees are particularly helpful because they allow for “greater discussion and more in-depth analysis than would be allowed during a board meeting.”²²⁰

With the exception of audit committees,²²¹ the CNCA does not set out any requirements with respect to committees. Accordingly, the number of committees, their terms of reference and their mandates depend on the discretion of the board.²²² However, there are some exceptions to the duties that the board can delegate to a committee. For instance, a board cannot ask a committee to submit to the members any question or matter requiring the approval of the members, to approve financial statements, nor to adopt, amend or repeal by-laws.²²³

3. Board meeting processes and procedures

The “frequency of [board] meetings, process to establish agendas, order in which matters are dealt with on agendas, availability of supporting materials, quality of minutes, conduct of the meeting by the board chair and processes for open and *in camera* meetings” are all elements that can promote effective governance.²²⁴ Accordingly, they should all be clearly established and understood. Additional elements that contribute to an effective meeting, and thus the discharge of the board’s governance role, include the board’s clear understanding of its governance role and appropriate behaviour in the boardroom.²²⁵

Leading Canadian and American authorities have suggested that the average number of meetings held by volunteer not-for-profit boards will range from seven to ten meetings a year.²²⁶ The frequency of meetings will ultimately depend on a number of organization specific factors.

²²⁰ Anne Corbett & James M Mackay, *Guide to Good Governance: Not-for-Profit and Charitable Organizations*, 2nd ed (September 2013) at 161; see also Business Roundtable, “Principles of Corporate Governance” (8 September 2016), online: *Harvard Law School Forum on Corporate Governance* <<https://corpgov.law.harvard.edu/2016/09/08/principles-of-corporate-governance/>>.

²²¹ *Canada Not-for-profit Corporations Act*, SC 2009, c 23, s 194.

²²² Anne Corbett & James M Mackay, *Guide to Good Governance: Not-for-Profit and Charitable Organizations*, 2nd ed (September 2013) at 160.

²²³ Anne Corbett & James M Mackay, *Guide to Good Governance: Not-for-Profit and Charitable Organizations*, 2nd ed (September 2013) at 160.

²²⁴ Anne Corbett & James M Mackay, *Guide to Good Governance: Not-for-Profit and Charitable Organizations*, 2nd ed (September 2013) at 162.

²²⁵ Anne Corbett & James M Mackay, *Guide to Good Governance: Not-for-Profit and Charitable Organizations*, 2nd ed (September 2013) at 162.

²²⁶ Grace Bugg & Sue Dallhoff, “National Study of Board Governance Practices in the Non-Profit and Voluntary Sector in Canada” (2006) at 29, online (pdf): *Strategic Leverage Partners Inc., & Centre for Voluntary Sector Research and Development* <http://www.strategicleveragepartners.com/bhg768kjmhgxxxxzwq/National_Study_of_Board_Governance_Practices_in_the_Non-Profit_and_Voluntary_Sector_in_Canada.PDF>; “Leading with Intent: BoardSource Index of Nonprofit Board Practices” (2021) at 33, online (pdf): *BoardSource* <<https://leadingwithintent.org/wp->

C. Relationships and accountabilities

i. *Sources of accountability and transparency*

While the CNCA does not expressly use the terms “accountable” and “transparent”, when considering generally the legislation and commentary on not-for-profit corporations, it is apparent that a not-for-profit corporation should strive to attain a high degree of transparency and accountability to its members and other stakeholders. In fact, when Minister Ablonczy introduced the CNCA to the House of Commons at second reading, she explained that the CNCA “would ensure that federally incorporated not-for-profit enterprises are governed by an up-to-date legislative framework that is flexible enough to meet the needs of both small and large organizations while providing the accountability and transparency necessary to meet the expectations of the Canadian public.”²²⁷ At the time, she recognized that the need for not-for-profit corporations to be transparent and financially accountable had increased “because they must establish and maintain a high level of public confidence in order to succeed.”²²⁸ The Minister added that “Canadians expect that corporations that benefit from government grants or public generosity should be more transparent.”²²⁹

References to accountability and transparency within the CNCA include members’ right to approve any by-law changes, to elect directors, and to receive the annual financial statements. Fundamental changes cannot be made without member approval.²³⁰ The CNCA also provides for oppression remedies²³¹ and derivative actions.²³² If directors were exempt from being accountable to members and were free to act as they see fit, these member rights would not exist. Similarly, the value of transparency is highlighted in the CNCA by members’ right to abundant information, such as copies of financial statements, access to the corporate records, and copies of the articles, by-laws and any amendments. As noted above in Chapter V, the CNCA also imposes additional requirements on soliciting corporations to ensure sufficient transparency and accountability for that income.²³³

content/uploads/2021/06/2021-Leading-with-Intent-Report.pdf?hsCtaTracking=60281ff7-cadf-4b2f-b5a0-94ebff5a2c25%7C428c6485-37ba-40f0-a939-aeda82c02f38>; Bohse & Associates Inc, “Bohse Tips: Board of Directors Series: Non-Profit Board Statistics” (2007) at 1, online (pdf): *Bohse & Associates Inc* <http://bohse.com/images/file/Board_of_Director_Series/Non-Profit_Board_Statistics.pdf>.

²²⁷ “Bill C-4, An Act respecting not-for-profit corporations and certain other corporations”, 2nd reading, *House of Commons Debates*, 40-2, No 8 (4 February 2009) at 1810 (Hon Diane Ablonczy).

²²⁸ “Bill C-4, An Act respecting not-for-profit corporations and certain other corporations”, 2nd reading, *House of Commons Debates*, 40-2, No 8 (4 February 2009) at 1815 (Hon Diane Ablonczy).

²²⁹ “Bill C-4, An Act respecting not-for-profit corporations and certain other corporations”, 2nd reading, *House of Commons Debates*, 40-2, No 8 (4 February 2009) at 1815 (Hon Diane Ablonczy).

²³⁰ The CNCA deals with Fundamental Changes in Part 13. Pursuant to section 197(1), Fundamental Changes include matters such as changing the name of the corporation, amending articles and by-laws, alternating the corporation’s activities, or changing its statement of purpose, changing conditions of membership, or the rights of any class or group of members, and changing the means of giving notice of a members’ meeting to voting members.

²³¹ *Canada Not-for-profit Corporations Act*, SC 2009, c 23, s 253(1).

²³² *Canada Not-for-profit Corporations Act*, SC 2009, c 23, s 251(1).

²³³ See e.g. *Canada Not-for-profit Corporations Act*, SC 2009, c 23, ss 125, 170(1), 176(1), 179;

Furthermore, members are responsible for appointing the public accountant. Section 180 of the CNCA prescribes the qualifications for a public accountant. In addition to these qualifications, the individual must be independent.²³⁴ The public accountant also has many participation rights at meetings of members. Our legislators drafted the CNCA in that manner because it is “necessary to ensure that the public accountant has the ability to carry out his or her duties and to meet the requirements under the [CNCA] – all of which are essential for financial accountability and transparency that underlie governance in the 21st century.”²³⁵

Many leaders in the not-for-profit sector have acknowledged and commented on the importance of accountability and transparency of not-for-profit corporations. Authors have said that “[c]orporations may be accountable to a number of stakeholders depending on the purposes or objects of the corporation. Each stakeholder relationship has the potential to give rise to some measure of accountability on behalf of the corporation.”²³⁶ In the 21st century, there have been “[g]reater demands for accountability by governments, funders and the general public. Accountability is defined not only in terms of proper use of funds but in the effectiveness and efficiency of the organization and in meeting the needs of the community.”²³⁷ In addition, mission and strategic planning (which involves the definition of the fundamental goals and strategy of the organization) is one of the most important tasks for a board “because it establishe[s] the basis for accountability – the basis on which to determine the appropriateness of the board’s actions”, performance and success.²³⁸ Among other principles, openness and accountability from directors is often perceived as one of the main principles in providing good governance and leadership.²³⁹

ii. *Importance of healthy relationships*

Relationships with members, stakeholders and the public are very important to the viability and the sustainability of a not-for-profit corporation. A board of directors should ensure that the

“Requirements for soliciting corporations under the Canada Not-for-profit Corporations Act (NFP Act)” (8 November 2012), online: *Government of Canada* <www.ic.gc.ca/eic/site/cd-dgc.nsf/eng/cs05011.html>.

²³⁴ Donald J Bourgeois, *The Law of Charitable and Not-for-Profit Organizations*, 5th ed (Toronto: LexisNexis Canada, 2016) at 41.

²³⁵ Donald J Bourgeois, *The Law of Charitable and Not-for-Profit Organizations*, 5th ed (Toronto: LexisNexis Canada, 2016) at 41.

²³⁶ Anne Corbett & James M Mackay, *Guide to Good Governance: Not-for-Profit and Charitable Organizations*, 2nd ed (September 2013) at 10; see also Keith Steel, *Management of Nonprofit and Charitable Organizations in Canada*, 4th ed (Toronto: LexisNexis Canada, 2018) at p 689.

²³⁷ Donald J Bourgeois, *The Law of Charitable and Not-for-Profit Organizations*, 5th ed (Toronto: LexisNexis Canada, 2016) at 152; see also Peter Dey & Sarah Kaplan, “360° Governance: Where are the Directors in a World in Crisis?” (2021) at 21, online (pdf): *Rotman School of Management University of Toronto* <<https://www.rotman.utoronto.ca/FacultyAndResearch/ResearchCentres/LeeChinInstitute/Sustainability-Research-Resources/360-Governance-Report>>; see also Keith Steel, *Management of Nonprofit and Charitable Organizations in Canada*, 4th ed (Toronto: LexisNexis Canada, 2018) at p 688-89.

²³⁸ Donald J Bourgeois, *The Law of Charitable and Not-for-Profit Organizations*, 5th ed (Toronto: LexisNexis Canada, 2016) at 157.

²³⁹ Donald J Bourgeois, *The Law of Charitable and Not-for-Profit Organizations*, 5th ed (Toronto: LexisNexis Canada, 2016) at 162; see also “Good Governance: A Code for the Voluntary and Community Sector” (October 2010) at 22, online (pdf): *Leading Governance* <<https://leadinggovernance.com/wp-content/uploads/2020/08/Code-of-Governance-Full1.pdf>>.

corporation develops effective relationships so that it has support for its objectives.²⁴⁰ Members, stakeholders and the public have “the potential to positively or negatively influence the corporation’s well-being.”²⁴¹ In fact, a not-for-profit’s risk management often includes stakeholder relations as they affect reputational risks.²⁴²

“In considering the quality of stakeholder relations, boards need to consider the concepts of accountability, transparency and engagement that provide a foundation for this function.”²⁴³ An effective way of fostering healthy relationships is indeed to be accountable, transparent, open and engaged.

Good and successful relationships mean that members, stakeholders and/or the public “understand the goals of the corporation and appreciate the rationale the board used in making a contentious decision.”²⁴⁴

The board is responsible for maintaining and overseeing relationships with members, stakeholders and the public, in addition to ensuring proper accountability and transparency. To do so, boards should identify a list of actors relevant to the organization, examine why and for what purpose the corporation is relating with each actor, and define principles of how the organization should relate with them.²⁴⁵ Some basic requirements for managing relations include developing a framework and a plan, using multiple tools.²⁴⁶ In other words, a board “needs to approve an overall policy direction for discharging its accountability, engagement and communications efforts.”²⁴⁷ The board should consider multiple ways of connecting with members, stakeholders and the public depending on the audience and the objective of the relationship.²⁴⁸ Finally, a board should monitor the status of its relationships, perhaps through reports from staff.

²⁴⁰ Anne Corbett & James M Mackay, *Guide to Good Governance: Not-for-Profit and Charitable Organizations*, 2nd ed (September 2013) at 67.

²⁴¹ Anne Corbett & James M Mackay, *Guide to Good Governance: Not-for-Profit and Charitable Organizations*, 2nd ed (September 2013) at 67.

²⁴² Anne Corbett & James M Mackay, *Guide to Good Governance: Not-for-Profit and Charitable Organizations*, 2nd ed (September 2013) at 58.

²⁴³ Anne Corbett & James M Mackay, *Guide to Good Governance: Not-for-Profit and Charitable Organizations*, 2nd ed (September 2013) at 67.

²⁴⁴ Anne Corbett & James M Mackay, *Guide to Good Governance: Not-for-Profit and Charitable Organizations*, 2nd ed (September 2013) at 68.

²⁴⁵ Anne Corbett & James M Mackay, *Guide to Good Governance: Not-for-Profit and Charitable Organizations*, 2nd ed (September 2013) at 68.

²⁴⁶ Anne Corbett & James M Mackay, *Guide to Good Governance: Not-for-Profit and Charitable Organizations*, 2nd ed (September 2013) at 68.

²⁴⁷ Anne Corbett & James M Mackay, *Guide to Good Governance: Not-for-Profit and Charitable Organizations*, 2nd ed (September 2013) at 68.

²⁴⁸ Anne Corbett & James M Mackay, *Guide to Good Governance: Not-for-Profit and Charitable Organizations*, 2nd ed (September 2013) at 68.

VII. GOVERNANCE IN THE WORLD OF SPORT AND HOCKEY CANADA

A. Defining “best practices” for National Sport Organizations

In accordance with the Terms of Reference, the general objective of this exercise is to review Hockey Canada’s governance structure, systems, personnel, and processes, including the extent to which they meet contemporary best practices for national sport organizations of similar size in Canada.²⁴⁹ To inform our analysis of whether Hockey Canada’s governance, systems, personnel and processes meet contemporary best practices for national sport organizations of similar size in Canada we compared Hockey Canada with:

- (i) Sport Canada’s Governance Principles for Sport Organizations;²⁵⁰
- (ii) Sport Canada’s Report Card Matrix;
- (iii) the Canadian Sport Governance Code and accompanying Good Governance Framework; and
- (iv) the governance structure of select comparable NSOs.

Although we have not compared Hockey Canada’s practices with those of not-for-profit organizations in general, our knowledge and experience of best practices in not-for-profit governance have informed our analysis. We will briefly describe these points of reference before turning to our analysis of how Hockey Canada compares with them.

i. Pursuing Effective Governance in Canada’s National Sport Community

In 2011, Sport Canada published a resource entitled “Pursuing Effective Governance in Canada’s National Sport Organizations” (the “**2011 Governance Tool**”) intended for funded sport organizations.²⁵¹ The document sets out a number of principles and practical tips in relation to achieving “effective governance” in the national sport context.

The 2011 Governance Tool identifies five principles of effective governance, namely:

1. Commitment to Vision, Mission, Values and Guided by a Strategic Plan
2. Clarity of Roles and Responsibilities
3. Effective Financial Control
4. Focused on Human Resources
5. Transparent and Accountable for Outcomes and Results

²⁴⁹ Hockey Canada Governance Review, “Terms of Reference” (4 August 2022) <<https://www.hockeycanada.ca/en-ca/news/thomas-cromwell-to-lead-hockey-canada-governance-review-corp-2022>>.

²⁵⁰ Sport Canada, *Pursuing Effective Governance in Canada’s National Sport Organizations* (November 2011).

²⁵¹ Sport Canada, *Pursuing Effective Governance in Canada’s National Sport Organizations* (November 2011).

For each principle, the document includes definitions and ideas on how to implement it in the national sport context. Central to those governance principles is the expectation that directors will model the highest standards of ethical behaviour, acting honestly and in good faith, and in the best interests of their organization.²⁵²

ii. *The COC Canadian Sport Governance Code*

As described in Chapter V, in November 2020, the COC [Canadian Olympic Committee] introduced the COC Code [Canadian Sport Governance Code] to the Canadian sport community. It is intended for all NSOs representing sports on the Olympic Program.²⁵³

The COC Code’s purpose is to “improve organizational performance by encouraging NSOs to upgrade governance practices through the adoption of revisions to by-laws and other structural mechanisms”.²⁵⁴ The “Purpose” section of the COC Code provides as follows:

[...] The Code articulates best practices to be met, thereby providing an objective standard that funding sources and other stakeholders can measure against. It is anticipated that various funders wishing to protect and maximize their investment in sport will expect that any NSO who seeks funding will be required to confirm it is in compliance with the Code.²⁵⁵

The COC has also developed a number of supporting governance resources and templates (such as template by-law provisions, board mandate, diversity policy, board skills matrix, committee terms of reference, etc.) to accompany the COC Code and to assist NSOs with their initiatives to comply with the COC Code.²⁵⁶ In addition, the COC published the *Good Governance Framework – A Guide for Implementing the Canadian Code of Governance* (the “**Framework**”) to supplement and support the implementation of the COC Code. The document provides commentary to enhance “understanding of good governance practices,” offers additional context to the COC Code’s provisions and is “intended to illustrate how implementation will lead to improved organization decision making.”²⁵⁷

Although compliance with the COC Code is not mandatory, the COC views it as a framework for governance best practices for NSOs and strongly encourages NSOs to adopt it as a model for their own organizations. During our discussions with representatives of the COC, they emphasized that the COC’s approach to the COC Code is intended to be collaborative and recognizes that full

²⁵² Sport Canada, *Pursuing Effective Governance in Canada’s National Sport Organizations* (November 2011).

²⁵³ Sport Canada, *Pursuing Effective Governance in Canada’s National Sport Organizations* (November 2011).

²⁵⁴ “Canadian Sport Governance Code” (April 2021), at 1, online: *Canadian Olympic Committee – NSO Sharing Centre* <https://nso.olympic.ca/wp-content/uploads/2021/10/Canadian_Sports_Governance_Code.pdf>.

²⁵⁵ “Canadian Sport Governance Code” (April 2021), at 1-2, online: *Canadian Olympic Committee – NSO Sharing Centre* <https://nso.olympic.ca/wp-content/uploads/2021/10/Canadian_Sports_Governance_Code.pdf>.

²⁵⁶ “Canadian Sport Governance Code: Supporting Resources” (27 April 2021), online: *Canadian Olympic Committee – NSO Sharing Centre* <https://nso.olympic.ca/wp-content/uploads/2021/10/GOODMANS-7073296-v12-Canadian_Sport_Governance_Code_-_Combined_Templates.docx>.

²⁵⁷ “Good Governance Framework: A Guide for Implementing the Canadian Code of Governance” (23 September 2021) at 1, online (pdf): *Canadian Olympic Committee* <<https://nso.olympic.ca/wp-content/uploads/2021/10/Good-Governance-Framework-Sept-2021-1.pdf>>.

compliance with the COC Code may not be possible or desirable for all NSOs. They are also of the view that the COC Code and supporting resources²⁵⁸ that accompany it are “living” documents that will and should evolve over time and be adapted to the specific needs and organizational structure of each NSO. Two of the five comparable NSOs that we interviewed adapted their governance models to generally align with the COC Code. A representative of one of the associations we interviewed indicated that they consider the COC Code to be mandatory.

As noted in Chapter V, the COC created the Good Governance Framework to link the principles in the COC Code with those in the Report Card Matrix.

iii. Comparator Associations

Hockey Canada identified the following comparator associations, consisting of five NSOs (the “**Comparator Associations**”) that promote and regulate an amateur sport in Canada on a nationwide basis:

1. Athletics Canada Athlétisme Canada (“**Athletics Canada**”) – the national governing body for track and field, para athletics, cross-country running and road running in Canada.
2. Canada Basketball (“**Canada Basketball**”) – the national governing body for basketball in Canada.
3. Canadian Curling Association (“**Curling Canada**”) – the national governing body for curling in Canada.
4. The Canadian Soccer Association Incorporated L’Association canadienne de soccer incorporée (“**Canada Soccer**”) – the national governing body for soccer in Canada.
5. The Canadian Tennis Association L’Association canadienne de tennis (“**Tennis Canada**”) – the national governing body for the sport of tennis in Canada.

We understand that Hockey Canada selected the Comparator Associations because they have a mandate and membership structure that are comparable to that of Hockey Canada. We recognize that consideration of other sport organizations and associations could inform a review of this nature. In Canada, there are over 60 NSOs²⁵⁹ and, internationally, there are several other international sports organizations. Given our tight timelines and the terms of our mandate that required us to consider “national sport organizations of similar size in Canada,” we limited the scope of the points of reference considered to those mentioned above. We also point out that our

²⁵⁸ “Canadian Sport Governance Code: Supporting Resources” (27 April 2021) at 62-67, online: *Canadian Olympic Committee – NSO Sharing Centre* <<https://nso.olympic.ca/wp-content/uploads/2021/10/GOODMANS-7073296-v12-Canadian Sport Governance Code - Combined Templates.docx>>.

²⁵⁹ “National Sport Organizations” (last visited 13 September 2022), online: Government of Canada <<https://www.canada.ca/en/canadian-heritage/services/sport-organizations/national.html>>.

consideration of the Comparator Associations enabled us to establish a threshold for those governance practices of Hockey Canada that we were asked to examine.

We reviewed publicly available information regarding the history, mission, membership base and organizational and governance structure of each Comparator Association. We also reviewed the articles and by-laws, board and committee mandates, and policies and annual reports of the Comparator Associations to the extent such information was publicly available and/or provided to us by the Comparator Associations. In addition, we conducted interviews with representatives from the COC and the five Comparator Associations. We also refer to some of the key criteria from phase two of the Sport Canada Report Card Matrix on good governance.²⁶⁰

B. Assessment of Hockey Canada – Are Hockey Canada’s By-laws concerning the constitution and operation of the Board of Directors in line with current best practices?

i. Composition of Hockey Canada’s current Board (skills, experience, and diversity) and observations about their alignment with best practices

1. Why diversity matters

The key functions of a board of directors are to articulate and ensure adherence to the vision, mission and values of the corporation, to approve a strategic plan, to oversee operational performance, to oversee financial assets and resources, to identify and manage risk, and to hire and provide appropriate oversight of the CEO. The board of directors must be comprised of a diverse group of individuals who collectively have the knowledge, skills, experience and capacity to allow it to carry out these key functions effectively. In addition to the required range of skills and expertise, the board ought to reflect the “demographic characteristics that exist across Canadian society including, but not limited to, sex, gender identity, race, ethnicity, sexual orientation, class, economic means, ability, age, official language of Canada spoken, religion and education.”²⁶¹ Several studies conclude that diversity on boards is associated with better decision-making and governance because “diversity - whether through representation of different strengths, consideration of different concerns, or questions based on varying life experiences - will counteract groupthink.”²⁶² Put another way, diversity in the boardroom enhances decision-making because the directors will deliberate from a range of perspectives, each with varying insight.²⁶³

Thus, having the right mix of people around the board table will enable the directors to accomplish their supervisory functions more effectively. To that end, an organization must recruit and select director candidates thoughtfully to ensure that the board’s composition is appropriate having regard to its current environment and anticipated circumstances. Indeed, to obtain an “excellent” grade for diversity and representation on Sport Canada’s Report Card, an organization’s Board of

²⁶⁰ Sport Canada, Report Card Phase 2 Matrices and Glossary, Government of Canada (undated).

²⁶¹ “Canadian Sport Governance Code” (April 2021) at 4, section B.5, online: Canadian Olympic Committee – NSO Sharing Centre <https://nso.olympic.ca/wp-content/uploads/2021/10/Canadian_Sports_Governance_Code.pdf>.

²⁶² Yaron Nili, “Beyond the Numbers: Substantive Gender Diversity in Boardrooms” (2019) 94 Ind LJ 145 at 162-3.

²⁶³ “Good Governance Framework: A Guide for Implementing the Canadian Code of Governance” (23 September 2021) at 3, online (pdf): Canadian Olympic Committee <<https://nso.olympic.ca/wp-content/uploads/2021/10/Good-Governance-Framework-Sept-2021-1.pdf>>.

directors must “reflec[t] the diversity of thought, backgrounds, skills, experiences and expertise”.²⁶⁴ Moreover, the Report Card Matrix recommends that the Board be “competency based, relevant to the areas addressed by the skills matrix”.²⁶⁵

Also key to obtaining an “excellent” grade for Diversity and Inclusion from the Report Card are ensuring that the Board’s composition reflects gender balance, that – the Board be committed to monitoring issues related to equity, access, diversity and inclusion, and that it has taken “demonstrable steps” to recruit members from under-represented groups.²⁶⁶

The Articles and By-laws of Hockey Canada set out some basic requirements in respect of the Board’s composition. The Articles provide that there shall be a minimum of five and a maximum of nine Directors on the Board.²⁶⁷ The By-Laws stipulate that the Board is composed of nine Directors who are elected by the Members, of whom at least two must be male and two female, and up to one Director appointed by the elected Directors.²⁶⁸ As at the date of this report, the Board was comprised of seven elected Directors. Two elected Director positions were vacant (further to Michael Brind’Amour’s resignation as Chair on August 6, 2022 and Andrea Skinner’s resignation as Interim Chair on October 8, 2022)²⁶⁹ and no appointed Director was serving on the Board.

2. Hockey Canada Board size

For the purpose of assessing the composition of Hockey Canada’s Board, we considered the Board’s size. As mentioned in the previous chapter of this report, the appropriate size for a board of directors depends on a number of factors, such as the amount of work to be done, which varies according to the projects in progress and issues facing the organization. However, the board should be sufficiently large to enable the directors to get the work done well, but not so large that meaningful discussion becomes difficult.²⁷⁰

When compared to the size of the board at the Comparator Associations, Hockey Canada’s Board falls within the ranges we observed and the best practices supported by the governance sources consulted for our review. The number of Directors on the Board is fixed by the By-laws at the

²⁶⁴ “Good Governance Framework: A Guide for Implementing the Canadian Code of Governance” (23 September 2021) at 4, online (pdf): *Canadian Olympic Committee* <<https://nso.olympic.ca/wp-content/uploads/2021/10/Good-Governance-Framework-Sept-2021-1.pdf>>; see also Sport Canada, *Report Card Phase 2 Matrices and Glossary*, Government of Canada (undated), at 2.3.3.

²⁶⁵ “Good Governance Framework: A Guide for Implementing the Canadian Code of Governance” (23 September 2021) at 4, online (pdf): *Canadian Olympic Committee* <<https://nso.olympic.ca/wp-content/uploads/2021/10/Good-Governance-Framework-Sept-2021-1.pdf>>; see also Sport Canada, *Report Card Phase 2 Matrices and Glossary*, Government of Canada (undated), at 2.3.4.

²⁶⁶ Sport Canada, *Report Card Phase 2 Matrices and Glossary*, Government of Canada (undated), at 2.3.3.

²⁶⁷ Industry Canada, “Hockey Canada Association Articles of Continuance” (10 June 2014).

²⁶⁸ “Hockey Canada By-Laws, Regulations and History” (May 2022), s 26.1, online (pdf): *Hockey Canada* <<https://cdn.hockeycanada.ca/hockey-canada/Corporate/About/Downloads/2022-23-bylaws-e.pdf>>.

²⁶⁹ Note to reader: Our observations on the composition of the Hockey Canada Board are based on the complement of Directors who were on the Board as at October 7, 2022, prior to Ms. Andrea Skinner’s resignation as Interim Board Chair on October 8, 2022.

²⁷⁰ Anne Corbett & James M Mackay, *Guide to Good Governance: Not-for-Profit and Charitable Organizations*, 2nd ed (September 2013) at 118.

maximum number permitted by the Articles, nine elected Directors, but provides for the option of an additional Board-appointed Director. Hockey Canada has informed us that the Board has never exercised its right to appoint an additional Director. The limitation in the Articles means that Hockey Canada cannot have nine elected Directors plus an additional appointed Director on the Board. Any increase to the number of Directors above nine would require Members' approval of an amendment to the Articles.

We observed that one other Comparator Association, Athletics Canada, has a similar range of number of Directors as Hockey Canada with a minimum of seven and maximum of nine. Canada Basketball's range is between six and eleven, and Curling Canada's is between eight and twelve. Canada Soccer and Tennis Canada have the largest boards of the Comparator Associations, with a fixed number of 14 and 13 Directors respectively. The COC Code states that "[b]oards should be functional in size with a minimum of five board members and a maximum of fifteen board members. It is expected that a typical board would have seven to eleven members."²⁷¹

On the June 2022 Report Card Intake Results, Hockey Canada received an "excellent" grade for its Board structure, with the document noting that the Board size "is based on the nature of the complexity of the organization".²⁷² We acknowledge that Hockey Canada's Board size generally aligns with the COC Code and the Comparator Associations. However we are of the view that, given the scope and complexity of Hockey Canada's mandate, the size of its Board should be closer to the upper end of the ranges stipulated in those points of reference. The addition of some positions on the Board would create the opportunity to include Directors with a greater range of skills, experience and background. In addition, given the heavy workload of the Board and the number of standing committees that support it, an increase in the number of Directors would allow the Board to allocate tasks and committee work among a larger group of people. As articulated in the Report Card Matrix, an "excellent" Board size means having a number of directors "based on the nature, size and complexity of the organization as well as its stage of development".²⁷³ Additionally, the Report Card recommends that the Board be "organized to respond to emerging issues and support the overall strategic plan of the organization".²⁷⁴

In light of these considerations, we recommend that Hockey Canada amend its Articles to increase the maximum number of Directors from 9 to 13 (we do not think it is necessary to amend the minimum number of Directors). We are also of the view that the By-laws should not prescribe a fixed number of Directors, but rather they should be amended to provide that the Board will consist of a number of Directors between the minimum and maximum number of Directors specified in the Articles. If the Articles allow for a range of Directors, and the Members have delegated to the Board the authority to fix the number of Directors, the Board can then easily adjust the number

²⁷¹ Canadian Sport Governance Code" (April 2021) at 3, para 1, online: Canadian Olympic Committee – NSO Sharing Centre <https://nso.olympic.ca/wp-content/uploads/2021/10/Canadian_Sports_Governance_Code.pdf>.

²⁷² Government of Canada, Sport Canada, "2022 Sport Canada Report Card – Phase 2 Open Intake Results" (June 2022) at 9.

²⁷³ "Good Governance Framework: A Guide for Implementing the Canadian Code of Governance" (23 September 2021) at 8, online (pdf): *Canadian Olympic Committee* <<https://nso.olympic.ca/wp-content/uploads/2021/10/Good-Governance-Framework-Sept-2021-1.pdf>>; see also Sport Canada, *Report Card Phase 2 Matrices and Glossary*, Government of Canada (undated), at 2.3.1.

²⁷⁴ Sport Canada, *Report Card Phase 2 Matrices and Glossary*, Government of Canada (undated), at 2.3.1.

within that range by ordinary resolution of the Directors, with no need for further Member approval. Such a feature is attractive since it provides the Board with more governance flexibility by allowing it to periodically adjust the size of the Board as needed.

Having a larger Board could also provide the Directors with greater opportunity to use their authority to appoint additional Directors by fixing the number of elected Directors at a number below the allowed maximum (e.g. 13 directors), therefore leaving room for a Board appointed director. In that regard, we are of the view that Hockey Canada ought to amend its By-laws to provide that the Board may appoint additional Directors within the legal limits imposed by the *Canada Not-for-profit Corporations Act*, SC 2009, c 23 (“CNCA”), rather than limiting that right to only one additional Director. The limits imposed by the CNCA are such that the number of appointed directors on the board (if any) cannot ever exceed one third of the number of directors elected at the previous annual meeting of members.

For example, in order for the Board to be able to appoint two Directors, a minimum of six Directors would need to be elected at the last annual meeting of Members. The practice of allowing Directors to appoint a limited number of Directors to fill a specific need or gap on the Board also aligns with the principle of the Board being responsible for its own governance (which we discussed earlier in our report) as it affords the Board an opportunity to participate in the Board’s formation in a meaningful way. While the removal of the limitation might not necessarily result in the Board being able to appoint more than one Director in any given year (as it will depend on the total number of Directors elected at the last annual meeting) we are of the view that maintaining a limit on appointing only one Director is unnecessarily restrictive since the CNCA has already built-in limitations that prevent the Board from misusing their right to appoint additional Directors and the limitation may fetter the Board’s ability to manage its own governance.

3. Hockey Canada Board diversity

Our assessment of the Hockey Canada Board’s current composition also included an examination of the Directors’ skills, expertise, experience and other diversity elements. The presence of a suitable mix of skills, expertise and experience is vital to ensure that the Board as a collective is equipped to supervise the activities and affairs of the organization and carry out its strategic vision.²⁷⁵ As mentioned above, diversity should include diversity of thought, as well as representation on the Board of demographic diversity characteristics such as gender, cultural, racial, sexual orientation, religion, disability and age.²⁷⁶

The COC Code provides some guidance for NSOs in respect of diversity standards: “Within an independent board staffed with directors who possess the necessary skills for the successful stewardship of the NSO and of whom not more than 60% of the directors are of the same gender, it is recognized that diverse perspectives, experiences and backgrounds provide for optimal board

²⁷⁵ Deloitte, “Diversity in the Boardroom, Practices and Perspectives” (2015) at 3, online: [Deloitte <https://www2.deloitte.com/za/en/pages/governance-risk-and-compliance/articles/diversity_in_the_boardroom.html>](https://www2.deloitte.com/za/en/pages/governance-risk-and-compliance/articles/diversity_in_the_boardroom.html).

²⁷⁶ Yaron Nili, “Beyond the Numbers: Substantive Gender Diversity in Boardrooms” (2019) 94 Ind LJ 145 at 162-3.

performance.”²⁷⁷ The COC Code goes on to say that NSOs should develop a policy for diversity at the board level. Diversity is defined as “the broad range of demographic characteristics that exists across Canadian society including, but not limited to, sex, gender identity, race, ethnicity, sexual orientation, class, economic means, ability, age, official language of Canada spoken, religion and education.”²⁷⁸

What follows is a summary of our observations on the make-up of the Hockey Canada Board as it existed on October 7, 2022 prior to the resignation of the Interim Chair (Andrea Skinner), but after the resignation of the Board Chair on August 6, 2022 (Michael Brind’Amour). Further to our review of the current Directors’ biographies, our interviews with each of them, and the Hockey Canada Board Matrix, we note that the following skills, experience, and diversity characteristics found on the current Board include the following:

- two (or 25%) of the current Directors are female, and six (or 75%) are male; in August 2022, immediately prior to the resignation of the former Board Chair Mr. Michael Brind’Amour (when all nine Board positions were filled), two (or 22.2%) of the Directors were female and seven (or 77.8%) were male;
- seven (or 87.5%) of the eight Directors are White;
- the age of the current Directors falls within the following age groups:
 - 35-44: 3
 - 45-54: 0
 - 55-64: 2
 - 65-74: 3
 - 75+: 0
- five (62.5%) of the eight Directors are 55 years of age or over;
- none of the eight Directors is fluently bilingual in English and French, although one Director is fluent in Punjabi and Hindi (we also note that the former Board Chair, Mr. Brind’Amour, was fluently bilingual in both English and French);
- one of the Directors identifies as a member of LGBTQ+ community;
- one of the Directors is of South Asian descent (2nd generation Canadian);

²⁷⁷ “Canadian Sport Governance Code” (April 2021) at 4, section B.5, online: *Canadian Olympic Committee – NSO Sharing Centre* <https://nso.olympic.ca/wp-content/uploads/2021/10/Canadian_Sports_Governance_Code.pdf>.

²⁷⁸ “Canadian Sport Governance Code” (April 2021) at 4, section B.5, online: *Canadian Olympic Committee – NSO Sharing Centre* <https://nso.olympic.ca/wp-content/uploads/2021/10/Canadian_Sports_Governance_Code.pdf>.

- seven of the eight Directors have a significant hockey background, each serving in a variety of roles (including former players, coaches, referees, trainers, event volunteers, task team or committee members) and at various levels of hockey;
- four of the eight Directors have served on the Board of Directors or as chair/president of a Hockey Canada Member Association or a hockey league;
- three of the eight Directors have played hockey at the university level;
- two of the eight Directors are lawyers;
- two of the eight Directors have experience in municipal politics or employment experience within a municipality;
- one of the eight Directors is a former registered nurse;
- two of the eight Directors have backgrounds in business and/or economics;
- at least five of the eight Directors have not-for-profit volunteer experience (including board and governance experience); and
- at least two of the Directors have employment or volunteer experience developing, executing and/or managing diversity, inclusion and/or multicultural initiatives.

To further inform our assessment of the Board’s composition and diversity, we also reviewed a number of Hockey Canada’s governance documents, including the By-laws, the Policy on Equity, Diversity and Inclusion, and committee terms of reference. As previously mentioned, the Hockey Canada By-laws provide that the nine elected Directors shall include a minimum of two male and two female Directors. The By-laws also provide that the Nominating Committee is responsible for ensuring that the Board “is composed of qualified and skilled persons capable of, and committed to, providing effective governance leadership to Hockey Canada.”²⁷⁹

While the By-laws provide no other guidance or criteria in respect of board composition and diversity, Hockey Canada’s Equity, Diversity and Inclusion Policy provides that the Board shall have the following responsibilities in respect of the diversity of the Board:²⁸⁰

- The Board will strive for a governance structure that encourages and promotes full and equal participation by all individuals, including under-represented populations;
- The Board will encourage the removal of barriers to achieve balanced gender representation on its Board and on all committees;

²⁷⁹ “Hockey Canada By-Laws, Regulations and History” (May 2022), s 48.1, online (pdf): *Hockey Canada* <<https://cdn.hockeycanada.ca/hockey-canada/Corporate/About/Downloads/2022-23-bylaws-e.pdf>>.

²⁸⁰ Hockey Canada, “Equity, Diversity and Inclusion Policy” (approved by Board May 2019) at 1.

- The Board will incorporate diversity and inclusion into their annual education/professional development plan; and
- The Board recognizes that diverse perspectives linked in common purpose contribute to innovation and growth for Hockey Canada. Accordingly the Board of Directors will review the skills, expertise, experience, independence and background of the Directors to identify the skills and competencies that could be targeted during the nomination process.

Furthermore, the Terms of Reference for the Nominating Committee of Hockey Canada set out some additional considerations. For example, the duties to be performed by the Nominating Committee include the obligations to:²⁸¹

- Promote a regional balance in the composition of the Board by recruiting candidates from different regions of the country;
- Promote diversity of the Board in relation to gender, age, language, ethnicity, professional backgrounds and personal experiences; and
- Have regard to the specific and desired competencies required on the Board as a whole in soliciting nominations.

On the June 2022 Report Card, Hockey Canada obtained a “good” grade with respect to Board composition.²⁸² The document notes that diversity “is considered a key priority, reflected in recruitment and governance materials” of Hockey Canada.

The Governance Committee of Hockey Canada also has diversity-related duties, namely to “make recommendations to the Board to assist the Nominating Committee in identifying ideal candidate profile(s), skills matrix and diversity needs.”²⁸³ We note that there is some overlap between or duplication of the duties of the Governance Committee and Nominating Committee, which will be addressed later in our report.

Our review of Hockey Canada’s governance documents, including the By-laws, the Policy on Equity, Diversity and Inclusion, and committee terms of reference shows that some proactive steps have been taken to include language and principles that promote equality, diversity and inclusion on the Hockey Canada Board; those have been noted above. In addition, we considered whether the composition of Hockey Canada’s Board (as it was constituted on October 7, 2022 prior to the resignation of Andrea Skinner as Interim Board Chair) reflects diversity of thought (skills, expertise and experience) and adequate representation of demographic diversity characteristics (such as gender, cultural, racial, sexual orientation, etc.). Although more limited, some positive Board features have been noted. For example, the Board includes a Director of South Asian descent and another who identifies as a member of LGBTQ+ community. In addition, the professional

²⁸¹ “Hockey Canada Terms of Reference” (updated to 18 March 2022) at 35, s 5.4.

²⁸² Government of Canada, Sport Canada, “2022 Sport Canada Report Card – Phase 2 Open Intake Results” (June 2022) at 13.

²⁸³ “Hockey Canada Terms of Reference” (updated to 18 March 2022) at 37, s 5.5.

backgrounds and knowledge of the Directors include legal training, business and/or economics, healthcare, municipal politics and equity, diversity and inclusion.

Notwithstanding the foregoing, the observations set out above regarding the most recent composition of the Hockey Canada Board illustrate that there is an obvious lack of diversity among the Directors serving on the Board of Hockey Canada. Identified issues include, for example, a noticeable disproportion of men to women Directors (this will be discussed further in the section below “Gender Identity”), a disproportion of White people, no Director fluently bilingual in French and English and a relatively high percentage of Directors over the age of 55. In addition, a high number of Directors (eight out of nine) have a significant hockey background, and four of those Directors (i.e. half of the Board) have served on the board of directors or as chair/president of a Hockey Canada Member or a hockey league. While there is value in having Directors on the Hockey Canada Board who understand hockey, the significant presence of hockey experience and lack of heterogeneity on the Board suggests that the network of people that are nominated as Director candidates by the Members and the Nominating Committee is relatively limited and homogenous, and a contributing factor to the lack of diversity on the Board.

As we mentioned in the Introduction section of our report, we are of the view that the current Director nomination process has not provided Hockey Canada with the wide range, depth and diversity of experience, both professional and personal, that the board collectively requires to govern this complex organization and to lead significant cultural change. The recommendations we make below in section B. iii. of this report are intended to remedy this, but implementing them will require strong support from and openness to change on the part of the Members.

4. Board skills and expertise matrix

In accordance with the policies referred to above, the Nominating Committee has developed a Board skills-expertise matrix (the “**Matrix**”).²⁸⁴ The Matrix serves as an inventory of the skills, expertise and characteristics that are desired on the Board. As such, the Matrix should enable the Nominating Committee to identify, for each Director of the Board, which of the below-listed skills, expertise and characteristics the Director possesses, as well as any gaps in respect of them. Those skills, expertise and characteristics are as follows:

Board skills-expertise matrix	
Core Board Competencies	Functional Expertise
Enterprise Leadership	HR Transformation
Entrepreneurship	IT/Cyber/AI
Board Governance Experience	Government Relations

²⁸⁴ “Hockey Canada Board Matrix” provided by Michael Bruni, Chair of the Nominating Committee (18 August 2022).

Board skills-expertise matrix	
Core Board Competencies	Functional Expertise
Financial Acumen	Legal/Regulatory
Government Relations	M&A/Integration
Industry/Sector Experience	Marketing/Sales
Strategic Growth/Value Creation Capability	Operations
Risk Identification, Assessment and Management	Manufacturing
Stakeholder Management	Sustainability
Behaviour Attributes	Other
Capacity to Challenge	Appointed by:
Collaboration	Gender (Female)
Communication	Tenure
Independent Judgement	Diversity – Ethnicity
Influencing Skills	Geography
Innovative/Conceptual Thinking	Generation Representation <40
Integrity	Generation Representation >80
Organizational Commitment	Aging related illness
Willingness to Act	

In addition to the Matrix, Hockey Canada maintains a separate document (also referred to by Hockey Canada as a “Board matrix”), which sets out in the form of a chart more detailed information in respect of the Directors’ specific skills, competencies and diversity. We were informed by Hockey Canada’s General Counsel that such information is provided to Hockey

Canada by the Directors themselves. The version of the document we reviewed was dated August 4, 2022 (the “**Matrix Supplement**”).²⁸⁵

We note that the use of a matrix by Hockey Canada’s Nominating Committee is a practice that aligns with best practices, including the COC Code, which provides that each “NSO must maintain a skills matrix and board membership shall be competency-based ensuring that the board members possess as many of the skills necessary for optimal board functioning as possible.”²⁸⁶ The Report Card Matrix also recognizes the use of a skills matrix for Board recruitment as best practice; to obtain a score of “excellent” under the Report Card Matrix, the skills matrix and professional development process of the organization must be “considered integral to the Board of Directors’ maturation and development.”²⁸⁷ The Report Card Matrix also recommends under the “excellent” grade that the Board Chair assess Directors’ evaluations to help inform Board development and skills matrices.²⁸⁸ On the June 2022 Report Card, Hockey Canada received a “good” grade in respect of Board composition, notably as the “skills matrix serves to guide the Board of Directors recruitment”. Four of the five Comparator Associations also have a formal skills Matrix. Tennis Canada uses an informal skills matrix for Director recruitment.²⁸⁹

When the Hockey Canada Matrix is compared to the matrix characteristics set out in the COC Code, we observe some minor differences. The COC Code expects that for most NSOs, a matrix’s skills would be “financial, governance, legal and sports” and for larger NSOs, the skills might also include “marketing, digital, HR, fundraising, sponsorship and international relations.”²⁹⁰ We note that from these, very few are not included in the Hockey Canada Matrix: digital (although the Matrix does list IT/Cyber/AI), sponsorship (but see Marketing/Sales) and international relations. We also note that the Matrix Supplement sets out the language competencies for each Director and includes a space where the diversity elements that the Director possesses are described.

Although the 2022 Matrix does not have a regional breakdown for the desired geographical representation of Directors, the Board has, until the resignation of the former Board Chair, Mr. Michael Brind’Amour, included representation from the Maritimes, Québec, Ontario and the Western provinces since the By-laws were amended in 2014 to remove mandatory geographic representation on the Board.²⁹¹ This aligns with the Nominating Committee’s duty to “Promote a

²⁸⁵ “Hockey Canada Board Matrix” (last updated 4 August 2022).

²⁸⁶ “Canadian Sport Governance Code” (April 2021) at 5, section B.7, online: Canadian Olympic Committee – NSO Sharing Centre <https://nso.olympic.ca/wp-content/uploads/2021/10/Canadian_Sports_Governance_Code.pdf>.

²⁸⁷ Sport Canada, *Report Card Phase 2 Matrices and Glossary*, Government of Canada (undated), at 2.3.3.

²⁸⁸ “Good Governance Framework: A Guide for Implementing the Canadian Code of Governance” (23 September 2021) at 21, online (pdf): *Canadian Olympic Committee* <<https://nso.olympic.ca/wp-content/uploads/2021/10/Good-Governance-Framework-Sept-2021-1.pdf>>; see also Sport Canada, *Report Card Phase 2 Matrices and Glossary*, Government of Canada (undated), at 2.3.2 .

²⁸⁹ Interview with Tennis Canada (September 28, 2022).

²⁹⁰ “Canadian Sport Governance Code” (April 2021) at 5, section B.7, online: Canadian Olympic Committee – NSO Sharing Centre <https://nso.olympic.ca/wp-content/uploads/2021/10/Canadian_Sports_Governance_Code.pdf>.

²⁹¹ Email to Victoria Prince from Sean Kelly (13 September 2022).

regional balance in the composition of the Board by recruiting candidates from different regions of the country.”²⁹²

To further inform our assessment of Hockey Canada’s current Board composition, we took a closer look at certain characteristics that are emphasized in the COC Code as best practice, such as gender identity and athlete representation. Approaches to these characteristics vary among the Comparator Associations.

5. Gender identity

The Hockey Canada By-laws provide that the nine elected Directors shall include a minimum of two male and two female Directors, meaning that no gender may represent more than 77.8% or less than 22.2% of Directors. We note that two other Comparator Associations have director gender requirements set out in their By-laws. Curling Canada’s By-laws provide “advancement for gender balance for women and men on the Board of Governors, while ensuring the prevailing criterion for election is eligibility, ability and professional performance,” no gender may represent more than 60% or less than 40% of governors.²⁹³ Canada Soccer’s By-laws state that not more than 60% of the Directors shall be of the same gender,²⁹⁴ meaning that with a board of 14 directors, no more than 8 of them can be of the same gender. Athletics Canada’s By-laws provide that its board shall include “three Athlete Directors, a minimum of one of each gender.”²⁹⁵ Athletics Canada’s Diversity, Equity and Inclusion policy goes on to say that it “will work toward achieving gender parity on its Board of Directors”²⁹⁶ and that “the athlete group who nominates the three Athlete Directors [must] nominate at least one athlete from each gender identity and at least one athlete who is a para-athlete.”²⁹⁷

While Canada Basketball does not have director gender requirements in its By-laws, it does have an organizational policy relating to diversity, equity and inclusion that contains aspirational statements regarding diversity objectives for its board. Notably, each of Canada Basketball’s policy and Athletics Canada’s policy provides that the NSO “will encourage balanced representation by Under-Represented Groups on its [Board] and on all committees.”²⁹⁸ Each of them uses the same definition of “Under-Represented Group”: “Under-Represented Groups include women, children in low income families, Indigenous people, seniors, people with disabilities, newcomers to Canada, and members of the LGBTQ2 community.” As mentioned

²⁹² “Hockey Canada Terms of Reference” (updated to 18 March 2022) at 35, s 5.4.

²⁹³ Curling Canada, “By-laws of Canadian Curling Association” (5 December 2018) at Part VIII, s 3.

²⁹⁴ “Canada Soccer By-laws” (May 2022), s 6.02(v) online (pdf): The Canada Soccer Association Incorporated <https://www.canadasoccer.com/wp-content/uploads/2021/05/CSA-GC-By-laws-2022-EN_Final.pdf>.

²⁹⁵ “Athletics Canada Bylaws” (January 2022) at s 5.1(d), online (pdf): *Athletics Canada* <<https://athletics.ca/wp-content/uploads/2022/01/Athletics-Canada-Bylaws-January-2022.pdf>>.

²⁹⁶ “Diversity, Equity and Inclusion Policy” (July 2020) at s 6, online (pdf): *Athletics Canada* <[Athletics-Canada-Diversity-Equity-and-Inclusion-Policy-July-2020.pdf](https://athletics.ca/wp-content/uploads/2020/07/Athletics-Canada-Diversity-Equity-and-Inclusion-Policy-July-2020.pdf)>.

²⁹⁷ “Diversity, Equity and Inclusion Policy” (July 2020) at s 7, online (pdf): *Athletics Canada* <[Athletics-Canada-Diversity-Equity-and-Inclusion-Policy-July-2020.pdf](https://athletics.ca/wp-content/uploads/2020/07/Athletics-Canada-Diversity-Equity-and-Inclusion-Policy-July-2020.pdf)>.

²⁹⁸ Canada Basketball, “Equity and Inclusion Policy” at s 4, online (pdf): <https://assets.website-files.com/5d24fc966ad064837947a33b/5e25e16b0482df7fb643b522_Equity%20and%20Inclusion%20Policy.pdf>; “Diversity, Equity and Inclusion Policy” (July 2020) at s 5, online (pdf): *Athletics Canada* <[Athletics-Canada-Diversity-Equity-and-Inclusion-Policy-July-2020.pdf](https://athletics.ca/wp-content/uploads/2020/07/Athletics-Canada-Diversity-Equity-and-Inclusion-Policy-July-2020.pdf)>.

earlier in this section of our report, the COC Code also provides some guidance for NSOs in respect of gender representation on the board. Pursuant to the COC Code, not more than 60% of the directors can be of the same gender.²⁹⁹ While Tennis Canada also has no director gender requirements set out in their By-laws, they advised during an interview that the organization has a policy relating to gender equity, which requires that at least 40% of the Board be comprised of women.³⁰⁰

When compared to the COC Code and the NSO Comparator Associations that have gender requirements in their By-laws (i.e. Curling Canada and Canada Soccer), Hockey Canada's minimum thresholds for representation of all genders are the lowest. Although Hockey Canada's Equity, Diversity and Inclusion Policy provides that the "Board will encourage the removal of barriers to achieve balanced gender representation on its Board,"³⁰¹ the current Board's composition has a noticeable disproportion of men to women Directors. In our view, Hockey Canada should take a more proactive approach to achieving balanced gender representation on its Board. To that end, we recommend that Hockey Canada amend its By-laws to increase its gender representation thresholds and to provide that no more than 60% of the Directors will be of the same gender, as per the COC Code.

It is worth noting that Hockey Canada's Female Hockey Policy Committee ("**FHP Committee**") made a similar recommendation to Hockey Canada's Board in September 2019. The FHP Committee is a committee established by the Board and responsible for monitoring the needs of females who play hockey and to make recommendations to the Board as it deems appropriate to meet those needs.³⁰² By way of a briefing note, the FHP Committee made a number of recommendations to the Board, including that Hockey Canada "adopt the CAAWS [Canadian Association for the Advancement of Women and Sport and Physical Activity] guidelines of achieving a 40-60% gender balance on the Hockey Canada Board of Directors over the next 6 years." That recommendation was not implemented.

6. Athlete representatives

The COC is of the view that it "is fundamental for athletes to have meaningful representation in the governance structure of the NSO and for athlete voices to be heard."³⁰³ While the COC Code provides that each NSO should determine how it can best achieve that objective, athlete representation among the directors is "strongly encouraged" and each NSO must establish a process that allows the athlete representative to be selected with significant input from that sport's athletes.³⁰⁴ The term "athlete" is defined as "a person currently on a national team or competing at

²⁹⁹ Canadian Sport Governance Code" (April 2021) at 4, section B.5, online: *Canadian Olympic Committee – NSO Sharing Centre* <https://nso.olympic.ca/wp-content/uploads/2021/10/Canadian_Sports_Governance_Code.pdf>.

³⁰⁰ Interview with Tennis Canada (September 28, 2022).

³⁰¹ Hockey Canada, "Equity, Diversity and Inclusion Policy" (approved by Board May 2019) at 1.

³⁰² "Hockey Canada Terms of Reference" (updated to 18 March 2022) at 60.

³⁰³ "Canadian Sport Governance Code" (April 2021) at 4, section B.6, online: *Canadian Olympic Committee – NSO Sharing Centre* <https://nso.olympic.ca/wp-content/uploads/2021/10/Canadian_Sports_Governance_Code.pdf>.

³⁰⁴ "Canadian Sport Governance Code" (April 2021) at 4, section B.6, online: *Canadian Olympic Committee – NSO Sharing Centre* <https://nso.olympic.ca/wp-content/uploads/2021/10/Canadian_Sports_Governance_Code.pdf>.

the international level or a person who is retired and was a member of a national team or competed at the international level, not more than eight years previously.”³⁰⁵

Hockey Canada’s By-laws do not have express requirements for athlete representation on the Board, although “Athlete Representatives” are identified in the By-laws as one of Hockey Canada’s stakeholder groups that “contribute[s] to the success of Hockey Canada.”³⁰⁶ Section 15.1 of the By-laws provides: “The Board shall appoint an athlete from each of Hockey Canada’s Male, Female and Para hockey programs to represent that program’s interests.” Athlete representatives have such rights and privileges as the Board may from time to time determine, but are not entitled to vote, other than in the committees or Task Teams to which they may be assigned, and are not deemed to be Members of Hockey Canada.³⁰⁷ Hockey Canada’s Matrix and the Matrix Supplement list “Industry/Sector Experience” and “player” experience, respectively, as one of the types of experience tracked, but that does not provide any certainty that an athlete representative will be elected to the Board. While we observed that three of the current Directors of Hockey Canada are former hockey players who have competed at the university level, albeit more than eight years ago, no Director is either currently or formerly on a national team or other team competing at the international level. Among the Comparator Associations, at least two of them have national team athlete representation on their boards entrenched in their By-laws. Canada Soccer’s By-laws provide that its board shall include “one (1) former Athlete (member of one of the National Teams; e.g., Senior, Youth, Para, Beach and/or Futsal).”³⁰⁸ Athletics Canada’s By-laws state that its board shall include three “Athlete Directors,” who will consist of at least “one para-athlete and one able-bodied athlete who are a member of and nominated by the group of athletes who are 18 years of age or older and who have been nominated or selected by [Athletics Canada] to a National Team in any discipline in the previous four years.”³⁰⁹

We agree with the COC that it is critical for athletes to have “meaningful representation in the governance structure of the NSO and for athlete voices to be heard.”³¹⁰ In our view, allowing an athlete representative to serve on the board of directors of an NSO is one of the most impactful ways to achieve that objective. Allowing athlete representation on the Board of Hockey Canada would be especially beneficial given the current challenges facing the organization and in particular the broader societal discussion around cultural change in the sport of hockey. As the persons having the most experience playing the sport of hockey and living the hockey culture both on and off the ice, the players’ voice and perspective is critical and ought to be given more prominence by formally giving players the right to be represented on the Hockey Canada Board.

³⁰⁵ “Canadian Sport Governance Code” (April 2021) at 4, section B.6, online: *Canadian Olympic Committee – NSO Sharing Centre* <https://nso.olympic.ca/wp-content/uploads/2021/10/Canadian_Sports_Governance_Code.pdf>.

³⁰⁶ “Hockey Canada By-Laws, Regulations and History” (May 2022), s 13.1, online (pdf): *Hockey Canada* <<https://cdn.hockeycanada.ca/hockey-canada/Corporate/About/Downloads/2022-23-bylaws-e.pdf>>.

³⁰⁷ “Hockey Canada By-Laws, Regulations and History” (May 2022), s 15.4, online (pdf): *Hockey Canada* <<https://cdn.hockeycanada.ca/hockey-canada/Corporate/About/Downloads/2022-23-bylaws-e.pdf>>.

³⁰⁸ “Canada Soccer By-laws” (May 2022), s 6.02(iv) online (pdf): *The Canada Soccer Association Incorporated* <https://www.canadasoccer.com/wp-content/uploads/2021/05/CSA-GC-By-laws-2022-EN_Final.pdf>.

³⁰⁹ “Athletics Canada Bylaws” (January 2022) at s 5.1(d), online (pdf): *Athletics Canada* <<https://athletics.ca/wp-content/uploads/2022/01/Athletics-Canada-Bylaws-January-2022.pdf>>.

³¹⁰ “Canadian Sport Governance Code” (April 2021) at 4, section B.6, online: *Canadian Olympic Committee – NSO Sharing Centre* <https://nso.olympic.ca/wp-content/uploads/2021/10/Canadian_Sports_Governance_Code.pdf>.

To that end, we recommend that the By-laws be amended to provide that the Board will include at least one athlete representative, who will be nominated by the Nominating Committee with significant input from hockey players.

7. Independent directors

It is not uncommon for national member-based not-for-profit organizations to have independent directors on their boards of directors. The inclusion of independent directors seeks to promote impartiality on a board and to cultivate a wide range of perspectives by engaging an external group of individuals who originate from a wide range of community circles.³¹¹ As the COC Code recognizes, “diverse perspectives, experiences and backgrounds provide for optimal board performance.”³¹² In addition, director independence increases effective governance by encouraging “objective independent judgment.”³¹³ Independence on a board is particularly important for corporations, such as Hockey Canada, in which “the organization has multiple accountabilities or provides services to the public with government money”³¹⁴ because it increases the confidence in the board by reducing the perception that the board is an “insider-only” board.

The COC Code recommends that “[n]ot less than 40% of the directors should be [i]ndependent.”³¹⁵ It defines “independent” as meaning “that a director has no fiduciary obligation to any body for the subject sport at the national or provincial level, receives no direct or indirect material benefit from any such party, and is free of any conflict of interest of a financial, personal or representational nature (provided that participating in the NSO’s sport does not alone cause a person not to be [i]ndependent).”³¹⁶ We observed that at least one of the Comparator Associations, Canada Soccer, has a similar requirement; six of its 14 directors must be independent. Although Hockey Canada’s By-laws do not expressly provide that Directors must be “independent,” they do provide that all Directors must, within 30 days of taking office, “divest themselves of any active executive position within a Member organization including, without limitation, a position on the board of directors of that Member, or any executive position within a Club, league or team.”³¹⁷ To strengthen the principle of independence in Hockey Canada’s By-laws, we suggest that people should meet the “independent” criteria at the time of their election, rather than be given an opportunity, after their election, to divest themselves of any interest that could be seen as fettering their independence.

³¹¹ Ellen Hirzy, ed, *Nonprofit Board Committees* (Washington, DC: BoardSource, 2018), at 37.

³¹² “Canadian Sport Governance Code” (April 2021) at 3, section B.5, online: *Canadian Olympic Committee – NSO Sharing Centre* <https://nso.olympic.ca/wp-content/uploads/2021/10/Canadian_Sports_Governance_Code.pdf>.

³¹³ “Principles of Corporate Governance” (2016) Harvard Law School Forum on Corporate Governance at 6.6.

³¹⁴ Anne Corbett & James M Mackay, *Guide to Good Governance: Not-for-Profit and Charitable Organizations*, 2nd ed (September 2013) at 122.

³¹⁵ “Canadian Sport Governance Code” (April 2021) at 3, section B.2, online: *Canadian Olympic Committee – NSO Sharing Centre* <https://nso.olympic.ca/wp-content/uploads/2021/10/Canadian_Sports_Governance_Code.pdf>.

³¹⁶ “Canadian Sport Governance Code” (April 2021) at 3, section B.2, online: *Canadian Olympic Committee – NSO Sharing Centre* <https://nso.olympic.ca/wp-content/uploads/2021/10/Canadian_Sports_Governance_Code.pdf>.

³¹⁷ “Hockey Canada By-Laws, Regulations and History” (May 2022), s 26.2, online (pdf): *Hockey Canada* <<https://cdn.hockeycanada.ca/hockey-canada/Corporate/About/Downloads/2022-23-bylaws-e.pdf>>.

In our view, enhanced language in the By-laws that reinforces the principle of independence and the presence of Independent Directors on the Board would further demonstrate Hockey Canada's commitment to building a diverse and impartial Board committed to serving the best interests of Hockey Canada. That in turn, may be of assistance to rebuilding confidence in Hockey Canada and expanding and improving Hockey Canada's relationships with Members and other stakeholders. For those reasons, we recommend that at least a majority of the Directors on the Hockey Canada Board be persons who, at the time of their election, are independent of Hockey Canada. By "independent" we mean a person who at the time of their election as a Director is not:

- a) an employee of Hockey Canada;
- b) an officer, director or employee of any Member of Hockey Canada (a "HC Member");
- c) an officer, director or employee of an organization that is a member of a HC Member (including without limitation a local Minor Hockey Association); or
- d) an officer, director or employee of any other hockey club, league or team.

The independence of a Director or a prospective Director should be determined by the Nominating Committee.³¹⁸

ii. *Term and term limits of Hockey Canada's Directors and observations about their alignment with best practices*

1. Director terms

1.1 Elected Directors

As part of our review, we have been asked if the current terms and term limits of the Hockey Canada Directors align with best practices. The elected Directors of Hockey Canada serve on the Board for a term of two years.³¹⁹ The term commences on the date of the Director's election and ends at the second annual meeting of Members that follows. As Hockey Canada holds an election of Directors only in even-numbered years,³²⁰ the terms of all the elected Directors expire at the same time and are not staggered.

The CNCA and the *Canada Not-for-Profit Corporations Regulations*, SOR/2011-223 set a limit of four years for any one term for an elected director.³²¹ The CNCA does not require that a

³¹⁸ "Canadian Sport Governance Code" (April 2021) at 3, section B.2, online: *Canadian Olympic Committee – NSO Sharing Centre* <https://nso.olympic.ca/wp-content/uploads/2021/10/Canadian_Sports_Governance_Code.pdf>.

³¹⁹ "Hockey Canada By-Laws, Regulations and History" (May 2022), s 30.1, online (pdf): *Hockey Canada* <<https://cdn.hockeycanada.ca/hockey-canada/Corporate/About/Downloads/2022-23-bylaws-e.pdf>>.

³²⁰ "Hockey Canada By-Laws, Regulations and History" (May 2022), s 28.1, online (pdf): *Hockey Canada* <<https://cdn.hockeycanada.ca/hockey-canada/Corporate/About/Downloads/2022-23-bylaws-e.pdf>>.

³²¹ *Canada Not-for-profit Corporations Act*, SC 2009, c 23, s 128(3); *Canada Not-for-Profit Corporations Regulations*, SOR/2011-223, s 28(1).

corporation hold an election of directors annually, but rather “at each annual meeting at which an election of directors is required.”³²²

Hockey Canada’s current Director term of two years is compliant with law and generally consistent with the practices of the Comparator Associations. For example, Athletics Canada, Canada Basketball and Tennis Canada prescribe a two-year term for their elected directors. Pursuant to their respective By-laws, the elected directors of Curling Canada serve for a term of four years³²³ and the directors of Canada Soccer for a term of three years.³²⁴ In addition, the COC Code provides that a single term for a director of an NSO should be “not longer than four years.”³²⁵

With respect to standards in the broader not-for-profit sector, a 2021 study conducted by BoardSource (a leading organization focused on strengthening and supporting non-profit board leadership) found 54% of American non-profit boards have both prescribed term lengths and term limits.³²⁶ The most common board member term structure was a three-year term, with a two-term maximum.³²⁷ In Canada, an older study from 2006 found that three to four years was the most common term length for boards in the not-for-profit and voluntary sector.³²⁸ Additionally, 48% of respondents allowed board members to serve one to two consecutive terms, whereas 47% allowed three or more consecutive terms. Only 5% of respondents did not allow consecutive terms.

While the current two-year term for Directors complies with the CNCA and the COC Code, and is generally consistent with the practices of the Comparator Associations, it is our view that Hockey Canada would be better served by increasing the length of the Director term to up to three years. The complexity of the Hockey Canada organization imposes a steep learning curve on its Directors, particularly those coming from backgrounds outside the sport of hockey. As such, there is a risk that by the time their two-year term expires, the Directors have only recently been able to “get up to speed” in the activities and affairs of the organization. Increasing the single term length by one year would ensure that Directors can familiarize themselves with the nuances of Hockey Canada sufficiently, thereby fostering strategic leadership and enabling Directors to have a more significant impact on the organization’s short- and long-term goals. A term length of up to three

³²² *Canada Not-for-profit Corporations Act*, SC 2009, c 23, s 128(3).

³²³ Curling Canada, “By-laws of Canadian Curling Association” (5 December 2018) at Part VIII, s 2(b).

³²⁴ “Canada Soccer By-laws” (May 2022), s 6.03(A)(i) online (pdf): *The Canada Soccer Association Incorporated* <https://www.canadasoccer.com/wp-content/uploads/2021/05/CSA-GC-By-laws-2022-EN_Final.pdf>.

³²⁵ “Canadian Sport Governance Code” (April 2021) at 5, section B.10, online: Canadian Olympic Committee – NSO Sharing Centre <https://nso.olympic.ca/wp-content/uploads/2021/10/Canadian_Sports_Governance_Code.pdf>.

³²⁶ “Leading with Intent: BoardSource Index of Nonprofit Board Practices” (2021) at 33, online (pdf): *BoardSource* <<https://leadingwithintent.org/wp-content/uploads/2021/06/2021-Leading-with-Intent-Report.pdf?hsCtaTracking=60281ff7-cadf-4b2f-b5a0-94ebff5a2c25%7C428c6485-37ba-40f0-a939-aeda82c02f38>>.

³²⁷ “Leading with Intent: BoardSource Index of Nonprofit Board Practices” (2021) at 33, online (pdf): *BoardSource* <<https://leadingwithintent.org/wp-content/uploads/2021/06/2021-Leading-with-Intent-Report.pdf?hsCtaTracking=60281ff7-cadf-4b2f-b5a0-94ebff5a2c25%7C428c6485-37ba-40f0-a939-aeda82c02f38>>.

³²⁸ Grace Bugg & Sue Dallhoff, “National Study of Board Governance Practices in the Non-Profit and Voluntary Sector in Canada” (2006) at 26, online (pdf): *Strategic Leverage Partners Inc., & Centre for Voluntary Sector Research and Development* <http://www.strategicleveragepartners.com/bhg768kjmhgxxxyxwq/National_Study_of_Board_Governance_Practices_in_the_Non-Profit_and_Voluntary_Sector_in_Canada.PDF>

years, coupled with the introduction of staggered terms (discussed below), also provides greater opportunity for Board renewal and succession planning.

1.2 Staggered terms for elected Directors

As mentioned above, the terms of the Hockey Canada Directors are not staggered and the term of each Director expires at the same time. Although the law does not require that the terms of directors be staggered, many organizations use overlapping or rotating terms to avoid having all directors retire at the same time and to ensure that there is a balance of new and experienced directors on the board. In that regard, the CNCA provides that “[i]t is not necessary that all directors elected at a meeting of members hold office for the same term.”³²⁹

We note that at least three of the five Comparator Associations expressly provide for staggered terms in their By-laws. In accordance with its by-laws, three directors of the Canada Basketball board are elected in even-numbered years and three are elected in odd numbered years.³³⁰ Meanwhile, each of the by-laws of Athletics Canada³³¹ and Curling Canada³³² provides for a similar rotation process, whereby a minimum number of directors must be elected in even-numbered years and in odd numbered years. Although Soccer Canada’s by-laws do not expressly provide for staggered terms, their elections process is structured in such a way that four directors (excluding the Vice-President and President) are up for election every year. In addition, the election of the Vice-President and President (each of whom serve a four-year term) is also staggered so that every two years either the Vice-President or President is also up for election. Tennis Canada does not provide for staggered election terms in their By-laws.³³³

During our interviews with Hockey Canada representatives, one individual stated that the organization holds an election of Directors only every second year because of the significant amount of time and resources needed to organize and plan it. One of the Member representatives we interviewed expressed the view that there would only be a complete turnover of the Hockey Canada Board if that is what the Members wanted. Respectfully, the risk of a complete turnover of the Board exists independently of what the Hockey Canada Members may want. In any given election year, the two-year term of all of the Hockey Canada Directors naturally expires. While some or all of those Directors may be eligible for re-election, there is never any guarantee that any or all of the eligible Directors will want to run for a subsequent term. Accordingly, we are of the view that the preferred approach is to implement a nominations and elections process that contemplates the election of some Directors at every annual meeting of Members. That not only

³²⁹ *Canada Not-for-profit Corporations Act*, SC 2009, c 23, s 128(4).

³³⁰ “Bylaw #1 Canada Basketball” (25 May 2014), s 3.11, online (pdf): *Canada Basketball* <https://assets.website-files.com/5d24fc966ad064837947a33b/5d40ccb3625e7f8a09193ca2_Canada_Basketball_Bylaws_2014_revision.pdf>.

³³¹ “Athletics Canada Bylaws” (January 2022) at s 5.5, online (pdf): *Athletics Canada* <<https://athletics.ca/wp-content/uploads/2022/01/Athletics-Canada-Bylaws-January-2022.pdf>>.

³³² Curling Canada, “By-laws of Canadian Curling Association” (5 December 2018), s 4 and “Temporary Bylaw Amendment” appended thereto.

³³³ Tennis Canada, “By-law N – a by-law relating generally to the conduct of the affairs of Canadian Tennis Association Association canadienne de tennis” (24 August 2015) at 7.02(e).

reduces the risk of having all or an important number of the Directors leave the Board at the same time, but also ensures that there is a combination of new and longer-serving Directors on the Board.

Considering our recommendation above that the term length of an elected Director should be increased to up to three years, we also recommend that the terms be staggered so that only about one third (1/3) of the elected Director positions on the Board of Hockey Canada would be up for election every year. This arrangement would ensure a measure of continuity within the Board for up to three years. In addition, the staggering of Director terms promotes the preservation of institutional knowledge because the knowledge and skills of outgoing Directors are continually being transferred or imparted to new members who are joining the Board on an annual basis.

1.3 Appointed Directors

The Board of Hockey Canada may also include up to one Director appointed by the elected Directors of Hockey Canada.³³⁴ The term of an appointed Director commences on the date of such appointment and expires immediately upon the close of the next annual meeting of Members.³³⁵ The CNCA allows such a practice and prescribes that any directors so appointed “shall hold office for a term expiring not later than the close of the next annual meeting of members.”³³⁶ The CNCA also provides that “the total number of directors so appointed may not exceed one third of the number of directors elected at the previous annual meeting of members.”³³⁷

We note that the term of Hockey Canada’s appointed Director (if one is appointed) is for up to one year and expires at the close of the next annual meeting of members, which is compliant with the CNCA. Accordingly, there is no need to change or revise that practice.

We also point out that, pursuant to the CNCA, the Board of Hockey Canada would only be permitted to exercise its right to appoint an additional Director in those years where an election was held. As mentioned above, the CNCA provides that the total number of appointed directors cannot exceed one third of the number of directors elected at the previous annual meeting of members. Accordingly, if no Directors were elected at the previous annual meeting (i.e. at an annual meeting held in an odd-numbered year), then the Board would not be allowed to appoint any Director during that year. We note that if our recommendation above to implement overlapping or staggered terms for elected Directors is accepted, the likelihood of the Board not being able to appoint a Director would be reduced if not eliminated as there would probably be at least three Directors up for election at every annual meeting of Members.

2. Term limits

The law does not mandate a maximum number of consecutive single terms for directors, but term limits are considered useful by many organizations. They are a gentle yet effective way of ensuring

³³⁴ Industry Canada, “Hockey Canada Association Articles of Continuance” (10 June 2014) at Sched B; “Hockey Canada By-Laws, Regulations and History” (May 2022), s 26.1(b), online (pdf): *Hockey Canada* <<https://cdn.hockeycanada.ca/hockey-canada/Corporate/About/Downloads/2022-23-bylaws-e.pdf>>.

³³⁵ “Hockey Canada By-Laws, Regulations and History” (May 2022), s 30.2, online (pdf): *Hockey Canada* <<https://cdn.hockeycanada.ca/hockey-canada/Corporate/About/Downloads/2022-23-bylaws-e.pdf>>.

³³⁶ *Canada Not-for-profit Corporations Act*, SC 2009, c 23, s 128(8).

³³⁷ *Canada Not-for-profit Corporations Act*, SC 2009, c 23, s 128(8).

people retire from the board on a regular basis. Term limits also assist with a perception of fairness and independence. If a group of directors has been serving the board for a prolonged period, there might be a perception or concern that those directors lack independence³³⁸ and have become too aligned with management. Term limits generate renewal and provide opportunity for new individuals to share fresh ideas with existing directors and management.

Hockey Canada’s By-laws state that an elected Director may, if the Director continues to meet the eligibility criteria, be re-elected for up to four consecutive two-year terms (i.e. eight years).³³⁹ A Director who has served eight consecutive years on the Board is not eligible for re-election to the Board until at least two consecutive years have lapsed since that Director’s last term served.³⁴⁰

The By-laws do not prescribe a limit on the number of terms that an appointed Director can serve.

No individual may serve more than two consecutive two year terms as Chair of the Board.³⁴¹

2.1 Elected Directors

Hockey Canada’s rule that limits an elected Director to serving no more than eight consecutive years on the Board is generally consistent with the Comparator Associations. Athletics Canada imposes on its elected directors a limit of eight years,³⁴² Curling Canada prescribes a limit of ten years (which need not be consecutive),³⁴³ Tennis Canada prescribes a limit of ten consecutive years³⁴⁴, while Canada Soccer imposes a nine-year maximum.³⁴⁵ It is not clear if the term limits set out in the By-laws of Athletics Canada and Canada Soccer apply to years served consecutively, or to a total number of years served on the board. Hockey Canada’s eight-year limit also aligns with the practice mandated by the COC Code. In that regard, the COC Code provides that each director “shall be subject to a term limit. Absent compelling reasons to the contrary as determined by the board’s nominating committee, that term limit should be a maximum of nine years (comprised of multiple terms each not longer than four years).”³⁴⁶ The COC Code does allow a sitting board chair

³³⁸ Peter Dey & Sarah Kaplan, “360° Governance: Where are the Directors in a World in Crisis?” (2021) at 33, online (pdf): *Rotman School of Management University of Toronto* <<https://www.rotman.utoronto.ca/FacultyAndResearch/ResearchCentres/LeeChinInstitute/Sustainability-Research-Resources/360-Governance-Report>>.

³³⁹ “Hockey Canada By-Laws, Regulations and History” (May 2022), s 30.3, online (pdf): *Hockey Canada* <<https://cdn.hockeycanada.ca/hockey-canada/Corporate/About/Downloads/2022-23-bylaws-e.pdf>>.

³⁴⁰ “Hockey Canada By-Laws, Regulations and History” (May 2022), s 30.3, online (pdf): *Hockey Canada* <<https://cdn.hockeycanada.ca/hockey-canada/Corporate/About/Downloads/2022-23-bylaws-e.pdf>>.

³⁴¹ “Hockey Canada By-Laws, Regulations and History” (May 2022), s 31.6, online (pdf): *Hockey Canada* <<https://cdn.hockeycanada.ca/hockey-canada/Corporate/About/Downloads/2022-23-bylaws-e.pdf>>.

³⁴² “Athletics Canada Bylaws” (January 2022) at s 5.1(c), online (pdf): *Athletics Canada* <<https://athletics.ca/wp-content/uploads/2022/01/Athletics-Canada-Bylaws-January-2022.pdf>>.

³⁴³ Curling Canada, “By-laws of Canadian Curling Association” (5 December 2018), s 2(b)(ii).

³⁴⁴ Tennis Canada, “By-law N – a by-law relating generally to the conduct of the affairs of Canadian Tennis Association Association canadienne de tennis” (24 August 2015) at 4.02(b).

³⁴⁵ “Canada Soccer By-laws” (May 2022), s 6.03(A)(ii) online (pdf): *The Canada Soccer Association Incorporated* <<https://www.canadasoccer.com/wp-content/uploads/2021/05/CSA-GC-By-laws-2022-EN-Final.pdf>>.

³⁴⁶ “Canadian Sport Governance Code” (April 2021) at 5, section B.10, online: *Canadian Olympic Committee – NSO Sharing Centre* <<https://nso.olympic.ca/wp-content/uploads/2021/10/Canadian-Sports-Governance-Code.pdf>>.

to serve one additional term for a maximum twelve-year term limit, provided that such individual not hold the position of chair of the board for more than six years.³⁴⁷

Although the eight-year limit for elected Directors is generally consistent with the practices of the Comparator Associations and the COC Code, we are of the view that the limit should be amended to better align with our recommendation to move to three-year terms for the Directors. If that recommendation is adopted by Hockey Canada without amending the eight-year limit, then a Director re-elected to serve a third term, would not be allowed to complete it and would need to resign in their eighth year of consecutive service. Accordingly, we also recommend that the number of consecutive years that a Director may serve on the Board be increased from eight years to nine years (e.g. three consecutive terms of three years). The slight increase in the maximum number of consecutive years served provides the Hockey Canada Directors with a little more time to educate themselves about the organization and make meaningful contributions to Hockey Canada's long-term goals and strategic objectives. Allowing Directors to serve for up to nine years also ensures greater continuity on the Board, while still avoiding overly long terms, which can "produce directors who are 'stale' and who are no longer able to generate the same degree of commitment and interest in the corporation."³⁴⁸

2.2 Board Chair

The Chair of Hockey Canada may serve as Chair for no more than four consecutive years (i.e. two consecutive terms of two years).³⁴⁹ The By-laws do not contemplate an exception to this rule. It is not clear if the time served as Chair counts towards the eight-year limit that applies to elected Directors; that should be clarified. The practice of imposing limits on the number of years a person can serve as chair of a board is common for the same reasons director term limits are considered a good practice – they provide opportunity for fresh insights, and enhance board dynamics.³⁵⁰ Each of Athletics Canada and Canada Soccer prescribes a limit on the number of years a person may occupy the office of chair/president, namely six³⁵¹ and eight³⁵² years respectively. In addition, the COC Code provides that a board chair "may not hold the position of chair of the board for longer than six years."³⁵³ Tennis Canada's By-laws impose no such limit, but the 3-year Chair term

³⁴⁷ "Canadian Sport Governance Code" (April 2021) at 5, section B.10, online: *Canadian Olympic Committee – NSO Sharing Centre* <https://nso.olympic.ca/wp-content/uploads/2021/10/Canadian_Sports_Governance_Code.pdf>.

³⁴⁸ Burke-Robertson, Carter & Man, *Corporate and Practice Manual for Charities and Not-for-Profit Corporations* (Toronto: Thomson Reuters Canada, 2022) at § 8.15 (Proview).

³⁴⁹ "Hockey Canada By-Laws, Regulations and History" (May 2022), s 31.6, online (pdf): *Hockey Canada* <<https://cdn.hockeycanada.ca/hockey-canada/Corporate/About/Downloads/2022-23-bylaws-e.pdf>>.

³⁵⁰ Peter Dey & Sarah Kaplan, "360° Governance: Where are the Directors in a World in Crisis?" (2021) at 33, online (pdf): *Rotman School of Management University of Toronto* <<https://www.rotman.utoronto.ca/FacultyAndResearch/ResearchCentres/LeeChinInstitute/Sustainability-Research-Resources/360-Governance-Report>>.

³⁵¹ "Athletics Canada Bylaws" (January 2022) at s 5.1(a), online (pdf): *Athletics Canada* <<https://athletics.ca/wp-content/uploads/2022/01/Athletics-Canada-Bylaws-January-2022.pdf>>.

³⁵² "Canada Soccer By-laws" (May 2022), s 6.03(A)(iv) online (pdf): *The Canada Soccer Association Incorporated* <https://www.canadasoccer.com/wp-content/uploads/2021/05/CSA-GC-By-laws-2022-EN_Final.pdf>.

³⁵³ "Canadian Sport Governance Code" (April 2021) at 5, section B.10(i), online: *Canadian Olympic Committee – NSO Sharing Centre* <https://nso.olympic.ca/wp-content/uploads/2021/10/Canadian_Sports_Governance_Code.pdf>.

coupled with 3-year term as past-Chair can at times lead to an overall term beyond the 10-year term for directors.

Considering that the maximum number of years an elected Director of Hockey Canada may serve on the Board is eight years, the four-year limit on occupying the office of Chair is, in our view, reasonable in the circumstances and generally aligned with the standard prescribed by the COC Code.

Although the four-year limit for the Board Chair is generally consistent with the practices of the Comparator Associations and the COC Code, and for the same reasons expressed above in respect of the limit of consecutive terms that may be served by an elected Director, we are of the view that the Board Chair limit should be amended to better align with our recommendation to move to three-year terms for the Directors. If that recommendation is adopted by Hockey Canada without amending the maximum number of terms for the Chair, then a Chair who is re-elected to serve a second term, would not be allowed to complete it and would need to resign in their fourth year of consecutive service. Accordingly, we also recommend that the number of consecutive years that the Board Chair may serve in that office be increased from four years to six years (i.e. two consecutive terms of three years).

iii. Hockey Canada’s nominating process and observations about their alignment with best practices

1. The nominating process

We have been asked to consider whether Hockey Canada’s nominating process needs to be amended. To answer this question, we looked at Hockey Canada’s By-laws and Nominating Committee Terms of Reference. We also heard from a number of Hockey Canada representatives who are familiar with the nominating process, including Hockey Canada’s General Counsel and the Chair of the Nominating Committee. In accordance with the By-laws, the election of Directors is held at each annual meeting in even-numbered years.³⁵⁴ The election of Directors includes the election of the Board Chair.³⁵⁵

Hockey Canada informed us that the nominating process followed in 2020 reflected a renewed approach by the Nominating Committee, who wanted to set out the nominations path and process more clearly. In 2020, the nominating process for the election of Directors, which was led by the Nominating Committee, was carried out as follows:

1. Approximately five months³⁵⁶ prior to the commencement of the annual meeting of Members, Hockey Canada notified Members, through a call for nominations, that Members may put forward nominations during the nominations period (the “**Call for**

³⁵⁴ “Hockey Canada By-Laws, Regulations and History” (May 2022), s 28.1, online (pdf): *Hockey Canada* <<https://cdn.hockeycanada.ca/hockey-canada/Corporate/About/Downloads/2022-23-bylaws-e.pdf>>.

³⁵⁵ “Hockey Canada By-Laws, Regulations and History” (May 2022), s 31.1, online (pdf): *Hockey Canada* <<https://cdn.hockeycanada.ca/hockey-canada/Corporate/About/Downloads/2022-23-bylaws-e.pdf>>.

³⁵⁶ Hockey Canada has indicated that in prior years since 2014, the call for nominations was issued sometime between the months of mid-June to early July. There are also no internal rules or policies prescribing when a call for nominations must be deployed.

- Nominations**”). Hockey Canada also reached out to the broader public to seek candidates for the election of the Chair and Directors. The Call for Nominations was published or posted on Hockey Canada’s social media platforms and website, on LinkedIn and through other postings with groups such as the Sport Information Resource Centre and the Institute of Corporate Directors.
2. The Call for Nominations included: (i) a brief description of Hockey Canada; (ii) the positions to be filled on the Board; (iii) a statement indicating that Hockey Canada “is seeking a diverse group of individuals to serve; bringing a variety of thoughts, knowledge and experiences is critical to the success of the organization”; (iv) a statement on who are “ideal candidates” for the Board; (v) the director eligibility criteria required by the CNCA and the Hockey Canada By-laws; (vi) a description of the nominations process, including key dates of the process; and (vii) a summary of the fiduciary duties of Directors.
 3. Pursuant to the By-laws, nominations for the position of elected Director could only be submitted by a Member or by the Chair of the Nominating Committee. No Member could submit a number of nominations that exceeded the number of Directors’ positions available for election.³⁵⁷ There was no limit on the number of nominations that could be submitted by the Chair of the Nominating Committee.
 4. Through the Call for Nominations, the Chair of the Nominating Committee invited individuals who were interested in being nominated by the Chair of the Nominating Committee (an “**External Candidate**”) to complete and file an application form, in the same way that an individual endorsed by a Member must complete and file one, except the External Candidate’s application need not be endorsed by a Member.
 5. In accordance with the By-laws, all nominations for the position of elected Director had to be submitted to the Chair of the Nominating Committee, at least 60 days prior to the commencement of the annual meeting of Members, and had to include a resume of the candidate’s credentials, and a written statement by the candidate expressing a willingness to serve as a Director.³⁵⁸
 6. Any individual nominated for the position of elected Director was eligible to stand for election as Chair of the Board.³⁵⁹ Individuals who wished to run for the position of Chair of the Board had to, no later than 45 days prior to the annual meeting of Members at which the election will take place, instruct the Chair of the Nominating Committee to include that individual’s name on the ballot for the position of Chair of the Board.³⁶⁰

³⁵⁷ “Hockey Canada By-Laws, Regulations and History” (May 2022), s 27.1, online (pdf): *Hockey Canada* <<https://cdn.hockeycanada.ca/hockey-canada/Corporate/About/Downloads/2022-23-bylaws-e.pdf>>.

³⁵⁸ “Hockey Canada By-Laws, Regulations and History” (May 2022), s 27.2, online (pdf): *Hockey Canada* <<https://cdn.hockeycanada.ca/hockey-canada/Corporate/About/Downloads/2022-23-bylaws-e.pdf>>.

³⁵⁹ “Hockey Canada By-Laws, Regulations and History” (May 2022), s 31.2, online (pdf): *Hockey Canada* <<https://cdn.hockeycanada.ca/hockey-canada/Corporate/About/Downloads/2022-23-bylaws-e.pdf>>.

³⁶⁰ “Hockey Canada By-Laws, Regulations and History” (May 2022), s 31.3, online (pdf): *Hockey Canada* <<https://cdn.hockeycanada.ca/hockey-canada/Corporate/About/Downloads/2022-23-bylaws-e.pdf>>.

7. The Nominating Committee reviewed all applications submitted by External Candidates and “may, depending on the volume of submissions, create a short-list of external candidates.”³⁶¹ The Nominating Committee, in its deliberations with the Chair of the Nominating Committee, made reference to the Matrix and list of duties of Directors that accompanied the Call for Nominations to evaluate and select the External Candidates to be nominated by the Chair of the Nominating Committee.
8. The Nominating Committee met with the External Candidates being considered for a nomination and candidates nominated by the Members to review their applications and résumés.³⁶²
9. The Nominating Committee created a final list of nominees that included all of the nominations made by the Members, and the External Candidates nominated by the Chair of the Nominating Committee. Each nominee was asked to produce a short video.³⁶³
10. The Nominating Committee forwarded all nominations for the Director positions and the Chair of the Board position, along with the video and any supporting documentation to the Members at least 30 days prior to the annual meeting of Members.³⁶⁴ We understand that some candidates offered to speak to Members and that Members’ responses to these offers varied. In accordance with the By-laws, nominations from the floor at the annual meeting of Members were not permitted.³⁶⁵
11. The election of the Directors and Chair was carried out at the annual meeting in accordance with the By-laws, which provided (and still provide):
 - a. The Directors and Chair of the Board are elected by the Hockey Canada Members at the annual meeting of Members.³⁶⁶
 - b. The names of all of the nominees for elected Director positions shall appear on the ballot.³⁶⁷ Each Member in attendance at the annual meeting of Members receives a number of ballots equal to the number of votes that the Member is entitled to cast.³⁶⁸

³⁶¹ “Nominations for Election to the Hockey Canada Board of Directors” (2020) at 2.

³⁶² “Nominations for Election to the Hockey Canada Board of Directors” (2020) at 2.

³⁶³ “Nominations for Election to the Hockey Canada Board of Directors” (2020) at 2.

³⁶⁴ “Hockey Canada By-Laws, Regulations and History” (May 2022), ss 27.2, 31.3, online (pdf): *Hockey Canada* <<https://cdn.hockeycanada.ca/hockey-canada/Corporate/About/Downloads/2022-23-bylaws-e.pdf>>.

³⁶⁵ “Hockey Canada By-Laws, Regulations and History” (May 2022), s 27.3, online (pdf): *Hockey Canada* <<https://cdn.hockeycanada.ca/hockey-canada/Corporate/About/Downloads/2022-23-bylaws-e.pdf>>.

³⁶⁶ “Hockey Canada By-Laws, Regulations and History” (May 2022), ss 28.1, 31.1, online (pdf): *Hockey Canada* <<https://cdn.hockeycanada.ca/hockey-canada/Corporate/About/Downloads/2022-23-bylaws-e.pdf>>.

³⁶⁷ “Hockey Canada By-Laws, Regulations and History” (May 2022), s 28.1, online (pdf): *Hockey Canada* <<https://cdn.hockeycanada.ca/hockey-canada/Corporate/About/Downloads/2022-23-bylaws-e.pdf>>.

³⁶⁸ “Hockey Canada By-Laws, Regulations and History” (May 2022), s 28.2, online (pdf): *Hockey Canada* <<https://cdn.hockeycanada.ca/hockey-canada/Corporate/About/Downloads/2022-23-bylaws-e.pdf>>.

- c. The Chair candidate receiving the most votes shall be declared elected as Chair of the Board. If more than one Chair candidate receives the highest number of votes on the first ballot or any subsequent ballot, the candidates who receive less than the highest number of votes on the current ballot is removed from the ballot and voting will continue until one candidate is the sole recipient of the most votes.³⁶⁹
- d. Following the election of the Chair of the Board, all of the remaining nominees, including nominees who unsuccessfully ran for the position of Chair of the Board, shall be eligible to run for the vacant elected Board positions using the procedure generally described in the By-laws.³⁷⁰

As mentioned earlier in this report, the Articles and By-laws provide that the Board may appoint up to one Director.³⁷¹ Pursuant to the By-laws, the general process for appointing an additional Director is as follows:

1. The Board informs the Nominating Committee that it wishes to exercise its right to appoint a Director to the Board.
2. Within 30 days of receiving a request from the elected Directors, the Chair of the Nominating Committee forwards to the Board the names of individuals recommended by the Nominating Committee to fill any appointed positions.³⁷² That By-law requirement is supplemented by the Terms of Reference of the Nominating Committee which reiterate that the Nominating Committee is responsible for identifying and recruiting qualified individuals to stand for appointment as Directors and for providing the Board with the names of such individuals to fill the appointed Director position.³⁷³
3. The elected Directors by Special Resolution,³⁷⁴ may appoint a recommended candidate to serve as an appointed Director.³⁷⁵

There is no further guidance in the By-laws or other governance documents of Hockey Canada in respect of the nominating or appointment process of appointed Directors.

³⁶⁹ “Hockey Canada By-Laws, Regulations and History” (May 2022), s 31.4, online (pdf): *Hockey Canada* <<https://cdn.hockeycanada.ca/hockey-canada/Corporate/About/Downloads/2022-23-bylaws-e.pdf>>.

³⁷⁰ “Hockey Canada By-Laws, Regulations and History” (May 2022), s 31.5, online (pdf): *Hockey Canada* <<https://cdn.hockeycanada.ca/hockey-canada/Corporate/About/Downloads/2022-23-bylaws-e.pdf>>.

³⁷¹ “Hockey Canada By-Laws, Regulations and History” (May 2022), s 26.1(b), online (pdf): *Hockey Canada* <<https://cdn.hockeycanada.ca/hockey-canada/Corporate/About/Downloads/2022-23-bylaws-e.pdf>>.

³⁷² “Hockey Canada By-Laws, Regulations and History” (May 2022), s 29.2, online (pdf): *Hockey Canada* <<https://cdn.hockeycanada.ca/hockey-canada/Corporate/About/Downloads/2022-23-bylaws-e.pdf>>.

³⁷³ “Hockey Canada Terms of Reference” (updated to 18 March 2022) at 35, s 5.4

³⁷⁴ “Special Resolution” means “a resolution passed by a majority of not less than two-thirds (2/3) of the votes cast on that resolution.” see “Hockey Canada By-Laws, Regulations and History” (May 2022), s 1aa, online (pdf): *Hockey Canada* <<https://cdn.hockeycanada.ca/hockey-canada/Corporate/About/Downloads/2022-23-bylaws-e.pdf>>.

³⁷⁵ “Hockey Canada By-Laws, Regulations and History” (May 2022), s 29.3, online (pdf): *Hockey Canada* <<https://cdn.hockeycanada.ca/hockey-canada/Corporate/About/Downloads/2022-23-bylaws-e.pdf>>.

2. Observations on nominating process for Directors

Mandate of the Nominating Committee

Hockey Canada’s Nominating Committee leads the nominating process for Directors. Hockey Canada’s Nominating Committee is responsible for ensuring, on a continuing basis, that the Board is comprised of qualified and skilled persons capable of, and committed to, providing effective governance leadership to Hockey Canada.³⁷⁶ The Nominating Committee Chair oversees elections of the Board Chair and other Board positions. The Nominating Committee Chair must ensure that candidate names appear on official ballots and oversee distribution and collection of ballots, counting of votes, announcing results and destroying ballots immediately thereafter.³⁷⁷ However, the Nominating Committee Chair may delegate these responsibilities to a third party appointed by the Nominating Committee if the elections happen entirely online, by phone or telecommunications.³⁷⁸

Pursuant to its Terms of Reference, the Nominating Committee has a number of other responsibilities, including the following:

- Promoting diversity of the Board in relation to gender, age, language, ethnicity, professional backgrounds and personal experiences;
- Having regard to the specific and desired competencies required on the Board as a whole in soliciting nominations; and
- Carrying out its duties in a manner that encourages a long-term view of Hockey Canada’s leadership needs, as well as Board succession planning.

The language set out in the By-laws and Nominating Committee Terms of Reference suggests to the reader that the Nominating Committee carries out an important leadership role in forming the Board of Hockey Canada, in building a diverse Board whose composition is carefully considered in light of the organization’s needs and strategic objectives, and engages in proactive succession planning for the Board. However, the current nomination process does not allow the Nominating Committee to fully carry out this role.

Use of the Board Matrix

Moreover, there ought to be more effective use of the Matrix in the call for nominations. The 2020 Call for Nominations that we reviewed provides “Hockey Canada is seeking a diverse group of individuals to serve on the Board; bringing a variety of thoughts, knowledge and experiences to the Board is critical to our success.”³⁷⁹ It also includes a section entitled “Ideal Candidates” that

³⁷⁶ “Hockey Canada By-Laws, Regulations and History” (May 2022), s 48.1, online (pdf): *Hockey Canada* <<https://cdn.hockeycanada.ca/hockey-canada/Corporate/About/Downloads/2022-23-bylaws-e.pdf>>.

³⁷⁷ “Hockey Canada By-Laws, Regulations and History” (May 2022), s 48.3, online (pdf): *Hockey Canada* <<https://cdn.hockeycanada.ca/hockey-canada/Corporate/About/Downloads/2022-23-bylaws-e.pdf>>.

³⁷⁸ “Hockey Canada By-Laws, Regulations and History” (May 2022), s 48.4, online (pdf): *Hockey Canada* <<https://cdn.hockeycanada.ca/hockey-canada/Corporate/About/Downloads/2022-23-bylaws-e.pdf>>.

³⁷⁹ “Nominations for Election to the Hockey Canada Board of Directors” (2020) at 1.

describes a number of general qualities of Hockey Canada Directors, such as: “they have a strong passion for the game,” “they have a genuine interest in contributing to the fulfillment of governance responsibilities using policy governance principles,” “they should feel comfortable providing objective and independent points of view with sound judgement and a broad perspective,” “they should be good communicators” and “they should be committed to the values and mission of Hockey Canada that inspire and enable all Canadians to enjoy the sport of hockey.”³⁸⁰ Although such qualities are personality traits that are desired in Directors, they are not, in our view, the only criteria that ought to be highlighted in a call for nominations for Directors and the Chair of the Board given the skills-expertise Matrix.

As mentioned above, the Hockey Canada Board skills-expertise Matrix serves as an inventory of current Directors’ skills, expertise and characteristics and any gaps in respect of them. As such, the Matrix helps the Nominating Committee identify, for each Director of the Board, which of the listed skills, expertise and characteristics the Director possesses. However, the purpose of a board skills and diversity matrix is not only to provide a snapshot of what the current Board looks like, but also to assist the Nominating Committee in identifying gaps in skills, knowledge and experience, and establishing the eligibility criteria for future directors based on a board’s needs and stakeholder accountability.³⁸¹ In other words, the Matrix should form part of a broader framework that strives to establish a Board made up of individuals who collectively and individually have a diverse mix of qualities, skills, knowledge and experience to effectively govern and direct the organization.

Although the 2020 Call for Nominations does state that Hockey Canada is seeking “a diverse group of individuals to serve on the Board,”³⁸² it does not mention any of the specific skills, expertise or diversity criteria of the Matrix that are of particular interest to the Nominating Committee nor does it encourage individuals who possess some of those specific elements (which might be lacking on the then-current Board) to apply for a position on the Board. In short, the Call for Nominations does not reflect that the Nominating Committee has considered (as it may well have) the specific and desired competencies required on the Board or the elements of diversity needed to address any gaps in the Board’s current composition. Instead, the Call for Nominations casts a very broad net among the Members of Hockey Canada and the general public, and does not draw attention to, or set as eligibility requirements any of the skills, expertise or diversity elements set out in the Matrix.

Members’ right to nominate candidates for election

In accordance with the Hockey Canada By-laws,³⁸³ the Nominating Committee is required to “forward all nominations to the Members at least thirty (30) Days prior to the commencement of the Annual Meeting.” The By-laws also provide that “the names of all of the nominees for elected

³⁸⁰ “Nominations for Election to the Hockey Canada Board of Directors” (2020) at 2.

³⁸¹ Anne Corbett & James M Mackay, *Guide to Good Governance: Not-for-Profit and Charitable Organizations*, 2nd ed (September 2013) at 122.

³⁸² “Nominations for Election to the Hockey Canada Board of Directors” (2020) at 1.

³⁸³ “Hockey Canada By-Laws, Regulations and History” (May 2022), s 27.2, online (pdf): *Hockey Canada* <<https://cdn.hockeycanada.ca/hockey-canada/Corporate/About/Downloads/2022-23-bylaws-e.pdf>>.

Directors' positions shall appear on the ballot.”³⁸⁴ Although the Call for Nominations provides that the Chair of the Nominating Committee may create a short-list of External Candidates that they want to include on the final list of nominees circulated to the Members,³⁸⁵ the same practice is not followed for nominations made by the Members. Instead, Hockey Canada allows all of the nominees endorsed by the Members to be included on the final list of nominees that appears on the voting ballot. That may be due in part to the language set out in the By-laws (quoted above) that stipulates that the Nominating Committee “shall forward all nominations” [emphasis added] to the Members and that “the names of all of the nominees [...] shall appear on the ballot” [emphasis added]. We note that the Nominating Committee’s Terms of Reference also provide that, as part of its duty to oversee the election of the Directors and Chair of the Board, the Nominating Committee shall ensure “that all candidates’ names appear on the ballots.”³⁸⁶ [emphasis added]

We understand that in some years, a call for nominations can generate a high number of candidacies therefore resulting in a ballot with a very long list of candidates. For example, the ballot for the 2020 election of Directors included 24 candidates, of which 15 were on automatically from the Members and nine were from the Chair of the Nominating Committee. Five of those candidates were on the ballot for the position of Board Chair. The high number of candidates is in part a consequence of the biennial election system, which results in having nine Director positions become vacant or up for re-election at the same time. In addition, each Member is entitled to nominate a number of candidates that is equal to the number of Directors’ positions available for election.³⁸⁷ Consequently, each of the 13 Members could nominate up to nine individuals, in which case the Nominating Committee would receive 117 Members’ nominations, all of which would need to be reviewed and considered for inclusion on the final election ballot.

We have heard from several persons interviewed that elections are held only every two years because of the amount of time, resources and planning required to carry out the nominations and elections process. It is likely that the past and most recent methods of director recruitment and nominations, which are not strongly supported or informed by any skills- or expertise-related criteria, are adding to the workload as the process tends to yield a high number of candidates, who might not have a suitable mix of competencies and experience to effectively carry out the Board’s functions and meet the specific needs of Hockey Canada.

Furthermore, the practice of allowing Members to nominate director candidates without a requirement to have regard to the Matrix and allowing all such nominated candidates to be included on the final election ballot is, in our view, problematic and could be a significant barrier to making progress on diversity objectives. Pursuant to its mandate, the Nominating Committee is “responsible for ensuring, on a continuing basis, that the Board of Directors is composed of qualified and skilled persons capable of, and committed to, providing effective governance

³⁸⁴ “Hockey Canada By-Laws, Regulations and History” (May 2022), s 28.1, online (pdf): *Hockey Canada* <<https://cdn.hockeycanada.ca/hockey-canada/Corporate/About/Downloads/2022-23-bylaws-e.pdf>>.

³⁸⁵ “Nominations for Election to the Hockey Canada Board of Directors” (2020) at 2.

³⁸⁶ “Hockey Canada Terms of Reference” (updated to 18 March 2022) at 35, s 5.4.

³⁸⁷ “Hockey Canada By-Laws, Regulations and History” (May 2022), s 27.1, online (pdf): *Hockey Canada* <<https://cdn.hockeycanada.ca/hockey-canada/Corporate/About/Downloads/2022-23-bylaws-e.pdf>>.

leadership to Hockey Canada.”³⁸⁸ However, that committee’s ability to carry out that mandate effectively and make nominating decisions that have a meaningful impact on the Board’s composition and diversity is limited because, ultimately, the Members have the right to elect the Directors and there is no requirement that all candidates on the ballot have been assessed according to the Matrix. As a result, the individuals whose names appear on the ballot and who are elected by the Members as the Directors may not have the particular skills, experience, competencies or other qualities that are needed on the Hockey Canada Board at that time. As noted above, the current Board nominating process has not provided Hockey Canada with the wide range, depth and diversity of experience that the Board collectively requires to govern this complex organization and to lead significant organizational and cultural change.

As a federated and member-based organization, where the Members of Hockey Canada have the right to elect the Directors, it is not surprising that they would also have the right to nominate Directors. As one of the key stakeholder groups of Hockey Canada, it is reasonable for the Members to want and to have the opportunity to participate in the Director recruitment and nominations process. However, for the reasons set out above, that right should not be unfettered. As discussed in Chapter IX, one of the Board’s duties is to be responsible for its own governance. That includes playing a meaningful role in the creation of a quality Board and establishing rules, policies and procedures to succeed in that regard. To that end, many boards create a nominating committee and delegate to it the performance of that role. The Nominating Committee’s job should be to recruit strategically and to select individuals who possess a variety of skills, experiences, competencies and qualities that collectively align with the organization’s broader strategic objectives. As such, the Nominating Committee can and should be helping the Members think carefully about how to grow its usual pool of candidates to include a broader mix of individuals who have novel ideas and fresh attitudes, which will add value to the Board.³⁸⁹

It is critical that this role of the Nominating Committee and the emphasis on recruiting strategically be properly documented in Hockey Canada’s By-laws and policies and endorsed by the Members. Member education on those key principles, along with a robust and transparent process are essential to ensuring that the Members understand the importance of strategic recruitment and, as a result, will want to vote for individuals who are best suited and qualified to serve on the Board and, to meet the needs and respond to the challenges of Hockey Canada.

Recommendations relating to Members’ right to propose candidates for election

For the reasons set out above, we are of the view that the Director nominating process should continue to provide the Members with the opportunity to play a meaningful role, albeit in a different way. To that end we make the following recommendations:

1. Members should continue to have the right to propose candidates for election as Directors (note that the general public and Nominating Committee should also continue to have that right). However, none of the names proposed (including those proposed by the Members) should automatically appear on the final ballot. Instead, the Nominating

³⁸⁸ “Hockey Canada By-Laws, Regulations and History” (May 2022), s 48.1, online (pdf): *Hockey Canada* <<https://cdn.hockeycanada.ca/hockey-canada/Corporate/About/Downloads/2022-23-bylaws-e.pdf>>.

³⁸⁹ Ellen Hirzy, ed, *Nonprofit Board Committees* (Washington, DC: BoardSource, 2018), at 42.

- Committee should evaluate all candidates proposed and create a short-list of nominees. Only candidates who qualify and can demonstrate that they possess the skills, competencies, experience and qualities identified by the Nominating Committee (using the Matrix) should be nominated by the Nominating Committee;
2. The Members, collectively as a group, should have the right to appoint a limited number of individuals to the Nominating Committee. It would be up to the Members themselves to determine, collectively, who and how such persons are selected; and
 3. The Members should be entitled to receive regular communications from the Nominating Committee on its recruitment work. For example, well in advance of the election of Directors, the Nominating Committee should review and, if necessary, update the Matrix, then identify the particular skills, competencies, experiences and qualities the Board needs for the next election cycle. Once the Nominating Committee has identified those criteria, they should be communicated to the Members, for their review and comment. Informed by any comments received from the Members, the Nominating Committee should then finalize the list of criteria, which should form part of the public call for nominations. We suggest that the Board also be entitled to receive such reports and given an opportunity to provide comments.

We will provide additional discussion and commentary relating to those recommendations (and in particular in respect of the composition of the Nominating Committee) in the section below titled “Observations on Nominating Committee.”

3. Observations on nomination and election of Chair

The Board Chair is elected by the Members,³⁹⁰ who also have the authority to remove the Chair from office.³⁹¹ Although the default rule under the CNCA is that the officers of a corporation are appointed by the directors, the CNCA does allow the articles or the by-laws of the corporation to provide for a different manner of appointing officers.³⁹² The practice of having a chair of the board elected by the members, rather than by the directors, is common in organizations where member involvement is high,³⁹³ such as an NSO. For example, the Chair of Athletics Canada is also elected by its members.³⁹⁴ At Soccer Canada, the President (who carries out the functions of board chair), is elected at the annual meeting by the members as President-Elect, then subsequently appointed (or “ratified”) by the board as President at the first board meeting following that annual meeting

³⁹⁰ “Hockey Canada By-Laws, Regulations and History” (May 2022), s 31.1, online (pdf): *Hockey Canada* <<https://cdn.hockeycanada.ca/hockey-canada/Corporate/About/Downloads/2022-23-bylaws-e.pdf>>.

³⁹¹ “Hockey Canada By-Laws, Regulations and History” (May 2022), s 34.1, online (pdf): *Hockey Canada* <<https://cdn.hockeycanada.ca/hockey-canada/Corporate/About/Downloads/2022-23-bylaws-e.pdf>>.

³⁹² *Canada Not-for-profit Corporations Act*, SC 2009, c 23, s 142.

³⁹³ Burke-Robertson, Carter & Man, *Corporate and Practice Manual for Charities and Not-for-Profit Corporations* (Toronto: Thomson Reuters Canada, 2022) at § 8.27 (Proview).

³⁹⁴ “Athletics Canada Bylaws” (January 2022) at s 5.1(a), online (pdf): *Athletics Canada* <<https://athletics.ca/wp-content/uploads/2022/01/Athletics-Canada-Bylaws-January-2022.pdf>>.

of members.³⁹⁵ Each of Basketball Canada³⁹⁶ and Curling Canada³⁹⁷ elect their chair of the board on an annual basis. At Tennis Canada, the Nominating Committee recommends a director to act as Chair of the Board, and the Board confirms the appointment by resolution.³⁹⁸

The practice of having the board of directors select its own Chair is generally more common in the not-for-profit sector and is considered best practice by the COC Code (it provides that the board chair of an NSO should be elected by the directors)³⁹⁹ and its supplemental Framework. There are good reasons for that. As mentioned earlier in our report, the Board is responsible for ensuring effective board leadership. It is also responsible for implementing a process for the recruitment and selection of officers, as well as a succession plan for those important roles. Thus, to effectively carry out those responsibilities, we are of the view and recommend that the Directors of Hockey Canada ought to be the group that appoints the Board Chair because they are better positioned than the Members to assess the needs of the Board and to determine who within that group possesses the experience and most suitable skills, qualities and competencies to fulfill that critical leadership role. We recommend that the By-laws be amended accordingly. We also note that three of the Comparator Associations that we examined also follow that practice.

Our review also revealed that there is no defined eligibility qualifications or a well-defined process for selecting the Board Chair of Hockey Canada. In that regard, the By-laws provide that “any individual nominated for the position of elected Director in accordance with [the By-laws] is eligible to stand for election as Chair of the Board”⁴⁰⁰ and that “any individual [so nominated] who wishes to run for the position of Chair of the Board shall [...] instruct the Chair of the Nominating Committee to include that individual’s name on the ballot for the position of Chair of the Board.”⁴⁰¹ Essentially, the By-laws allow anyone, regardless of their skills, experience or expertise to be nominated for the position of Board Chair and the By-laws are not supplemented by any other Board policies or terms of reference that would provide additional guidance in this respect.

The absence of such criteria and selection processes is concerning because the role of the chair is a critical one. To be effective, the chair of a board must have the necessary skills and qualities to provide leadership to the board and to the organization as a whole. In addition, the chair must have the ability to manage board meetings, and develop and maintain healthy relationships with other directors, committee chairs, management and stakeholder groups. Such skills and competencies

³⁹⁵ “Canada Soccer By-laws” (May 2022), ss 6.03(C)(vii), 8.01(i), online (pdf): The Canadian Soccer Association Incorporated <https://www.canadasoccer.com/wp-content/uploads/2021/05/CSA-GC-By-laws-2022-EN_Final.pdf>.

³⁹⁶ “Bylaw #1 Canada Basketball” (25 May 2014), s 3.26, online (pdf): *Canada Basketball* <https://assets.website-files.com/5d24fc966ad064837947a33b/5d40ccb3625e7f8a09193ca2_Canada_Basketball_Bylaws_2014_revision.pdf>.

³⁹⁷ “By-laws of Canadian Curling Association” (5 December 2018) at Part IX, s 2, online (pdf): *Curling Canada* <<https://www.curling.ca/files/2018/12/Curling-Canada-By-laws-as-of-Dec.-5-2018-1.pdf>>.

³⁹⁸ Tennis Canada, “By-law N – a by-law relating generally to the conduct of the affairs of Canadian Tennis Association Association canadienne de tennis” (24 August 2015) at 5.03(a)-(c).

³⁹⁹ “Canadian Sport Governance Code” (1 September 2021) at 1, online: *Canadian Olympic Committee – NSO Sharing Centre* <<https://nso.olympic.ca/canadian-sport-governance-code/>>.

⁴⁰⁰ “Hockey Canada By-Laws, Regulations and History” (May 2022), s 31.2, online (pdf): *Hockey Canada* <<https://cdn.hockeycanada.ca/hockey-canada/Corporate/About/Downloads/2022-23-bylaws-e.pdf>>.

⁴⁰¹ “Hockey Canada By-Laws, Regulations and History” (May 2022), s 31.3, online (pdf): *Hockey Canada* <<https://cdn.hockeycanada.ca/hockey-canada/Corporate/About/Downloads/2022-23-bylaws-e.pdf>>.

are particularly important in an organization such as Hockey Canada that has a broad and multifaceted mandate and complex organizational and operational structures.

4. Observations on the Nominating Committee

As mentioned above, Hockey Canada’s Nominating Committee leads the nominating process for Directors. The By-laws⁴⁰² and the Nominating Committee’s Terms of Reference⁴⁰³ provide that the Nominating Committee’s overall mandate is as follows:

The Nominating Committee is responsible for ensuring, on a continuing basis, that the [Board of Directors] is comprised of qualified and skilled persons capable of, and committed to, providing effective governance leadership to Hockey Canada.

Committee composition

The By-laws provide that the Nominating Committee shall have a minimum of four and a maximum of eight members (including the committee chair).⁴⁰⁴ They also state that the Chair of the Board appoints the members of the Nominating Committee, including its Chair, and all members of the committee “shall be individuals who are at arm’s length from the Board.”⁴⁰⁵

The requirement that all members of the Nominating Committee must be at arm’s length from the Board is noteworthy. Similar to the concept of independent directors, as described above, that rule is intended to promote impartiality and ensure that no member of the Nominating Committee has close ties to the Directors or to particular factions of the Board. It also has the benefit of engaging an external group of individuals who originate from a wide range of community circles, which “is an asset because [such engagement] yields not only personal contacts, but a varied perspective on the external environment.”⁴⁰⁶ We note that some of the Comparator Associations also have a similar requirement. For example, the Nominating Committee of Canada Soccer must include three “Independents” – an “Independent” is defined “as a person who at the time of his/her appointment is not an officer, director or employee of Canada Soccer or any member of Canada Soccer or their members.”⁴⁰⁷ However, as the committee responsible for assembling a group of suitable, diverse and engaged individuals with the appropriate mix of skills, experience, qualities and competencies, it is critical that the Nominating Committee also be attuned and responsive to the needs of the Board. In order to do so, the Nominating Committee must have a clear line of sight into the inner workings of the Board. The Nominating Committee “must be alert to board dynamics, the organization’s overall evolution, and current and potential challenges, which will

⁴⁰² “Hockey Canada By-Laws, Regulations and History” (May 2022), s 48.1, online (pdf): *Hockey Canada* <<https://cdn.hockeycanada.ca/hockey-canada/Corporate/About/Downloads/2022-23-bylaws-e.pdf>>.

⁴⁰³ “Hockey Canada Terms of Reference” (updated to 18 March 2022) at 35.

⁴⁰⁴ “Hockey Canada Terms of Reference” (updated to 18 March 2022) at 36.

⁴⁰⁵ “Hockey Canada By-Laws, Regulations and History” (May 2022), s 48.2, online (pdf): *Hockey Canada* <<https://cdn.hockeycanada.ca/hockey-canada/Corporate/About/Downloads/2022-23-bylaws-e.pdf>>.

⁴⁰⁶ Ellen Hirzy, ed, *Nonprofit Board Committees* (Washington, DC: BoardSource, 2018), at 37.

⁴⁰⁷ The Canadian Soccer Association Incorporated, “Governance Policies” (March 2021), p. 15.

all determine its focus and the way it operates. Its job is to build a board that successfully secures the organization's future."⁴⁰⁸

In our view, a nominating committee that is comprised exclusively of non-directors is less likely to have that insight because it is not directly linked to the Board. It is also less likely to have a good sense of whether the board of directors is functioning well, the areas that are in need of improvement and which skills, competencies and qualities are most needed on the Board at any given time. For those reasons, we recommend that there be at least one and up to two Directors of the Board sitting on the Nominating Committee. That approach is also consistent with that of Comparator Associations. All of the five Comparator Associations have at least one director on their committee responsible for overseeing the director nominating process, and three of them have three or more directors on its committee. The practice of having directors on a nominating committee also aligns with the COC Code and the Framework's model "Nominating Committee Terms of Reference," which provide that the nominating committee of an NSO should "be composed of at least three directors, as designated by the Board from time to time."⁴⁰⁹

In addition, to enhance the committee's credibility and avoid any conflict of interests, we recommend that any Director serving on the Nominating Committee not be a Director who is seeking re-election in the next election cycle. At least three of the Comparator Associations also prohibit any director who is up for re-election from serving on their nominating committee. The COC Code⁴¹⁰ and the model "Nominating Committee Terms of Reference,"⁴¹¹ likewise recommend that the nominating committee of an NSO not include any director up for re-election.

As discussed earlier in this report, we recommend that an athlete representative serve on the Board of Hockey Canada because we are of the view that hockey players should have a meaningful role in the organization's governance. For those same reasons, we are of the view and recommend that the Nominating Committee should also include at least one athlete representative. The athlete representative serving on the Nominating Committee could, but would not need to be the same person serving as the Board athlete representative, although we do recommend that if they are not the same person, that this hockey player also be selected with significant input from hockey's athletes.

⁴⁰⁸ Ellen Hirzy, ed, *Nonprofit Board Committees* (Washington, DC: BoardSource, 2018), at 37.

⁴⁰⁹ Goodmans LLP, "Canadian Sport Governance Code: Supporting Resources" (27 April 2021) at 62, online: *Canadian Olympic Committee – NSO Sharing Centre* <<https://nso.olympic.ca/wp-content/uploads/2021/10/GOODMANS-7073296-v12-Canadian Sport Governance Code - Combined Templates.docx>>.

⁴¹⁰ "Canadian Sport Governance Code" (1 September 2021) at 7, online: *Canadian Olympic Committee – NSO Sharing Centre* <<https://nso.olympic.ca/canadian-sport-governance-code/>>.

⁴¹¹ Goodmans LLP, "Canadian Sport Governance Code: Supporting Resources" (27 April 2021) at 62, online: *Canadian Olympic Committee – NSO Sharing Centre* <<https://nso.olympic.ca/wp-content/uploads/2021/10/GOODMANS-7073296-v12-Canadian Sport Governance Code - Combined Templates.docx>>.

To summarize, we recommend the following changes to the Nominating Committee's composition:

- The Nominating Committee be comprised of up to nine (9) individuals and that the fixed number always be an odd number.
- The Nominating Committee be constituted as follows:
 - The majority of the committee members would be individuals who are at arm's length from the Board ("Independents"). "Independent" means a person who at the time of their appointment is not: a) an officer, director or employee of Hockey Canada; b) an officer, director or employee of any Member of Hockey Canada (a "HC Member"); c) an officer, director or employee of an organization that is a member of a HC Member (including without limitation a local Minor Hockey Association); or d) an officer, director or employee of any other hockey club, league or team. The Independents, who should be highly qualified and diverse, would be appointed by the Board of Hockey Canada, with the assistance of a reputable board recruitment firm hired by Hockey Canada;
 - The Members of Hockey Canada, collectively, appoint up to two individuals to serve on the Nominating Committee. It would be up to the Members to decide, collectively and among themselves, how those individuals will be selected;
 - At least one member of the Nominating Committee would be an athlete representative, who would be appointed by the Board of Hockey Canada with significant input from hockey's athletes. That person could, but need not be, the same person who is the athlete representative on the Board (provided that person is not up for re-election to the Board);
 - At least one and up to two Directors of the Hockey Canada Board would be appointed by the Board to serve on the Nominating Committee. A Director who is up for re-election in the next election cycle would not be eligible to serve on the Nominating Committee;
 - In the event the number of members on the Nominating Committee is less than nine, there could only be one Director and one person appointed by the Members.

We acknowledge that a Nominating Committee comprised of up to nine members is a large number. As a reminder, the current Nominating Committee is comprised of seven people. We are suggesting that the committee could include up to nine people in order to allow the committee to have broad representation from a variety of Hockey Canada's key stakeholder groups, including the community at large, the hockey athletes and the Members. To help rebuild confidence in Hockey Canada and mend the fractured relationships with those stakeholders, we believe that it is important, particularly in the short term, to allow those stakeholders to have a meaningful voice in the Director nominating process. We also reiterate our recommendation that the Board engage a reputable board recruitment firm to assist the Directors with the recruitment of highly qualified

and diverse individuals to serve as Independents on the Nominating Committee, who would always be required to be a majority on the committee. In our view, by allowing the Nominating Committee to be served by a broad and diverse mix of individuals, and by enlisting the assistance of a professional board recruitment firm to recruit the Independent members of the committee, there will be a higher level of vetting and scrutiny of candidates, which we hope will allow the organization to rebuild the best Board possible and, be a crucial step towards rebuilding confidence in Hockey Canada.

Nominating Committee mandate

In addition to its general mandate, the Nominating Committee Terms of Reference go on to list 13 key duties to be performed by the committee.⁴¹² Our review of the Nominating Committee’s Terms of Reference did not reveal any significant anomalies and the overall mandate of the committee largely aligns with the general mandate of the equivalent committee of other Comparator Associations. In that regard, four of the five Comparator Associations have either a “nominating/nominations committee” or a “governance and nominating committee” that is mandated to make recommendations in respect of board composition, to define and assess qualifications of directors and identifying potential candidates to serve on their board of directors. Although the fifth Comparator Association does not have a designated nominations or governance committee *per se*, we were informed that its Executive Committee does have responsibilities in those areas.

We note that the Nominating Committee Terms of Reference were last updated on May 2, 2019 and this would be an opportune time to have them reviewed and updated to include the recommendations we have made above.⁴¹³ We provide further discussion and recommendations in respect of Hockey Canada’s general committee structure later in the report.

5. Summary of recommendations regarding the nominating process

As previously stated, we are of the view that Hockey Canada ought to make a number of changes to its current Director nominating process with a view to establishing a more robust and transparent process and building a Board that is diverse and best suited to meet the needs and challenges currently facing Hockey Canada. Our recommendations (some of which were stated earlier in the report) are the following:

1. As mentioned above, amend the By-laws to provide that: (a) no more than 60% of the Directors are of the same gender, as per the COC Code; (b) the Board will include at least one athlete representative, who will be nominated by the Nominating Committee with significant input from hockey players; and (c) a majority of the Directors on the Board must be persons who are independent of Hockey Canada. “Independent” would mean a person who at the time of their election as a Director is (i) an employee of Hockey Canada; (ii) an officer, director or employee of any Member of Hockey Canada (an “HC Member”); (iii) an officer, director or employee of an organization that is a member of an HC Member (including, without limitation, a local Minor Hockey

⁴¹² “Nominations” in *Hockey Canada Terms of Reference* (updated to 18 March 2022) at 36, s 5.4.

⁴¹³ “Nominations” in *Hockey Canada Terms of Reference* (updated to 18 March 2022) at 37, s 5.4.

- Association); or (iv) an officer, director or employee of any other hockey club, league or team.
2. Review and, if required, update the Board Matrix to ensure it reflects the skills, experience and diversity elements that are needed on the Hockey Canada Board.
 - Such an exercise falls within the existing duties of the Nominating Committee to ensure, on a continuing basis, that the Board is composed of qualified and skilled persons capable of, and committed to, providing effective governance leadership to Hockey Canada, as set out in its Terms of Reference and By-laws.⁴¹⁴
 - The skills, experience and diversity elements ought to be reviewed having regard to Hockey Canada’s strategic direction and any specific requirements, initiatives or projects facing the organization in the next three to five years.⁴¹⁵
 - The Matrix should take into account regional representation of the Hockey Canada Members rather than just “geography.”⁴¹⁶
 - The Matrix should be reviewed at least annually and otherwise periodically as the circumstances require, and revised as necessary.⁴¹⁷
 3. For each election cycle (including the 2022 election), that the Nominating Committee use the Board Matrix as a tool to support the call for nominations and to clearly articulate the specific skills and competencies being sought for the Board positions to be filled.⁴¹⁸
 - This aligns with the Nominating Committee’s duty to “Have regard to the specific and desired competencies required on the Board as a whole in soliciting nominations.”⁴¹⁹
 - The Nominating Committee should conduct an evaluation of the Board’s composition annually to “strengthen the board’s effectiveness, to assess the

⁴¹⁴ “Hockey Canada By-Laws, Regulations and History” (May 2022), s 48.1, online (pdf): *Hockey Canada* <<https://cdn.hockeycanada.ca/hockey-canada/Corporate/About/Downloads/2022-23-bylaws-e.pdf>>.

⁴¹⁵ This aligns with the Nominating Committee’s duty to “Carry out [its] duties in a manner that encourages a long-term view of Hockey Canada’s leadership need, as well as Board succession planning.”

⁴¹⁶ This aligns with the Nominating Committee’s duty to “Carry out [its] duties in a manner that encourages a long-term view of Hockey Canada’s leadership need, as well as Board succession planning.” See “Hockey Canada Terms of Reference” (updated to 18 March 2022) at 35, s 5.4.

⁴¹⁷ Goodmans LLP, “Canadian Sport Governance Code: Supporting Resources” (27 April 2021) at 39, online: *Canadian Olympic Committee – NSO Sharing Centre* <<https://nso.olympic.ca/wp-content/uploads/2021/10/GOODMANS-7073296-v12-Canadian Sport Governance Code - Combined Templates.docx>>.

⁴¹⁸ This aligns with the Nominating Committee’s duty to “Have regard to the specific and desired competencies required on the Board as a whole in soliciting nominations.” See “Hockey Canada Terms of Reference” (updated to 18 March 2022) at 35, s 5.4

⁴¹⁹ See “Hockey Canada Terms of Reference” (updated to 18 March 2022) at 35.

diversity in the boardroom, and to highlight gaps between the skills and background of existing Directors and their optimal mix.”⁴²⁰ The results of that evaluation should be used to inform the next recruitment and nominating process leading up to the next election of Directors.

- We strongly encourage the Nominating Committee to engage and consult with a reputable board recruitment firm to assist it with the review of the Matrix and recruitment of qualified candidates to serve as Directors. That firm could be the same recruitment firm retained by Hockey Canada to assist with the recruitment of candidates for the Nominating Committee.
4. Amend the By-laws to provide that all persons proposed for nomination to positions of elected Directors be submitted to the Nominating Committee, who will have the authority to vet and create a short list of candidates to be placed on the election ballot. That includes amending and removing all language in the By-laws and the Nominating Committee Terms of Reference that states or suggests that all nominations of candidates proposed by the Members shall be included in the final ballot for the election of the Directors and the Board Chair. In that regard, we understand that the Members of Hockey Canada have already approved By-law amendments to that effect at a meeting of the Members held on October 15, 2022. That process of vetting, evaluating and shortlisting candidates should be done having regard to the Board Matrix. We recommend that this approach be implemented for the current election cycle.
 5. The Nominating Committee, as part of its right to vet and create a short list of qualified candidates for nomination, should have the authority and discretion to determine the number of nominees whose names will be included on the final election ballot, which number could be equal to or exceed the number of Directors positions available on the Board. In either case, in accordance with the CNCA, the Members must elect the directors by ordinary resolution.
 6. Amend the By-laws to provide that the Directors of Hockey Canada (and not the Members) have the right to appoint the Board Chair.
 7. Revise and update (or replace) the current “Chair of the Board Terms of Reference” to ensure the description of the Chair’s role and duties is current and reflects the current needs of Hockey Canada. That description of the Chair’s role should, at a minimum, include a list of qualities and minimum competencies required of the Chair.
 - Use the list of defined qualities and competencies to support the selection and appointment of the Board Chair. Some qualities and competencies to consider include:⁴²¹

⁴²⁰ Deloitte, “Diversity in the Boardroom, Practices and Perspectives” (2015) at 13, online: [Deloitte <https://www2.deloitte.com/za/en/pages/governance-risk-and-compliance/articles/diversity_in_the_boardroom.html>](https://www2.deloitte.com/za/en/pages/governance-risk-and-compliance/articles/diversity_in_the_boardroom.html).

⁴²¹ Anne Corbett & James M Mackay, *Guide to Good Governance: Not-for-Profit and Charitable Organizations*, 2nd ed (September 2013) at 183.

- a. Proven leadership skills;
 - b. Good strategic and facilitation skills; ability to influence and achieve consensus;
 - c. Ability to act impartially and without bias and display tact and diplomacy;
 - d. Effective communicator;
 - e. Political acuity;
 - f. Must have the time to continue the legacy of building strong relationships between the corporation and stakeholders;
 - g. Ability to establish trusted advisor relationships with the chief executive officer and other board members;
 - h. Governance and board-level experience;
 - i. Outstanding record of achievement in one or several areas of skills and experience used to select board members.
- We strongly recommend that such a list be created and used as part of the current nomination process for the new transition Board Chair. Going forward, and for purposes of Board succession planning, the Nominating Committee should ensure that individuals who possess the qualities and skills set out above and who are interested in serving as Board Chair be regularly encouraged to submit their candidacy as part of the annual nominating process. That will ensure that at any given time, there are qualified Directors who can succeed to the office of Board Chair when the time comes.
8. Update or replace the Nominating Committee Terms of Reference to revise its composition and how its members are appointed. Our specific recommendations in that regard are the following:
- The Nominating Committee be comprised of up to nine (9) individuals and that the fixed number always be an odd number.
 - The Nominating Committee be constituted as follows:
 - The majority of the committee members would be individuals who are at arm's length from the Board ("Independents"). "Independent" means a person who at the time of their appointment is not: a) an officer, director or employee of Hockey Canada; b) an officer, director or employee of any Member of Hockey Canada (a "HC Member"); c) an officer, director or employee of an organization that is a member of a HC Member (including without limitation a local Minor Hockey Association); or d) an officer,

director or employee of any other hockey club, league or team. The Independents, who should be highly qualified and diverse, would be appointed by the Board of Hockey Canada, with the assistance of a reputable board recruitment firm hired by Hockey Canada;

- The Members of Hockey Canada, collectively, appoint up to two individuals to serve on the Nominating Committee. It would be up to the Members to decide, collectively and among themselves, how those individuals will be selected;
 - At least one member of the Nominating Committee would be an athlete representative, who would be appointed by the Board of Hockey Canada with significant input from hockey's athletes. That person could, but need not be, the same person who is the athlete representative on the Board (provided that person is not up for re-election to the Board); and
 - At least one and up to two Directors of the Hockey Canada Board would be appointed by the Board to serve on the Nominating Committee. A Director who is up for re-election in the next election cycle would not be eligible to serve on the Nominating Committee.
9. Amend the By-laws to provide that the Board may appoint additional Directors within the legal limits imposed by the CNCA, rather than limiting the option to only one additional Director. That change would also align with the language in the Articles, which currently mirrors the CNCA rule.
- iv. *Hockey Canada's committee structure (standing committees and task teams), committee mandates/terms of reference and mechanisms for reporting to the Board, and observations about their alignment with best practices.*

Committees are formed to assist the Board in performing its duties and responsibilities. Standing committees and other committees of the board are usually established by a board of directors to help manage ongoing board activities that are expected to be carried on permanently or for an indefinite period. Task teams or task forces, sometimes called ad hoc committees or groups, are typically created to assist a board of directors with time-limited projects and tasks. The structure, division and composition of committees, task forces and subcommittees often varies among corporations based on the needs and objectives of each corporation. Committees are an important element of the governance process and “should be established with clearly agreed reporting procedures and a written scope of authority”,⁴²² typically by way of terms of reference. To be most valuable, terms of reference should include detail pertaining to “the composition of the committee, the objectives, purpose and activities, the powers that have been delegated, any mandate to make recommendations to the board, the lifespan of the committee, and how the committee reports to

⁴²² Deloitte, “Board committees” (2014) at 1, online (pdf) Deloitte <https://www2.deloitte.com/content/dam/Deloitte/za/Documents/governance-risk-compliance/ZA_BoardCommittees_24032014.pdf>.

the board.”⁴²³ This section will comment on Hockey Canada’s committees by first reviewing committee structure, secondly reviewing each committee’s composition, mandates and terms of reference, and finally reviewing the mechanisms by which committees report to the Board.

1. Committee structure

As per its By-Laws, Hockey Canada’s committee structure is comprised of six standing committees, other Board committees and a variety of task teams.

1.1 Standing/Board committees

Hockey Canada has six standing committees and one board committee as follows:

- Audit and Finance
- Human Resources
- Risk Management
- Governance
- Nominating
- Program Standards⁴²⁴
- Female Hockey Policy⁴²⁵

All standing and board committees report to the Board. They must maintain minutes of their meetings and make those minutes available to the Board.⁴²⁶

1.2 Task teams

Hockey Canada’s Board Chair (in consultation with the Board, the CEO, the President and COO) may establish a Task Team to undertake a specific task or project to be completed within a defined

⁴²³ Deloitte, “Board committees” (2014) at 1, online (pdf) Deloitte <https://www2.deloitte.com/content/dam/Deloitte/za/Documents/governance-risk-compliance/ZA_BoardCommittees_24032014.pdf>.

⁴²⁴ “Hockey Canada By-Laws, Regulations and History” (May 2022), s 44.1, online (pdf): *Hockey Canada* <<https://cdn.hockeycanada.ca/hockey-canada/Corporate/About/Downloads/2022-23-bylaws-e.pdf>>: note however that the Female Hockey Policy Committee is not referenced in the By-laws.

⁴²⁵ “Female Hockey Policy Committee” in *Hockey Canada Terms of Reference* (updated to 18 March 2022) at 60-61.

⁴²⁶ “Standing Committees” in *Hockey Canada Terms of Reference* (updated to 18 March 2022) at 26.

period of time.⁴²⁷ All Task Teams report to the Board. A Task Team is dissolved once it has accomplished its task or project.⁴²⁸

1.3 Observations on committee structure

Pursuant to the CNCA, directors of a corporation are permitted to establish committees of the board and delegate to them any of the powers of the directors.⁴²⁹ The CNCA does, however, prescribe certain limits on the delegation of that authority; namely, directors cannot delegate their power to: submit to the members any question or matter requiring the approval of members, fill a vacancy among the directors or in the office of public accountant or appoint additional directors, issue debt obligations, approve financial statements, adopt, amend or repeal by-laws, establish contributions to be made, or dues to be paid, by members.⁴³⁰ Otherwise (and subject to a few exceptions, which will be addressed later in the report), the CNCA is generally silent in respect of how a corporation may or should structure its committees, which provides a corporation and its board with a certain amount of latitude in terms of how it organizes its various committees and working groups.

Nonetheless, there are some sound trends and practices in the not-for-profit and NSO sector that are useful points of reference for the purpose of assessing the appropriateness of Hockey Canada's standing/board committees and task forces, such as the COC Code and related Framework. We also considered the committee structure of the Comparator Associations, to the extent such information was made available to us. In that regard, we found that Hockey Canada's committee structure is generally consistent with the practices of the Comparator Associations. Hockey Canada and the Comparator Associations do have some differences with respect to the existence of certain committees, but their overall committee structures are similar. Like Hockey Canada, most Comparator Associations have a mix of permanent committees and temporary committees.

In reviewing the committee structure of the Comparator Associations (other than Basketball Canada for which we did not have the relevant information)⁴³¹, we noted the following:

- Hockey Canada and four Comparator Associations have a combined audit and finance committee.
- Hockey Canada and four Comparator Associations have a governance committee; only Athletics Canada has a combined governance and nominations committee.
- Hockey Canada, Tennis Canada and Canada Soccer have a nominations committee that is separate from its governance committee.

⁴²⁷ "Hockey Canada By-Laws, Regulations and History" (May 2022), s 51.1, online (pdf): *Hockey Canada* <<https://cdn.hockeycanada.ca/hockey-canada/Corporate/About/Downloads/2022-23-bylaws-e.pdf>>.

⁴²⁸ "Hockey Canada By-Laws, Regulations and History" (May 2022), s 51.1, online (pdf): *Hockey Canada* <<https://cdn.hockeycanada.ca/hockey-canada/Corporate/About/Downloads/2022-23-bylaws-e.pdf>>.

⁴²⁹ *Canada Not-for-profit Corporations Act*, SC 2009, c 23, s 138(1).

⁴³⁰ *Canada Not-for-profit Corporations Act*, SC 2009, c 23, s 138(2).

⁴³¹ Note: Basketball Canada does not currently have as formal a committee structure so is not included in these observations unless expressly stated otherwise.

- Hockey Canada and Soccer Canada have a risk committee; Curling Canada’s finance and audit committee also performs risk management functions.
- Hockey Canada, Athletics Canada, Curling Canada and Tennis Canada (through its Executive Committee) all have a human resources committee.

Hockey Canada’s standing committees generally align with the types of standing committees that one would expect in a large not-for-profit organization, namely the Audit and Finance Committee, the Governance Committee, the Human Resources Committee, the Nominating Committee and the Risk Management Committee. Such committees are common and considered best practice since each of them carries out functions that are related to the core duties and responsibilities of the directors. Those committees are also consistent with the COC Code, which recommends that the board of an NSO should have committees that focus on nominations, governance and ethics, audit and finance, compensation and human resources.⁴³² The COC Code does, however, recommend a committee that focuses on “governance and ethics”. It appears that Canada Soccer and Basketball Canada are the only Comparator Associations with an ethics committee. Hockey Canada does not currently have a committee dealing specifically with ethics questions relating to the Board.

Further to our review and for the reasons set out above, we are of the view that the structure of Hockey Canada’s various standing/board committees generally aligns with the Comparator Associations and points of reference reviewed.

2. Committee composition, mandates and terms of reference

2.1 Standing committees

With the exception of the Nominating Committee, all of Hockey Canada’s standing committees are chaired by a Director who is appointed by the Chair of the Board.⁴³³ Each standing committee must be comprised of four to eight members, including the Committee Chair.⁴³⁴ With the exception of the Nominating Committee, the Chair of the Board (in consultation with the Board) appoints the committee Chair and members of each standing committee.⁴³⁵ There is also a staff resource person on each committee (non-voting).⁴³⁶ Standing committee members serve on a committee for

⁴³² “Canadian Sport Governance Code” (April 2021) at 6, online: *Canadian Olympic Committee – NSO Sharing Centre* <https://nso.olympic.ca/wp-content/uploads/2021/10/Canadian_Sports_Governance_Code.pdf>.

⁴³³ “Hockey Canada By-Laws, Regulations and History” (May 2022), s 44.2, online (pdf): *Hockey Canada* <<https://cdn.hockeycanada.ca/hockey-canada/Corporate/About/Downloads/2022-23-bylaws-e.pdf>>.

⁴³⁴ “Hockey Canada By-Laws, Regulations and History” (May 2022), s 44.3, online (pdf): *Hockey Canada* <<https://cdn.hockeycanada.ca/hockey-canada/Corporate/About/Downloads/2022-23-bylaws-e.pdf>>.

⁴³⁵ “Hockey Canada By-Laws, Regulations and History” (May 2022), s 44.3, online (pdf): *Hockey Canada* <<https://cdn.hockeycanada.ca/hockey-canada/Corporate/About/Downloads/2022-23-bylaws-e.pdf>>.

⁴³⁶ “Standing Committees” in *Hockey Canada Terms of Reference* (updated to 18 March 2022) at 25.

a term of two years, but may be reappointed for subsequent terms.⁴³⁷ However, committee members may be removed from their role as committee member, at any time, by the Board Chair.⁴³⁸

Each standing committee has its own mandate and Terms of Reference. All standing committees review policies for which they are responsible, as well as their Terms of Reference, at least every two years.⁴³⁹ The Terms of Reference of standing committees are set out in policies established by the Board. Standing committees may propose changes to its Terms of Reference to the Board.⁴⁴⁰ The following paragraphs review each committee individually.

(a) Audit and Finance Committee

Composition

Hockey Canada’s Audit and Finance Committee is comprised of between four to eight members, including the committee Chair. The Chair of the Board appoints the Chair of the Audit and Finance Committee, while the Board appoints the other members of the committee. Pursuant to the Audit and Finance Committee Terms of Reference, the committee includes the Chief Executive Officer and/or the President and Chief Operating Officer, as an ex-officio member.⁴⁴¹ At least one member of the Committee must be a CPA, CGA, CMA or “its equivalent professional designation, or will be financially literate as such qualifications are interpreted by the Board in its business judgment.”⁴⁴² The inclusion of a person with a professional accounting background or who is financially literate is particularly important given the committee’s core mandate is to ensure Hockey Canada has in place adequate policies and procedures relating to the organization’s finances, audit obligations and financial risk management.

Pursuant to section 194(1) of the CNCA if a corporation has an audit committee, it must be composed of not less than three directors, a majority of whom are not officers or employees of the corporation or its affiliates. Provided Hockey Canada’s Board Chair consistently appoints at least three directors to the Audit and Finance Committee, a majority of whom are not officers or employees, the composition of Hockey Canada’s Audit and Finance Committee will comply with the CNCA. For the 2021-2022 season, the committee members included five Directors,⁴⁴³ a majority of whom were not officers or employees of Hockey Canada. Hockey Canada’s CFO was also designated as a resource person for that committee.

Hockey Canada’s Audit and Finance Committee composition is similar to other Comparator Associations. For example, Canada Soccer’s audit and finance committee is composed of no fewer

⁴³⁷ “Hockey Canada By-Laws, Regulations and History” (May 2022), s 44.4, online (pdf): *Hockey Canada* <<https://cdn.hockeycanada.ca/hockey-canada/Corporate/About/Downloads/2022-23-bylaws-e.pdf>>.

⁴³⁸ “Hockey Canada By-Laws, Regulations and History” (May 2022), s 44.8, online (pdf): *Hockey Canada* <<https://cdn.hockeycanada.ca/hockey-canada/Corporate/About/Downloads/2022-23-bylaws-e.pdf>>.

⁴³⁹ “Hockey Canada Terms of Reference” (updated to 18 March 2022) at 25.

⁴⁴⁰ “Hockey Canada By-Laws, Regulations and History” (May 2022), s 44.5, online (pdf): *Hockey Canada* <<https://cdn.hockeycanada.ca/hockey-canada/Corporate/About/Downloads/2022-23-bylaws-e.pdf>>.

⁴⁴¹ “Hockey Canada Terms of Reference” (updated to 18 March 2022) at 29.

⁴⁴² “Hockey Canada Terms of Reference” (updated to 18 March 2022) at 29.

⁴⁴³ 2021-22 Hockey Canada Standing Committees of the Board (26 August 2022) at 1.

than four members, plus the president as ex-officio. The committee may include members who are not directors to expand its expertise, but the chair of the committee must be a director.⁴⁴⁴ Committee members, including the chair, are appointed by the president with the approval of a majority of the board.⁴⁴⁵ Canada Soccer also requires a basic level of financial literacy from members of its audit and finance committee.⁴⁴⁶

As to Athletics Canada's finance committee, the board chair is an ex-officio and non-voting member.⁴⁴⁷ The chair of the committee is appointed by the board.⁴⁴⁸ Athletics Canada's finance committee is also composed of the treasurer (chair), the chief executive officer, the chief operating officer, up to three individuals appointed by the board, an athlete representative, and the director of finance as ex-officio.⁴⁴⁹ The chair and committee members serve two year terms. Athletics Canada's finance committee (as with all of its committees) must also have a minimum of one member of each gender⁴⁵⁰ and committee membership is "competency" based.⁴⁵¹ Appointed individuals should have "experience with financial matters" and an accounting designation is considered an asset.⁴⁵²

While there are some differences between the composition of Hockey Canada's Finance and Audit committee and those of the Comparator Associations we reviewed, their composition is generally similar to each other and consistent with best practices, such as the COC Code's template audit and finance committee terms of reference. The COC Code template suggests that an audit and

⁴⁴⁴ "Governance Policies" (January 2022) at 13, online (pdf): *The Canadian Soccer Association* <https://www.canadasoccer.com/wp-content/uploads/2022/03/CSA-Governance-Policies-2022_EN.pdf>.

⁴⁴⁵ "Governance Policies" (January 2022) at 14, online (pdf): *The Canadian Soccer Association* <https://www.canadasoccer.com/wp-content/uploads/2022/03/CSA-Governance-Policies-2022_EN.pdf>.

⁴⁴⁶ "Governance Policies" (January 2022) at 14, online (pdf): *The Canadian Soccer Association* <https://www.canadasoccer.com/wp-content/uploads/2022/03/CSA-Governance-Policies-2022_EN.pdf>.

⁴⁴⁷ "Athletics Canada Bylaws" (January 2022) at 25, online (pdf): *Athletics Canada* <<https://athletics.ca/wp-content/uploads/2022/01/Athletics-Canada-Bylaws-January-2022.pdf>>.

⁴⁴⁸ "Athletics Canada Bylaws" (January 2022) at 12, online (pdf): *Athletics Canada* <<https://athletics.ca/wp-content/uploads/2022/01/Athletics-Canada-Bylaws-January-2022.pdf>>.

⁴⁴⁹ "Athletics Canada Bylaws" (January 2022) at 24, online (pdf): *Athletics Canada* <<https://athletics.ca/wp-content/uploads/2022/01/Athletics-Canada-Bylaws-January-2022.pdf>>..

⁴⁵⁰ "Athletics Canada Bylaws" (January 2022) at 9, online (pdf): *Athletics Canada* <<https://athletics.ca/wp-content/uploads/2022/01/Athletics-Canada-Bylaws-January-2022.pdf>>.

⁴⁵¹ "Athletics Canada Bylaws" (January 2022) at 12, online (pdf): *Athletics Canada* <<https://athletics.ca/wp-content/uploads/2022/01/Athletics-Canada-Bylaws-January-2022.pdf>>.

⁴⁵² "Athletics Canada Bylaws" (January 2022) at 25, online (pdf): *Athletics Canada* <<https://athletics.ca/wp-content/uploads/2022/01/Athletics-Canada-Bylaws-January-2022.pdf>>.

finance committee be composed of at least three directors, at least one independent director⁴⁵³ and a chair designated by the board.⁴⁵⁴

Mandate

Pursuant to the Terms of Reference of Hockey Canada’s Audit and Finance Committee, the committee’s mandate is to be “responsible for oversight related to Hockey Canada’s auditing and reporting, financial policies and strategies, and financial risk management.”⁴⁵⁵ The Terms of Reference also provide that the “Committee is a limited agent of the Board in relation to audit matters, and is an active advisor to the Board on all other financial matters.”⁴⁵⁶ As such, the committee has both audit-related functions and finance-related functions. The committee’s audit-related duties include, at the time of the annual audit, providing the corporation’s auditor with access to Hockey Canada’s financial records, reviewing the Auditor’s report, and submitting that report to the Members.⁴⁵⁷ Some of its finance-related duties include working with staff to review and assess budgets, and advise on budget recommendations to the Board.⁴⁵⁸ The committee is also responsible for overseeing the following policies: investment policy, expenses, travel, bonding, fees and assessments, and events. We assume that the reference to the committee being a limited agent of the Board means that the Board has delegated limited authority to the Audit and Finance Committee in respect of audit-related matters, but that is not clear. We recommend that the Terms of Reference be revised to remove or clarify that language.

An audit committee “should act as an independent oversight body.”⁴⁵⁹ Its primary role is to oversee the integrity and compliance of the corporation’s financial reporting and to manage financial

⁴⁵³ “Independent” means that a director has no fiduciary obligation to any body for the subject sport at the national or provincial level, receives no direct or indirect material benefit from any such party, and is free of any conflict of interest of a financial, personal or representational nature (provided that participating in the NSO’s sport does not alone cause a person not to be Independent).” “Canadian Sport Governance Code” (April 2021) at 3, online: *Canadian Olympic Committee – NSO Sharing Centre* <https://nso.olympic.ca/wp-content/uploads/2021/10/Canadian_Sports_Governance_Code.pdf>.

⁴⁵⁴ “Canadian Sport Governance Code Combined Templates” (July 2021) at 75, online: *Canadian Olympic Committee – NSO Sharing Centre* <https://nso.olympic.ca/wp-content/uploads/2021/10/GOODMANS-7073296-v12-Canadian_Sport_Governance_Code_-_Combined_Templates.docx>.

⁴⁵⁵ “Hockey Canada Terms of Reference” (updated to 18 March 2022) at 28.

⁴⁵⁶ “Hockey Canada Terms of Reference” (updated to 18 March 2022) at 29.

⁴⁵⁷ “Hockey Canada By-Laws, Regulations and History” (May 2022), s 45.2, online (pdf): *Hockey Canada* <<https://cdn.hockeycanada.ca/hockey-canada/Corporate/About/Downloads/2022-23-bylaws-e.pdf>>.

⁴⁵⁸ “Hockey Canada Terms of Reference” (updated to 18 March 2022) at 28.

⁴⁵⁹ Deloitte, “Board committees” (2014) at 3, online (pdf): *Deloitte* <https://www2.deloitte.com/content/dam/Deloitte/za/Documents/governance-risk-compliance/ZA_BoardCommittees_24032014.pdf>.

risk.⁴⁶⁰ It also plays “a key role in ensuring accountability and transparency” of the corporation.⁴⁶¹ To do so, an audit committee usually has the responsibility to manage the audit process, recommend the independent auditor, review the audit report with the auditor, present the report to the full board, use the independent auditor as an advisor, and ensure compliance with all reporting requirements.⁴⁶² Section 194(2) of the CNCA also provides that the audit committee must review the financial statements of the corporation before they are approved by the directors.⁴⁶³

A finance committee also carries out financial oversight functions. While staff typically “prepare the budget and monitor daily income and expenditures, a finance committee “provides oversight by reviewing financial statements and the budget.”⁴⁶⁴ The end goal is for the finance committee to ensure “that the board’s policies and strategic priorities are reflected in the budget.”⁴⁶⁵

Like Hockey Canada, Curling Canada, Canada Soccer, Athletics Canada and Tennis Canada have a combined audit and finance committee, whose mandates are all similar to each other and generally align with the mandate and duties that we would expect to find in the terms of reference for an audit and finance committee. The COC Code’s template audit and finance committee terms of reference also provide for a combined audit and finance committee.⁴⁶⁶ Nonetheless, for the reasons set out below we recommend that Hockey Canada divide its Audit and Finance Committee into two separate committees: an Audit Committee, and a Finance Committee.

The current crisis has shown that Hockey Canada’s key stakeholders have lost confidence in Hockey Canada’s ability to oversee and manage the funds of the organization with transparency and accountability. As a step towards regaining that confidence, we are of the view that the new

⁴⁶⁰ Kevin D Chen and Andy Wu, “The Structure of Board Committees” (2016) at 5, online (pdf): *Harvard Business School* <https://www.hbs.edu/ris/Publication%20Files/17-032_22ea9e7a-4f26-4645-af3d-042f2b4e058c.pdf>; Deloitte, “Board committees” (2014) at 5, online (pdf): *Deloitte* <https://www2.deloitte.com/content/dam/Deloitte/za/Documents/governance-risk-compliance/ZA_BoardCommittees_24032014.pdf>.

⁴⁶¹ Deloitte, “Board committees” (2014) at 5, online (pdf): *Deloitte* <https://www2.deloitte.com/content/dam/Deloitte/za/Documents/governance-risk-compliance/ZA_BoardCommittees_24032014.pdf>.

⁴⁶² “Board Committee Membership: Who Should Serve on Which Committee?” (2017) at 5, online (pdf): *BoardSource* <<https://boardsource.org/wp-content/uploads/2017/08/Committees-Who-Serves-Where.pdf?hsCtaTracking=86de16b1-84e0-49d2-b5a3-de66f0a7df72%7C2c5d5d88-615f-4567-9d09-2fc7758fd168>>.

⁴⁶³ *Canada Not-for-profit Corporations Act*, SC 2009, c 23, s 194.

⁴⁶⁴ “Board Committee Membership: Who Should Serve on Which Committee?” (2017) at 4, online (pdf): *BoardSource* <<https://boardsource.org/wp-content/uploads/2017/08/Committees-Who-Serves-Where.pdf?hsCtaTracking=86de16b1-84e0-49d2-b5a3-de66f0a7df72%7C2c5d5d88-615f-4567-9d09-2fc7758fd168>>.

⁴⁶⁵ “Board Committee Membership: Who Should Serve on Which Committee?” (2017) at 4, online (pdf): *BoardSource* <<https://boardsource.org/wp-content/uploads/2017/08/Committees-Who-Serves-Where.pdf?hsCtaTracking=86de16b1-84e0-49d2-b5a3-de66f0a7df72%7C2c5d5d88-615f-4567-9d09-2fc7758fd168>>.

⁴⁶⁶ Goodmans LLP, “Canadian Sport Governance Code: Supporting Resources” (27 April 2021) at 75, online: *Canadian Olympic Committee – NSO Sharing Centre* <https://nso.olympic.ca/wp-content/uploads/2021/10/GOODMANS-7073296-v12-Canadian_Sport_Governance_Code_-_Combined_Templates.docx>.

transition Board should focus particular attention on the responsibilities of those committees that have finance-related responsibilities, such as the Audit and Finance Committee and the Risk Management Committee. The composition, mandates and key functions of those committees should be carefully considered and revised to ensure that robust practices and procedures relating to financial management, audit reporting and transparency are well documented and implemented. The new transition Board may very well determine that the Board’s financial oversight functions need to be diversified and finance-related functions reallocated among a separate Audit Committee and a separate Finance Committee in order to perform those oversight functions with greater efficiency, transparency and accountability.

Not all organizations structure their “financial committees” in the same way. Factors such as the organization’s size, maturity and complexity influence how the Board will configure and organize its committees.⁴⁶⁷ Larger boards have more people and resources and can usually support a higher number of committees. By increasing the size of its Board, as we have recommended, Hockey Canada will have more Directors and resources to support an additional committee, if need be.⁴⁶⁸ The allocation of financial-related duties among multiple committees has other advantages. For example, “when a board separates its financial tasks [...], it is in a better position to focus on the key aspects of each task.”⁴⁶⁹ For organizations like Hockey Canada with multi-million budgets and multiple revenue streams, the allocation of finance-related functions and audit-related functions to two separate committees is especially prudent, as it adds another layer of fiscal oversight. As one author has stated, such an approach “provides for added accountability when oversight for financial management and the independent audit are fully detached.”⁴⁷⁰ When separate, the finance committee is responsible for monitoring the organization’s financial practices, while the audit committee monitors the process by which the financial practices are carried out. For that reason, the audit committee should have plenty of independence from the finance committee.

Given the current challenges Hockey Canada is facing with respect to the transparency of its National Equity Fund, we recommend that Hockey Canada’s new Board reconfigure the current Audit and Finance Committee and establish instead two separate committees: a Finance Committee, and an Audit Committee. We also make the following additional recommendations with respect to each of those committees.

New Finance Committee

1. The Terms of Reference should emphasize that the committee’s overall mandate is to oversee and monitor the Hockey Canada’s financial practices to ensure it is operating in a financially sustainable manner. The Finance Committee’s specific duties should include:⁴⁷¹
 - a. ensuring that accurate and complete financial records are maintained;

⁴⁶⁷ Ellen Hirzy, ed, *Nonprofit Board Committees* (Washington, DC: BoardSource, 2018), at 81.

⁴⁶⁸ Ellen Hirzy, ed, *Nonprofit Board Committees* (Washington, DC: BoardSource, 2018), at 81.

⁴⁶⁹ Ellen Hirzy, ed, *Nonprofit Board Committees* (Washington, DC: BoardSource, 2018), at 81.

⁴⁷⁰ Ellen Hirzy, ed, *Nonprofit Board Committees* (Washington, DC: BoardSource, 2018), at 81.

⁴⁷¹ Ellen Hirzy, ed, *Nonprofit Board Committees* (Washington, DC: BoardSource, 2018), at 84.

- b. ensuring that accurate, timely, and meaningful financial statements are prepared and presented to the Board;
 - c. overseeing budget preparation and financial planning;
 - d. safeguarding Hockey Canada's assets;
 - e. helping the full Board understand Hockey Canada's financial affairs; and
 - f. ensuring compliance with federal, provincial and other regulatory or contractual requirements relating to the organization's finances.
2. The Finance Committee should have between 3 and 7 members.
 3. The Board should appoint the members of the Finance Committee, including the Chair of the committee.
 4. At least a majority of the Finance Committee members should be Directors, including the committee Chair.
 5. The Finance Committee should include some people with expertise or experience in financial matters, including the committee Chair.
 6. Non-Directors may be appointed as members of the Finance Committee, to enhance the collective skills, experience or competencies of committee, or to provide specialized knowledge or expertise on a particular financial issue facing the organization. Non-Directors who are subject-matter experts should add value and contribute meaningfully to the committee's work.

New Audit Committee

1. The Terms of Reference should emphasize that the committee's overall mandate is to ensure the integrity of financial controls and integrated reporting and identifying and managing financial risk.⁴⁷² The Audit Committee's specific duties should include:⁴⁷³
 - a. overseeing the external audit process, which includes meeting with the auditor without staff present, and interpreting the findings of the independent auditor;
 - b. ensuring accurate and transparent financial reporting in accordance with Canadian accounting standards for not-for-profit organizations (ASNPO), which includes reviewing the budget process and ensuring that financial reports are received, monitored and disseminated; and

⁴⁷² Deloitte, "Board committees" (2014) at 3, online (pdf): *Deloitte* <https://www2.deloitte.com/content/dam/Deloitte/za/Documents/governance-risk-compliance/ZA_BoardCommittees_24032014.pdf>.

⁴⁷³ Ellen Hirzy, ed, *Nonprofit Board Committees* (Washington, DC: BoardSource, 2018), at 92.

- c. monitoring financial risk management and internal controls, which includes examining financial management policies and practices to ensure that operations are carried out according to policy and with adequate controls.
2. The Audit Committee should have between 3 and 5 members.
 3. The Board should appoint the members of the Audit Committee, including the committee Chair.
 4. In accordance with the CNCA,⁴⁷⁴ the Audit Committee should be composed of not less than three Directors, a majority of whom are not officers or employees of the corporation or its affiliates. Notwithstanding the CNCA, we recommend that no current or former employees of Hockey Canada be permitted to serve on the Audit Committee. We do think it is reasonable to have the Chief Financial Officer attend meetings of the Audit Committee, as needed, as a staff resource person.
 5. All members of the Audit Committee should be Directors, including the Chair. A majority of them should be Independent Directors.
 6. All members of the Audit Committee should have some experience in audit-related matters, and in particular be able to read and reasonably interpret financial statements.
 7. At least one member of the Audit Committee should be someone with expertise in financial matters, and preferably in accounting or auditing. They should also be familiar with and understand: complex accounting issues, Canadian accounting standards for not-for-profit organizations (ASNPO), financial statements, procedures relating to internal controls and financial reporting, and the functions of an audit committee.⁴⁷⁵
 8. If there is a low number of Directors with accounting expertise on the Board, non-Directors may be appointed to serve in an advisory capacity, provided they are non-voting.
 9. No staff, including the Chief Financial Officer, should attend any audit planning meetings with the auditor, or meetings where the committee reviews the draft financial statements with the auditor before they are provided to the full Board.⁴⁷⁶

(b) Human Resources Committee

Hockey Canada's Human Resources Committee is composed of the Committee Chair (a Director appointed by the Chair of the Board) and between four and eight members (appointed by the Board and including the Chair). For the 2021-2022 season, the committee members included five Directors and two Member Presidents.⁴⁷⁷

⁴⁷⁴ *Canada Not-for-profit Corporations Act*, SC 2009, c 23, s 194.

⁴⁷⁵ Ellen Hirzy, ed, *Nonprofit Board Committees* (Washington, DC: BoardSource, 2018), at 98.

⁴⁷⁶ Ellen Hirzy, ed, *Nonprofit Board Committees* (Washington, DC: BoardSource, 2018), at 95.

⁴⁷⁷ 2021-22 Hockey Canada Standing Committees of the Board (26 August 2022) at 1.

The Human Resources Committee is responsible for overseeing the development of employment policies for Hockey Canada and for policies related to volunteers, as well as for monitoring compliance with those policies.⁴⁷⁸ The committee is also responsible for overseeing the implementation of the following policies: Code of conduct, gifting, social networking, dispute resolution, bullying and harassment, national registry, privacy, privileges for award winners, recognition of service by the Board Chair, out of country medical insurance, neutrality, and non-discrimination.⁴⁷⁹

A board of directors has the authority to establish committees at its discretion. Not all boards have a human resources committee, and such a committee might not be appropriate for every organization. In some organizations, the human resources committee is a non-board committee, populated mostly by staff and reporting directly to the chief executive officer, rather than the board. We note that two of the five Comparator Associations have a human resources committee. We note that the COC Code and COC model terms of reference for the Audit and Finance Committee also provide that if a NSO board does not have a compensation or human resources committee, another board committee should have the responsibilities in those areas.⁴⁸⁰ Those responsibilities should include (but not be limited to): i) the appointment, performance evaluation and compensation of senior management; and ii) the compensation structure of senior management including salaries and annual and long-term incentive plans. We note that at Hockey Canada, the Governance Committee is responsible for “proposing policies for the recruitment, selection and evaluation of the Chief Executive Officer of Hockey Canada.”⁴⁸¹

Regardless of its nature as either a board or non-board committee, typically a human resources committee is responsible for monitoring and/or creating values-based systems and policies to ensure that the organization is complying with its statutory obligations and certain best practices relating to its employees and creating an attractive environment for current and prospective employees.⁴⁸² In other words, the committee’s primary role (particularly when it is a board committee) is usually to ensure there is an appropriate framework for the oversight of the corporation’s human resources.

While the Terms of Reference for Hockey Canada’s Human Resources Committee describe some functions that relate to that role, we noted that certain key duties of the committee are not within the usual scope of responsibilities of a human resources committee. Those include: i) establishing self-assessment tools for the Directors and the Board; ii) ensuring there is proper orientation, support and continuing education for the Directors; and iii) ensuring there is an annual evaluation of the performance of individual Directors and the Board as a whole. In our view, the Human Resources Committee should not be responsible for those functions and we recommend that such functions should instead form part of the Governance Committee’s duties, as they better align with

⁴⁷⁸ “Hockey Canada By-Laws, Regulations and History” (May 2022), s 46.1, online (pdf): *Hockey Canada* <<https://cdn.hockeycanada.ca/hockey-canada/Corporate/About/Downloads/2022-23-bylaws-e.pdf>>.

⁴⁷⁹ “Hockey Canada Terms of Reference” (updated to 18 March 2022) at 31.

⁴⁸⁰ “Canadian Sport Governance Code” (April 2021), at 6, online: *Canadian Olympic Committee – NSO Sharing Centre* <<https://nso.olympic.ca/canadian-sport-governance-code/>>.

⁴⁸¹ “Hockey Canada Terms of Reference” (updated to 18 March 2022) at 37.

⁴⁸² Michele Berger, “Human Resources Committee” (21 January 2014), online (pdf): *Nonprofit Law Blog by NEO Law Group* <<https://nonprofitlawblog.com/human-resources-committee/>>.

that committee’s responsibility for advising the Board on matters relating to the Board’s own evaluation processes, and those of individual Directors.⁴⁸³

In addition, we are of the view that there is an opportunity to streamline the current duties of the Human Resources Committee, by reassessing and reallocating those duties to other committees, with a view to disbanding this committee. As mentioned above, the governance-related duties, such as Board evaluations, Board orientation and ongoing education, guidelines for media-related policies and guidelines for Directors should be reassigned to the Governance Committee. Moreover, the remaining duties set out in the Terms of Reference appear to be outdated and they focus heavily on duties that require the committee to establish vague policies relating to the management of human resources or to ensure that such policies exist. We recommend that Hockey Canada carefully review those human resources-related duties to determine whether they are still appropriate and should continue be performed by a standing committee of the Board.

As mentioned above, in some organizations, the human resources committee is a non-board committee, consisting predominantly of staff and reporting directly to the chief executive officer, rather than the board. One advantage of that approach is that it avoids the need for an additional Board committee. Furthermore, the ability to populate a board committee with adequate human resources-related experience and expertise from among the directors is often a challenge. Accordingly, we recommend that any committee duties that are related to human resources be clearly identified and reallocated to either the Governance Committee or the new Finance Committee, as appropriate. For example, we recommend that any responsibilities related to the compensation framework of senior management, including salaries and annual and long-term incentive plans, be a responsibility of the Finance Committee.

(c) Risk Management Committee

Hockey Canada’s Risk Management Committee is composed of the Committee Chair (a Director appointed by the Chair of the Board), between four to eight members (appointed by the Board and including the Chair), and the President and COO (as ex-officio members). For the 2021-2022 season, the committee members included five Directors, one expert, and two Member Presidents.⁴⁸⁴

The Risk Management Committee is responsible for ensuring the development and implementation of a comprehensive risk management program and for monitoring compliance with the program standards and objectives.⁴⁸⁵ The committee is also responsible for overseeing the implementation of the policies relating to insurance, maltreatment, bullying and harassment protection and prevention, co-ed dressing room, concussion, screening, Canadian Anti-Doping Program, criminal record searches, return to play following player injury, and the Hockey Canada COVID-19 vaccination policy.⁴⁸⁶ The Risk Management Committee is required to consider the input and expertise of the Hockey Canada Chief Medical Officer (“CMO”) and other subject matter experts as required. In addition, although not formally or explicitly noted within the

⁴⁸³ “Hockey Canada Terms of Reference” (updated to 18 March 2022) at 38.

⁴⁸⁴ 2021-22 Hockey Canada Standing Committees of the Board (26 August 2022) at 1.

⁴⁸⁵ “Hockey Canada By-Laws, Regulations and History” (May 2022), s 47.1, online (pdf): *Hockey Canada* <<https://cdn.hockeycanada.ca/hockey-canada/Corporate/About/Downloads/2022-23-bylaws-e.pdf>>.

⁴⁸⁶ “Hockey Canada Terms of Reference” (updated to 18 March 2022) at 33.

Committee’s Terms of Reference, Hockey Canada has advised us that the Risk Management Committee occasionally receives information about individual legal claims when further direction is required.⁴⁸⁷

We note that at least two of the five Comparator Associations have a board committee tasked specifically with a risk management mandate. Canada Soccer’s risk management committee has a similar mandate to that of Hockey Canada’s: it assists the directors in fulfilling their duty of care with respect to the safety, security and integrity of the operations of Canada Soccer, and provides oversight and makes policy recommendations regarding significant hazards and risks.⁴⁸⁸

Although the COC Code’s template audit and finance committee terms of reference includes the responsibility for risk management, we recommend that Hockey Canada continue with its practice of having a standalone Risk Management Committee. Given recent events and the current climate at Hockey Canada, risk management ought to be a topic of great priority and importance to the organization and requires the attention of a subject expert committee than can focus on the challenging and immediate risk management issues currently facing Hockey Canada. In that regard, we are also of the view that Hockey Canada’s Risk Management Committee should receive frequent reports from relevant staff and advise the Board on any material government investigations, litigation, contractual disputes, or legal matters, a responsibility that currently lies solely with the Audit and Finance Committee. This role should be entrenched in the Risk Management Committee’s Terms of Reference, as it is currently only an occasional and secondary role. We provide further commentary on the Risk Management Committee in Chapters VII and VIII.

(d) Nominating Committee

For a detailed discussion on Hockey Canada’s Nominating Committee, please refer to section B(iii) 4 of this Chapter.

(e) Governance Committee

Hockey Canada’s Governance Committee is composed of the Committee Chair (a Director appointed by the Chair of the Board), between four to eight members (appointed by the Board and including the Chair), the CEO (as ex-officio member) and the President and COO (as non-voting members).

COC Code’s template terms of reference recommends that the committee have at least one independent director.⁴⁸⁹ For the 2021-2022 season, Hockey Canada’s Governance Committee

⁴⁸⁷ Email to Nadia Effendi from Mary Anne Veroba (17 October 2022); Email to Nadia Effendi from Blaire Peterson (13 October 2022).

⁴⁸⁸ “Canada Soccer By-laws” (May 2022), s 9.01(iv) online (pdf): *The Canada Soccer Association Incorporated* <https://www.canadasoccer.com/wp-content/uploads/2021/05/CSA-GC-By-laws-2022-EN_Final.pdf>.

⁴⁸⁹ ““Independent” means that a director has no fiduciary obligation to any body for the subject sport at the national or provincial level, receives no direct or indirect material benefit from any such party, and is free of any conflict of interest of a financial, personal or representational nature (provided that participating in the NSO’s sport does not alone cause a person not to be Independent).” “Canadian Sport Governance Code” (April 2021) at 3, online: *Canadian*

members included three Directors and two Member Presidents.⁴⁹⁰ As indicated by the COC Code, we recommend that the Governance Committee have one member who is not a Director and who is independent from other provincial and local hockey associations. This would allow for a fresh and unbiased contribution to the corporation's governance matters. We also recommend that such person have significant experience in board governance matters.

Hockey Canada's Governance Committee is responsible for advising the Board on matters relating to the Board's governance structure, processes and policies, evaluation of the Board's effectiveness, education and evaluation of Directors, and for establishing policies on hiring and evaluating the CEO.⁴⁹¹ The committee is also responsible for overseeing the implementation of the following policies: president hiring, non sanctioned hockey, trophy, Hockey Canada representative on other sport federation's boards, Hockey Canada trademark, official languages, COI, record keeping, transfer agreements, and appeals.

We have the following observations and recommendations with respect to the Governance Committee.

As mentioned above, the Governance Committee should expand its responsibilities in relation to training and evaluation of the Directors and the Board. In addition, the Governance Committee should take over the following responsibilities from the Human Resources Committee: establishing self-assessment tools for Directors and the Board, ensuring there is proper orientation, support and continuing education for the Directors, and ensuring there is an annual evaluation of the performance of individual Directors and the Board as a whole. To help support the Governance Committee with those functions, we recommend that Hockey Canada retain the services of a reputable governance consultant who can serve as a resource person and advisor, as needed.

Again, we note that the COC Code's template terms of reference suggests that a NSO should have a committee focused on governance and ethics. We also note that none of the terms of reference that we reviewed for each of the standing committees provide for duties relating to Board ethics and Director behaviour. To be clear, we are not suggesting that any of the Hockey Canada committees or Directors have acted unethically. However our review did identify this content gap in the committee's written terms of reference. For those reasons, we recommend that the Board amend the terms of reference of the Governance Committee and attribute to it responsibility for matters relating to Board ethics and Director conduct. For instance, as part of its ethics duties, the Governance Committee should be responsible for reviewing the Directors' Code of Conduct.

Third, although there is no reporting relationship between the Governance Committee and the Nominating Committee (both report to the Board), pursuant to its Terms of Reference, the Governance Committee makes recommendations to the Board and the Nominating Committee with respect to the structure and functioning of the Board to ensure that policy governance is successfully implemented and maintained. It also makes recommendations to the Board to assist

Olympic Committee – NSO Sharing Centre <https://nso.olympic.ca/wp-content/uploads/2021/10/Canadian_Sports_Governance_Code.pdf>.

⁴⁹⁰ 2021-22 Hockey Canada Standing Committees of the Board (26 August 2022) at 1.

⁴⁹¹ "Hockey Canada By-Laws, Regulations and History" (May 2022), s 50.1, online (pdf): *Hockey Canada* <<https://cdn.hockeycanada.ca/hockey-canada/Corporate/About/Downloads/2022-23-bylaws-e.pdf>>.

the Nominating Committee in identifying ideal candidate profile(s), skills matrix and diversity needs. Hockey Canada staff are unaware of any situation where the Governance Committee has made any recommendations to the Nominating Committee.⁴⁹² We recommend that the terms of reference of both committees be reviewed and revised to remove all duplication of responsibilities and ensure there are no gaps or omissions.

Subject to the above, Hockey Canada's Governance Committee is generally consistent with the Comparator Associations. Although Athletics Canada has a combined Governance & Nominating Committee, the committee's governance-focused responsibilities are similar to those of Hockey Canada's Governance Committee.⁴⁹³ At Curling Canada, the Nominations Committee is a sub-committee of the Governance Committee, but its mandate is similar to that of Hockey Canada's Governance Committee.⁴⁹⁴ The mandate of Canada Soccer's Governance Committee is also similar.⁴⁹⁵

(f) Program Standards Committee

The Program Standards Committee is one of the six standing committees set out in the By-laws. Pursuant to the By-laws and the committee's terms of reference, the Program Standards Committee is responsible for the general oversight of Hockey Canada programs by ensuring the establishment of program practice standards and for monitoring compliance with such standards and performance of programs against approved objectives.⁴⁹⁶ One of the Committee's key duties is to ensure that Hockey Canada's Members deliver programs and services consistent with national standards.⁴⁹⁷ The committee is also responsible for overseeing the implementation of the following policies: forfeiture, hockey helmet, and individual program policies. The committee's terms of reference provide that the committee is composed of the Committee Chair (a Director appointed by the Chair of the Board) and between four to eight members (appointed by the Board and including the Chair).

Hockey Canada has advised that the Program Standards Committee ceased to be an active committee in or about 2018 when Hockey Canada created the Member Engagement department and the position of Vice President, Member Engagement, who would lead that department.⁴⁹⁸ We understand that senior leaders in office at the time, including the CEO and COO, were of the view that the work performed by the Program Standards Committee was operational in nature and it would be appropriate to move those functions to staff working within the Member Engagement

⁴⁹² Email to Victoria Prince from Sean Kelly (15 September 2022).

⁴⁹³ "Athletics Canada Bylaws" (January 2022) at 16, online (pdf): *Athletics Canada* <<https://athletics.ca/wp-content/uploads/2022/01/Athletics-Canada-Bylaws-January-2022.pdf>>.

⁴⁹⁴ Curling Canada, "Policy Manual" (May 2021) at 21, online (pdf): *Curling Canada* <<https://www.curling.ca/files/2021/06/POLICY-MANUAL-May-2021-edition.pdf>>.

⁴⁹⁵ "Canada Soccer By-laws" (May 2022), s 9.01(iii) online (pdf): *The Canada Soccer Association Incorporated* <https://www.canadasoccer.com/wp-content/uploads/2021/05/CSA-GC-By-laws-2022-EN_Final.pdf>.

⁴⁹⁶ "Hockey Canada By-Laws, Regulations and History" (May 2022), s 49.1, online (pdf): *Hockey Canada* <<https://cdn.hockeycanada.ca/hockey-canada/Corporate/About/Downloads/2022-23-bylaws-e.pdf>>.

⁴⁹⁷ "Hockey Canada Terms of Reference" (updated to 18 March 2022) at 39.

⁴⁹⁸ "Email to Sylvie Lalonde from Pat McLaughlin" (25 October 2022).

department. Based on our review of the committee’s Term of Reference, we agree that the committee’s duties appeared to be operational.

At this time, Hockey Canada does not intend to revive the Program Standards Committee and is considering creating another staff position, “Director of Program Implementation” to take on additional responsibilities that the now-defunct committee might have otherwise been asked to perform. Given the status of the Program Standards Committee, we recommend that the Board formally dissolve the committee and repeal its terms of reference, and that all references to the Program Standards Committee be deleted from the By-laws.

(g) Female Hockey Policy Committee

The Female Hockey Policy Committee (the “**FHP Committee**”) is “responsible for monitoring the needs of the Female hockey player playing either in “Female Only” Divisions or on hockey teams that include non-female players and making such recommendations to the Board as it deems appropriate to address those needs.”⁴⁹⁹ The Committee’s Terms of Reference provide that the FHP Committee is composed of the Committee Chair (appointed by the Board Chair), up to three other people (appointed by the Board), one Director (liaison), staff resource person(s) such as the General Counsel or VP Grow the Game, and the CEO, President and COO (each as ex-officio members). Hockey Canada has advised that it no longer has a “VP Grow the Game” and that the Director, Women & Girls Hockey is the person invited to serve on the FHP Committee instead.

The FHP Committee was established in 2019. Its specific duties include: fostering and encouraging policies for the development approach to the teaching of the game to female hockey players, reviewing and considering audits on the state of “female only” hockey and make recommendations for improving policies related to the game for all female players.⁵⁰⁰ In addition to the duties set out in its Terms of Reference, the FHP Committee hosts forums and other events dedicated to promoting female hockey and females in hockey.

For example, the FHP Committee hosted a virtual National Forum and Women’s Hockey Summit on May 8 and 9, 2021 with female hockey leaders and advocates from each Member of Hockey Canada, as well as other leaders from the Members and Hockey Canada.⁵⁰¹ The Women’s Hockey Summit on Day 2 was an open event where Canadian hockey administrators, coaches, officials, players, and parents were able to attend in addition to all Day 1 participants. One of the objectives of that event was to engage with the collective of people involved in hockey in Canada and gather information to inform a set of recommendations aimed at moving towards gender equity in the sport of hockey. The FHP Committee compiled its 11 recommendations into three key themes:⁵⁰²

⁴⁹⁹ “Hockey Canada Terms of Reference” (updated to 18 March 2022) at 60.

⁵⁰⁰ Interview of Female Hockey Policy Committee (Stephanie White, Chair, and Barry Reynard, Board Liaison) (17 October 2022).

⁵⁰¹ “Female Hockey Policy Committee National Forum & Women’s Hockey Summit Executive Summary Report (8-9 May 2021) at 1.

⁵⁰² “Female Hockey Policy Committee National Forum & Women’s Hockey Summit Executive Summary Report” (8-9 May 2021) at 2.

1. Investment – Investing in women is an opportunity to strengthen society

Example recommendation: “Provide opportunities for girls to play with girls at all levels. This is often missing at the youngest levels. Start-up funding for female hockey associations is required to support this area.”

2. Equity – Gender equity means fairness of treatment for men and women according to their respective needs

Example recommendation: “A statement be released by Hockey Canada endorsing regulatory changes by Members that support the advancement of female hockey and females in hockey (i.e., flexibility in age division modifications, transfers, double carding, zoning, etc.)”.

3. Visibility – Representation matters – in all roles and at all levels of the game

Example recommendation: “Establish gender equity in all levels of leadership across Hockey Canada Members by following Hockey Canada’s lead and implementing a Board gender equity policy (across all Hockey Canada Members to all Local Hockey Associations)”.

We highlight those recommendations as they are directly tied to the “Women and Girls Hockey Plan” identified as part of Hockey Canada’s “Focused Growth and Retention” strategy.⁵⁰³ In our view, the existence of the FHP Committee demonstrates that Hockey Canada is committed to addressing the issue of females in hockey and that the Board has chosen to give that issue prominence by exercising an oversight function of that initiative through that committee. In addition, the Chair of the FHP Committee stated that the committee’s status as a Board committee provides a critical connection between the Board and the Members, and enhances the committee’s ability to influence meaningful changes that affect female hockey players.⁵⁰⁴ This structure, along with the presence of a Director on the committee, gives the Chair of the FHP Committee easy access to the Board and Board Chair and provides a platform where ideas and recommendations can be made directly to the top leaders of Hockey Canada.

We observed no similar board committees at Comparator Associations or in the COC Code. Nevertheless, we are of the view that the FHP Committee plays a critical role in advancing a clearly defined strategic plan objective and initiative and we encourage Hockey Canada to maintain this committee.

2.2 Task Teams

As mentioned above, Task Teams may be established by the Chair of the Board (in consultation with the Board, the CEO, the President and Chief Operating Officer) to undertake a specific task

⁵⁰³ Hockey Canada, “Strategic Plan 2022-2026” at 21.

⁵⁰⁴ Interview of Female Hockey Policy Committee (Stephanie White, Chair, and Barry Reynard, Board Liaison) (17 October 2022).

or project to be completed within a defined period of time.⁵⁰⁵ Task Teams are typically created between November and January and they operate on an annual basis.⁵⁰⁶ A Task Team will be dissolved once it has accomplished its task or project.⁵⁰⁷ Task Teams are generally struck following the request of a Member or from the initiative of the Board Chair.⁵⁰⁸ More recently, there has been an effort to ensure the goal of a Task Team stems from a need identified within the strategic plan or an issue the Board feels needs attention.⁵⁰⁹ The Task Teams Terms of Reference provide that a Task Team “will maintain minutes of its meetings and will make those minutes available to the Board.”⁵¹⁰

Task Team chairs and members are appointed by the Chair of the Board. Task Teams also include a Director, appointed by the Chair of the Board, who serves in a non-voting role to act as a liaison between the Task Team and the Board. Each Task Team must be comprised of four to eight members, including the Task Team Chair, but not including the appointed Director.

Like standing committees, Task Teams have their own mandates and Terms of Reference. Task Teams also have Charters which detail the Task Team’s specific mandate, key action items, budget considerations, and how success will be measured. In addition to this, a Task Team Tracker exists to keep track of the overall status of a Task Team’s action items in relation to its due dates.

At the time of this review, Hockey Canada’s active Task Teams are the following:

- Gender Expression and Identity
- Canadian Development Model – Minor
- Canadian Development Model – Female
- Canadian Development Model – Junior
- Coaching
- Officiating
- Financial Accessibility to Hockey
- Rules Review
- Officiating Curriculum (ad hoc)

⁵⁰⁵ “Hockey Canada By-Laws, Regulations and History” (May 2022), s 51.1, online (pdf): *Hockey Canada* <<https://cdn.hockeycanada.ca/hockey-canada/Corporate/About/Downloads/2022-23-bylaws-e.pdf>>.

⁵⁰⁶ Interview with Sean Kelly and Pat McLaughlin, October 18, 2022.

⁵⁰⁷ “Hockey Canada By-Laws, Regulations and History” (May 2022), s 51.1, online (pdf): *Hockey Canada* <<https://cdn.hockeycanada.ca/hockey-canada/Corporate/About/Downloads/2022-23-bylaws-e.pdf>>.

⁵⁰⁸ Interview with Sean Kelly and Pat McLaughlin, October 18, 2022.

⁵⁰⁹ Interview with Sean Kelly and Pat McLaughlin, October 18, 2022.

⁵¹⁰ “Hockey Canada Terms of Reference” (updated to 18 March 2022) at 43.

Basketball Canada, Athletics Canada, Curling Canada and Soccer Canada all have ad hoc committees, task forces or temporary work groups like Hockey Canada that function in a very similar fashion.⁵¹¹

Hockey Canada has communicated to us that Task Teams are most useful when they are created to meet a specific need of the corporation and when a Task Team’s objective is too broad or runs long term, the Task Team tends to become unproductive.

Task Teams are another way of referring to “task forces” or “temporary work groups”. These types of committees “allow boards to tackle immediate issues [...] quickly and efficiently without rethinking the whole committee structure or assignments.”⁵¹² Task forces are often able to “accomplish a great deal with their focused, short-term assignments.”⁵¹³ Some authors consider “a lean committee structure supported by task forces to be the best way to help the board accomplish its work.”⁵¹⁴ We are of the view that the practice of Hockey Canada’s Board to establish and rely on Task Teams to carry out specific and short-term functions can be an effective and useful way of transacting specialized board business. Task Teams should be established in a way that allows for effective and efficient delegation of work to a small group of people and produces work that is of the highest quality and relevance to the Board’s work. The work delegated to a Task Team ought to be directly related to the strategic objectives and priorities established by the Board. That said, we do not believe that the three Canadian Development Model Task Teams, in particular, should function as Task Teams. These Task Teams were not established for a specific and short-term goal. Rather, they have broad and longer-term objectives. As such, we believe the Canadian Development Model Task Team responsibilities would be more appropriately carried out by an operational committee or staff. We recommend that the Board, in consultation with the CEO re-evaluate all Task Teams and their respective Terms of Reference and Charter to determine whether a Task Team appropriately exists for a specific and short-term function related to the strategic plan and the Board’s functions. If they do not, we recommend that Hockey Canada reconstruct these Task Teams into operational committees or other forms of working groups.

In addition, Task Teams should be populated by Directors and non-Directors who have the right mix of skills and competencies to tackle the particular issue and tasks that the Task Team is being established to consider and perform. Task Teams should include subject experts and key stakeholders who will be able to contribute high quality and relevant work to the Task Team, and by extension, to the Board’s work. To ensure the most appropriate individuals are selected for Task Teams, staff and the Board should be consulted as to whom they would consider a valuable addition to the Task Team.

⁵¹¹ “Bylaw #1 Canada Basketball” (25 May 2014), s 3.37, online (pdf): *Canada Basketball* <https://assets.website-files.com/5d24fc966ad064837947a33b/5d40ccb3625e7f8a09193ca2_Canada_Basketball_Bylaws_2014_revision.pdf>; “Athletics Canada Bylaws” (January 2022) at 14, online (pdf): *Athletics Canada* <<https://athletics.ca/wp-content/uploads/2022/01/Athletics-Canada-Bylaws-January-2022.pdf>>; “Policy Manual” (May 2021) at 18, online (pdf): *Curling Canada* <<https://www.curling.ca/files/2021/06/POLICY-MANUAL-May-2021-edition.pdf>>; “Canada Soccer By-laws” (May 2022), s 9.02, online (pdf): *The Canadian Soccer Association Incorporated* <https://www.canadasoccer.com/wp-content/uploads/2021/05/CSA-GC-By-laws-2022-EN_Final.pdf>

⁵¹² Ellen Hirzy, ed, *Nonprofit Board Committees* (Washington, DC: BoardSource, 2018), at p 12.

⁵¹³ Ellen Hirzy, ed, *Nonprofit Board Committees* (Washington, DC: BoardSource, 2018), at p 27.

⁵¹⁴ Ellen Hirzy, ed, *Nonprofit Board Committees* (Washington, DC: BoardSource, 2018), at p 27.

To the extent that Task Teams are being used in the above fashion, we think that they should continue to form part of the Board overall committee structure.

While it is important for the Board to have a solid foundation of board committees and temporary work groups to assist it with its work, we want to emphasize that the Board should use Task Teams thoughtfully and always consider whether the Board has sufficient bandwidth to support the number of Task Teams that are struck at any given time. Overuse of Task Teams that require the participation of many Directors may exert a strain on already busy Directors, which might impact the quality of the work and tasks being performed not only by the Task Teams themselves, but by the Board as a whole.

2.3 Meetings of Members, Forums and Congresses

Although not committees, the By-Laws provide for three types of meetings Members can attend, namely, Members' Meetings (including the annual meeting and special meetings), Congresses and Members Forums.

In accordance with the CNCA, Hockey Canada must hold the annual meeting no later than six months after the end of its preceding financial year and no later than 15 months after its previous annual meeting.⁵¹⁵ The annual meeting is an opportunity for Members to participate in the governance of the organization. Pursuant to the By-laws, the order of business for the annual meeting includes (among other items) reports by the Chair of the Board and the CEO, the approval of financial statements, the appointment of auditors and the election of the Directors and Board Chair.⁵¹⁶ The Members' right to approve the financial statements is also set out at section 59.2 of the By-laws.⁵¹⁷ We note that the approval of financial statements is not a typical function of the Members. Under the CNCA,⁵¹⁸ it is the directors of a corporation and not its members who are required to approve financial statements. The rationale is that the directors are fiduciaries who are required to act with care, diligence and with a view to the best interests of the corporation. As such, they are expected to have in-depth knowledge of the corporation's finances and exercise oversight of its general financial affairs. While members are entitled to appoint the auditor⁵¹⁹ and to receive and consider the audited financial statements of the corporation under the CNCA,⁵²⁰ they are not fiduciaries and are not as intimately familiar with the corporation's finances. For those reasons, we are of the view that the Members of Hockey Canada should not be asked to approve the financial statements and that only the Directors should be required to approve the financial statements in accordance with the CNCA. We also recommend that Hockey Canada amend the By-laws to remove all language that provides for the Members' right to approve the financial

⁵¹⁵ *Canada Not-for-profit Corporations Act*, SC 2009, c 23, s 160; "Hockey Canada By-Laws, Regulations and History" (May 2022), s 21.1, online (pdf): *Hockey Canada* <<https://cdn.hockeycanada.ca/hockey-canada/Corporate/About/Downloads/2022-23-bylaws-e.pdf>>.

⁵¹⁶ "Hockey Canada By-Laws, Regulations and History" (May 2022), s 21.2, online (pdf): *Hockey Canada* <<https://cdn.hockeycanada.ca/hockey-canada/Corporate/About/Downloads/2022-23-bylaws-e.pdf>>.

⁵¹⁷ "Hockey Canada By-Laws, Regulations and History" (May 2022), s 59.2, online (pdf): *Hockey Canada* <<https://cdn.hockeycanada.ca/hockey-canada/Corporate/About/Downloads/2022-23-bylaws-e.pdf>>.

⁵¹⁸ *Canada Not-for-profit Corporations Act*, SC 2009, c 23, s 178(1).

⁵¹⁹ *Canada Not-for-profit Corporations Act*, SC 2009, c 23, s 181(1)

⁵²⁰ *Canada Not-for-profit Corporations Act*, SC 2009, c 23, s 162(9).

statements and to instead provide that the Directors shall be the ones responsible for approving them.

Congresses are at the call of the Board and may focus on issues including the execution of Board priorities, technical workshops, professional development, policy issues and governance.⁵²¹ Members are entitled to attend them.⁵²² In practice, each Congress is a two to three day seasonal meeting. The event normally includes workshops and education sessions, along with more formal meetings.

The By-laws also provide for a Member Forum, which “shall provide an opportunity for discussion and communication between representatives of the Members and the Board regarding key issues.”⁵²³ The Member Forum consists of the Chair and Executive Director of each Member, as well as the Directors and certain senior executives of Hockey Canada. The Forum is usually held three times each year – one at each of the Spring and Winter Congresses.⁵²⁴ The third is typically held during the Annual Meeting.⁵²⁵ It is a recommending body that has no decision-making authority.⁵²⁶ Reports (written or oral) and presentations are provided from committees and task teams during Members Forums.⁵²⁷

These types of meetings are particularly important for engaging with Members and we recommend that they be preserved in some fashion. These events should be maximized and utilized by the Board as a tool to engage with and report to Members in a thoughtful way. Hockey Canada’s Board and staff should ensure that reports and presentations made at these meetings are detailed, open and transparent and should ensure that Members have ample opportunity for discussion and questions. Such reports should form part of an ongoing, cyclical reporting practice (e.g., quarterly) whereby the Board keeps Members apprised of developments on key issues such as risk, growth plans, state of operations, needed disclosures, cases being settled, etc.

We also recommend that minutes be taken and kept for all meetings of Members, Forums and Congresses. Hockey Canada should designate a resource person and/or secretary who can assist with minute taking and preparation of reports to Members, as needed. We also recommend that a schedule be published on Hockey Canada’s website detailing the dates that regular Board and Member meetings occur. This would assist in clearly demonstrating how often the Board discusses, as well as how often the Board engages with its Members.

⁵²¹ “Hockey Canada By-Laws, Regulations and History” (May 2022), s 23.1, online (pdf): *Hockey Canada* <<https://cdn.hockeycanada.ca/hockey-canada/Corporate/About/Downloads/2022-23-bylaws-e.pdf>>.

⁵²² “Hockey Canada By-Laws, Regulations and History” (May 2022), s 10.1, online (pdf): *Hockey Canada* <<https://cdn.hockeycanada.ca/hockey-canada/Corporate/About/Downloads/2022-23-bylaws-e.pdf>>.

⁵²³ “Hockey Canada By-Laws, Regulations and History” (May 2022), s 42.1, online (pdf): *Hockey Canada* <<https://cdn.hockeycanada.ca/hockey-canada/Corporate/About/Downloads/2022-23-bylaws-e.pdf>>.

⁵²⁴ “Hockey Canada By-Laws, Regulations and History” (May 2022), s 43.1, online (pdf): *Hockey Canada* <<https://cdn.hockeycanada.ca/hockey-canada/Corporate/About/Downloads/2022-23-bylaws-e.pdf>>; “Hockey Canada Terms of Reference” (updated to 18 March 2022) at 10.

⁵²⁵ Email to Victoria Prince from Sean Kelly (15 September 2022).

⁵²⁶ “Hockey Canada Terms of Reference” (updated to 18 March 2022) at 10.

⁵²⁷ “Board and Member Forum Reports: Committees, Work Groups and Task Teams” (15-16 November 2019).

With time, such practices along with other Member engagement strategies will help Hockey Canada regain the trust of its Members and that of Participants and Canadians at large.

2.4 Final observations and recommendations on committee structure

Hockey Canada is a large and complex organization. In addition, it has multiple and sophisticated revenue streams. On paper and subject to some exceptions, Hockey Canada generally has the right complement of Standing and Board Committees, and the terms of reference of the various committees do not reveal any significant deviations from what we would normally expect for a not-for-profit corporation. However, as mentioned above, there is some duplication of duties in some committees, and consideration should be given as to whether some duties should be shifted from one committee to another. Furthermore, the duties and functions of the various committees are often described in the terms of reference in a vague or unclear manner. We also noted that the terms of reference do not, in every instance, accurately reflect what the Committees and Task Teams are actually doing.

Our examination of Hockey Canada's governance policies and practices suggest that certain aspects of the current committee structure and the language of the terms of reference may have lost some of their relevance or outgrown some of their usefulness given the current climate and, in particular, as a result of the challenges arising out of the organization's management of the NEF. Hockey Canada is at a critical juncture and will soon be governed by a new transitional Board. If our recommendation is adopted, the Board's size will also be increasing next year. We have heard from a number of Directors that they are members of too many committees and that Directors spend too much time discussing operational matters, which significantly increases the hours that a Director devotes to Hockey Canada. As Hockey Canada's and the new Board's strategic priorities and objectives change, the number, size and mandates of the Board committees are also likely to need further internal assessment and review.

In our view, now is an opportune time for this and we recommend that Hockey Canada conduct an in-depth review of its committee structure with a view to: 1) streamlining and maintaining core committees focused on meeting the needs of the new Board; 2) restructuring or disbanding Committees or Task Teams that have lost their relevance or that are operationally focused and perform staff functions; and 3) developing a suite of new, refreshed and robust terms of reference that clearly define each committee's mandate and role, its key duties and functions, what it is responsible for achieving, and to whom it reports and is accountable. We also recommend that, for greater flexibility, the By-laws be amended to remove details of any particular committee structure and instead include only general language that provides for the Board's authority to establish and disband committees and working groups as needed.

3. Mechanisms for reporting to the Board by Board committees and Task Teams

This section reviews how Board committees and Task Teams report to the Board. Chapter IX, on the other hand, will discuss how staff and operational committees report to the Board.

Several people we interviewed expressed concern that the Directors dedicate too many hours to Hockey Canada per year. Based on our conversations with Hockey Canada Directors, all

committees provide written reports to the Board approximately fifteen days prior to Board meetings. A Director suggested that, given the number of committees, Directors often receive 200-250 pages of written committee reports, which are circulated in advance of Board meetings. They suggest this is too much.

With respect to Task Teams specifically, some Task Teams provide periodic updates to the Board, while other Task Teams, primarily those that are most operational, report back to the Board only when their task is complete.⁵²⁸ A Task Team’s reporting style depends on the instructions provided to it by the Board.⁵²⁹

We agree that it is a good governance practice for Board committees and Task Teams “to provide [...] reports and information sufficiently in advance of the meeting to allow directors to come to the meeting prepared.”⁵³⁰ Other Comparator Associations follow this practice. Curling Canada’s committees annually create and report to the board on a work plan, maintain a suite of documents suitable for briefing new directors on the role, background, and work of the committee, and regularly update the board on committee activities.⁵³¹ Canada Soccer’s committees report to the board by way of written reports.⁵³² Athletics Canada also submits reports to the board in advance of their meetings.⁵³³

It is important for committees to have an organized, consistent and well-documented system for communicating with the board.” In addition, committees and Task Teams should make their reports available to the Board well in advance of Board meetings, ideally about two weeks prior,⁵³⁴ to give Directors sufficient time to review the material and prepare for the meeting.

With respect to the contents of written committee reports, these “should be presented in the context of the strategic picture – a reminder of the strategic objective with some updates.”⁵³⁵ As noted above, Directors are busy and are volunteers. Reports “should be presented in a concise way so that [Directors] can grasp the details quickly.”⁵³⁶ Where “committee reports are confusing or incomplete, the board may waste time at meetings asking questions to get the missing information.”⁵³⁷ In other words, committees should include in their reports concise background information on their work, “but not a detailed account.”⁵³⁸ As a general rule:

⁵²⁸ Interview with Sean Kelly and Pat McLaughlin, October 18, 2022.

⁵²⁹ Interview with Sean Kelly and Pat McLaughlin, October 18, 2022.

⁵³⁰ Anne Corbett & James M Mackay, *Guide to Good Governance: Not-for-Profit and Charitable Organizations*, 2nd ed (September 2013) at 163.

⁵³¹ Curling Canada, “Policy Manual” (May 2021) at p 17, 18 online (pdf): *Curling Canada* <<https://www.curling.ca/files/2021/06/POLICY-MANUAL-May-2021-edition.pdf>>.

⁵³² Interview with Canada Soccer, September 12, 2022.

⁵³³ Interview with Athletics Canada, September 26, 2022.

⁵³⁴ Ellen Hirzy, ed, *Nonprofit Board Committees* (Washington, DC: BoardSource, 2018), at p 22.

⁵³⁵ Ellen Hirzy, ed, *Nonprofit Board Committees* (Washington, DC: BoardSource, 2018), at p 22.

⁵³⁶ Ellen Hirzy, ed, *Nonprofit Board Committees* (Washington, DC: BoardSource, 2018), at p 22.

⁵³⁷ Ellen Hirzy, ed, *Nonprofit Board Committees* (Washington, DC: BoardSource, 2018), at p 22.

⁵³⁸ Ellen Hirzy, ed, *Nonprofit Board Committees* (Washington, DC: BoardSource, 2018), at p 22.

Reports “may include a request to the [B]oard for feedback on an idea, an emerging direction with salient pros and cons, or a recommendation for board action. If the committee is not making a recommendation or requesting feedback, it should submit a progress report for the board’s information only, with no discussion needed during the board meeting.”⁵³⁹

We recommend that Hockey Canada committees and Task Teams continue to provide written reports to the Board sufficiently in advance of Board meetings. We also recommend that committees and Task Teams adopt a consistent form of report that is clear, concise and impactful, and that is focused on providing information to Directors that is directly related to the strategic objectives of Hockey Canada and not on operational details. The form of report should be streamlined and organized in a way that allows all standing committees and Task Teams to report to the Board in a consistent way, with themes that are focused on strategic outcomes and effectiveness, and assist the Board in carrying out its functions and fiduciary oversight. To that end, executive summaries and dashboard reporting can be particularly helpful. Some committee members and members of the senior leadership team informed us that some of those strategic alignment tools, such as dashboards, initiative trackers and scorecards have started to be developed and deployed within the organization with the objective of improving communications and reporting between senior staff, committees and Board. We support those steps and encourage Hockey Canada to continue its efforts in that regard.

Committee reports should be approved by the Chair of the committee and each committee should have a dedicated resource person and/or secretary who can assist with minute taking and preparation of reports. In addition, the minutes of all Standing Committees and Task Teams meetings should be made readily and easily available to all Directors so they can be consulted by them if they require or desire additional detail. We understand that the Hockey Canada Board uses a SharePoint site or Board portal to facilitate the Directors’ access to relevant corporate and governance-related documents, and meeting materials as needed and on a timely basis. We encourage the continued use of such tools.

C. Conclusion and summary of recommendations in light of observations and best practices

Terms of Reference Question	Response
2. Are the organization’s By-Laws concerning the constitution and operation of the Board of Directors in line with current best practices, appropriate or require amendments?	- The current By-laws are not significantly misaligned with the points of reference that we examined (i.e. Sports Canada’s Governance Principles for Sport Organizations, the Canadian Sport Governance Code, Athletics Canada Athlétisme Canada, Canada Basketball, Curling Canada, Canada Soccer and Tennis Canada).

⁵³⁹ Ellen Hirzy, ed, *Nonprofit Board Committees* (Washington, DC: BoardSource, 2018), at p 22.

Terms of Reference Question	Response
	<ul style="list-style-type: none"> - However, as set out above, we have several suggested changes.
<p>a. Recognizing the Board’s current composition, are there recommended changes to the organization’s governance structure that would support and further enhance the diversity of the Board?</p>	<ul style="list-style-type: none"> - Yes. - Amend the corporation’s Articles to increase the maximum number of Directors from 9 to 13. - Amend the By-laws to provide that the Board will consist of a number of Directors between the minimum and maximum number of Directors specified in the Articles, rather than prescribing a fixed number. - Amend the By-laws to provide that no more than 60% of the Directors are of the same gender, to bring this aspect in line with the COC Canadian Sport Governance Code. - Amend the By-laws to provide that the Board will include at least one athlete representative, who will be nominated by the Nominating Committee with significant input from hockey players. - Amend the By-laws to provide that at least a majority of the Directors on the Board be persons who, at the time of their election, are independent of Hockey Canada. By “independent” we mean a person who at the time of their election as a Director is not: a) an employee of Hockey Canada; b) an officer, director or employee of any Member of Hockey Canada (a “HC Member”); c) an officer, director or employee of an organization that is a member of a HC Member (including without limitation a local Minor Hockey Association); or d) an officer, director or employee of any other hockey club, league or team. - See our additional recommendations below under “c.” respecting the nominating process.

Terms of Reference Question	Response
<p>b. Are current terms and term limits aligned with best practices?</p>	<ul style="list-style-type: none"> - There are no significant divergences from best practices, but the following measures would strengthen the Board’s capacity: - Increase the Directors’ terms to up to three years from two; - Stagger Directors’ terms so that only about one third of the Board would be up for re-election in any year; - Increase term limit to nine consecutive years from eight (e.g. three consecutive terms of three years); - Increase term limit of the Board Chair to six consecutive years from four to align with the new three-year term for Directors (e.g. two consecutive terms of three years).
<p>c. Does the nominating process need to be amended?</p>	<ul style="list-style-type: none"> - Yes. <p>Nominating Committee</p> <ul style="list-style-type: none"> - The Nominating Committee should be comprised of up to nine individuals and that the fixed number always be an odd number. - The Nominating Committee should be constituted as follows: <ul style="list-style-type: none"> o The majority of the committee members would be individuals who are at arm’s length from the Board (“Independents”). The Independents, who should be highly qualified and diverse, would be appointed by the Board with the assistance of a reputable board recruitment firm hired by Hockey Canada. o The Members of Hockey Canada, collectively, would be entitled to appoint up to two individuals to serve on the Nominating Committee.

Terms of Reference Question	Response
	<ul style="list-style-type: none"> ○ At least one member of the Nominating Committee would be an athlete representative, who would be appointed by the Board of Hockey Canada with significant input from hockey's athletes. ○ At least one and up to two Directors of the Hockey Canada Board would be appointed by the Board to serve on the Nominating Committee. A Director who is up for re-election in the next election cycle would not be eligible to serve on the Nominating Committee. <p>- Update or replace the Nominating Committee Terms of Reference to revise its composition and how its members are appointed and to better define the committee's role and duties.</p> <p>Nominating Process</p> <ul style="list-style-type: none"> - Review and, if required, update the Board Matrix to ensure it reflects the skills, experience and diversity elements that are needed on the Hockey Canada Board; this can be put into effect immediately and should be done annually. - For each election cycle (including the 2022 election), that the Nominating Committee use the Board Matrix as a tool to support the call for nominations and to articulate clearly the specific skills and competencies being sought for the Board positions to be filled. - We strongly encourage the Nominating Committee to engage and consult with a reputable board recruitment firm to assist it with the review of the Matrix and recruitment of qualified candidates to serve as Directors. That firm could be the same recruitment firm retained by Hockey Canada to assist with the recruitment of candidates for the Nominating Committee. - Members (along with the general public and the Nominating Committee) should continue to have the

Terms of Reference Question	Response
	<p>right to propose candidates for election as Directors. However, none of the names proposed (including those proposed by the Members) should automatically appear on the final ballot. Instead, the Nominating Committee should evaluate all candidates proposed and create a short-list of nominees. Only candidates who qualify and can demonstrate that they possess the skills, competencies, experience and qualities identified by the Nominating Committee (using the Matrix) should be and nominated by the Nominating Committee.</p> <ul style="list-style-type: none"> - Amend the By-laws to provide that all persons proposed for nomination to positions of elected Directors be submitted to the Nominating Committee, who will have the authority to vet and create a short list of candidates to be placed on the election ballot. That includes amending and removing all language in the By-laws and the Nominating Committee Terms of Reference that states or suggests that all nominations of candidates proposed by the Members shall be included in the final ballot for the election of the Directors and the Board Chair. In that regard, we understand that the Members of Hockey Canada have already approved By-law amendments to that effect at a meeting of the Members held on October 15, 2022. That process of vetting, evaluating and shortlisting candidates should be done having regard to the Board Matrix. We recommend that this approach be implemented for the current election cycle and all future ones. - The Members should be entitled to receive regular communications from the Nominating Committee on its recruitment work and given an opportunity to provide comments. The Board should also be entitled to receive such reports and given an opportunity to provide comments. - The Nominating Committee, as part of its right to vet and create a short list of qualified candidates, should have the authority and discretion to determine the number of nominees whose names will be included on the final election ballot, which number could be

Terms of Reference Question	Response
	<p>equal to or exceed the number of Directors positions available on the Board. In either case, in accordance with the CNCA, the Members must elect the Directors by ordinary resolution.</p> <p>Board Chair</p> <ul style="list-style-type: none"> - Amend the By-laws to provide that the Directors (and not the Members) have the right to appoint the Board Chair. - Revise and update the current “Chair of the Board Terms of Reference” to ensure they are current and include a list of qualities and minimum competencies required of the Board Chair. Such a list should be created and used as part of the current nomination process for the new transition Board Chair. <p>Appointed Directors</p> <ul style="list-style-type: none"> - Amend the By-laws to provide that the Board may appoint additional Directors within the legal limits imposed by the CNCA, rather than limiting the option to only one additional Director.
<p>d. Is the structure of the various standing committees and task teams, including their Terms of Reference/mandates and reporting mechanism to the Board, appropriate?</p>	<ul style="list-style-type: none"> - Hockey Canada’s standing committees generally align with the types of standing committees that one would expect in a large not-for-profit organization, namely the Audit and Finance Committee, the Governance Committee, the Human Resources Committee, the Nominating Committee and the Risk Management Committee. - However, as set out above, we have several recommended changes. - Divide the Audit and Finance Committee into two separate committees: an Audit Committee, and a Finance Committee. - Adopt new terms of reference for each of the new Audit Committee and Finance Committee, as we suggest above.

Terms of Reference Question	Response
	<ul style="list-style-type: none"> - Reassess the current duties of the Human Resources Committee and reallocate relevant duties to other committees or staff, with a view to disbanding the Human Resources Committee. - Enhance the role of the Risk Management Committee to include receiving regular reports from staff and advising the Board on any material government investigations, litigation, contractual disputes, or legal matters. That role should be entrenched in the Terms of Reference. - Have one member of the Governance Committee be someone who is not a Director and who is independent from other provincial and local hockey associations. - Have the Governance Committee take over the following responsibilities from the Human Resources Committee: establishing self-assessment tools for Directors and the Board, ensuring there is proper orientation, support and continuing education for the Directors, and ensuring there is an annual evaluation of the performance of individual Directors and the Board as a whole. To help support the Governance Committee with those functions, we recommend that Hockey Canada retain the services of a reputable governance consultant who can serve as a resource person and advisor, as needed. - Assign to the Governance Committee responsibility for matters relating to Board ethics and Director conduct. - Formally dissolve the Program Standards Committee, which has been inactive for approximately four years, and repeal its terms of reference. Remove from the By-laws all references to the Program Standards Committee. - Maintain the Female Hockey Policy Committee, which plays a critical role in advancing a clearly defined strategic plan objective and initiative.

Terms of Reference Question	Response
	<ul style="list-style-type: none"> - That the Board, in consultation with the CEO re-evaluate all Task Teams and their respective Terms of Reference and Charters to determine whether they exist for a specific and short-term function related to the strategic plan and the Board's functions. If they do not, we recommend that Hockey Canada reconstruct these Task Teams into operational committees or other forms of working groups. - Amend the By-laws to remove all language that provides for the Members' right to approve the financial statements and to instead provide that the Directors shall be the ones responsible for approving them. - Ensure minutes be taken and kept for all meetings of Members, Forums and Congresses. Hockey Canada should designate a resource person and/or secretary who can assist with minute taking and preparation of reports to Members, as needed. - Conduct an in-depth review of the overall committee structure with a view to: 1) streamlining and maintaining core committees focused on meeting the needs of the new Board; 2) restructuring or disbanding Committees or Task Teams that have lost their relevance or that are operationally focused and perform staff functions; and 3) developing a suite of new, refreshed and robust terms of reference that clearly define each committee's mandate and role, its key duties and functions, what it is responsible for achieving, and to whom it reports and is accountable. - Amend the By-laws to remove details of any particular committee structure and instead include only general language that provides for the Board's authority to establish and disband committees and working groups as needed. - Adopt a consistent form of report for Standing Committees and Task Teams that is clear, concise and impactful, and focused on providing information to Directors that is directly related to the strategic objectives of Hockey Canada and not on operational

Terms of Reference Question	Response
	<p>details. The form of report should be streamlined and organized in a way that allows all Standing Committees and Task Teams to report to the Board in a consistent way, with themes that are focused on strategic outcomes and effectiveness, and assist the Board in carrying out its functions and fiduciary oversight.</p>

VIII. WAS THE USE OF THE NATIONAL EQUITY FUND APPROPRIATE?

Risk management is an important consideration for all organizations. One of the Board’s core responsibilities is to ensure that risks are identified and that appropriate measures are put in place to address them.

Many not-for-profit corporations create reserve funds as a risk management tool to ensure they have sufficient resources to respond to risks if and when they materialize. Hockey Canada’s National Equity Fund (“NEF”) must be understood and assessed in this context. The key questions for this review are whether the NEF was established properly, and whether Hockey Canada governs the maintenance and use of the Fund appropriately.

A. Development, Purposes and Funding of the National Equity Fund

i. Introduction

The NEF has existed in some form since 1986,⁵⁴⁰ but its purposes have evolved over time. For this review, its evolution is best divided into three phases – the self-insurance phase (1986–1995), the initial commercial insurance phase (1995–2016), and the current phase (2016–Present).

The NEF is now one element in an interlocking framework, which aims to ensure that Hockey Canada retains adequate resources to meet its potential liabilities and those of its Members, and Participants. The other elements are two distinct funds: the Participants Legacy Trust Fund (the “**Legacy Trust**”) – which while it does not belong to Hockey Canada is for the benefit of its Members – and the Insurance Rate Stabilization Fund (“**IRS Fund**”) along with extensive insurance coverages.

For the purpose of this Chapter, we have defined the following terms:

- **Members** are the provincial, regional or territorial associations/federations that manage and foster amateur hockey within their geographic regions and have the responsibility to represent their constituents.⁵⁴¹ The 13 Members of Hockey Canada currently are: British Columbia Hockey, Hockey Alberta, Hockey Saskatchewan, Hockey Manitoba, Hockey Northwestern Ontario, Ontario Hockey Federation, Hockey Eastern Ontario, Hockey Québec, Hockey New Brunswick, Hockey Nova Scotia, Hockey Prince Edward Island, Hockey Newfoundland and Labrador, and Hockey North. These Members have certain rights and obligations under Hockey Canada’s constating documents.
- **Participant** means all players, coaches, referees, assistant coaches, trainers, managers and volunteers of Hockey Canada and its Members, including local associations and teams.

⁵⁴⁰ Questions Answered by Glen McCurdie, former Vice President of Insurance and Risk at Hockey Canada (dated 29 August 2022).

⁵⁴¹ “Hockey Canada 2020-21 Annual Report” (2020-21) at 5, online (pdf): *Hockey Canada* <<https://cdn.hockeycanada.ca/hockey-canada/Corporate/About/Downloads/2020-21-annual-report-e.pdf>>; “Hockey Canada By-Laws, Regulations and History” (May 2022) at s 8.1, online (pdf): *Hockey Canada* <<https://cdn.hockeycanada.ca/hockey-canada/Corporate/About/Downloads/2022-23-bylaws-e.pdf>>.

ii. *1986–1995: The self-insurance phase*

In September 1986, Hockey Canada’s predecessor, the Canadian Amateur Hockey Association (“CAHA”), began operating the National Equity Fund Insurance Program (the “**Program**”).⁵⁴² This self-funded Program was created as an opportunity to reduce insurance costs and benefit from the CAHA’s size to spread out individual Members’ financial risk.⁵⁴³ The partner organization, Canadian Hockey League (“CHL”), and several Members across Canada contributed to the Program throughout its existence, under which they were “beneficiaries.”⁵⁴⁴ The Fédération québécoise de hockey sur glace (now Hockey Québec) only participated in the Program until August 31, 1993, and only certain teams in that federation participated between September 1, 1993 and August 31, 1995.⁵⁴⁵ Hockey North (which currently holds jurisdiction of the Northwest Territories and Nunavut) was not a contributing Member.⁵⁴⁶

The Program was initially comprised of general liability coverage of \$2 million from the CAHA Liability Fund (which we understand to be the NEF), bolstered with \$3 million excess liability coverage with Segwick Tomenson Inc., which also provided comprehensive accident insurance coverage (for accidental injury or death while participating in sanctioned hockey activities).⁵⁴⁷

In 1988, Hockey Canada obtained a \$3 million comprehensive general liability policy with the Co-operators General Insurance Company (the “**Co-operators**”), in addition to a \$3 million excess policy from the Zurich Insurance Company. Hockey Canada advised that, in the same year, the CAHA contracted with the Cooperators to administer the Program, and paid them an annual premium (the “**Co-operators Agreement**”). Unfortunately, Hockey Canada has been unable to locate the original agreement with the Co-operators. The information provided indicates that the

⁵⁴² See Canada Hockey Association, “Trust Agreement” (1 June 1999); see also Canadian Amateur Hockey Association, “General Liability Fund and Excess Insurance Plus Comprehensive Accident Insurance Brochure” (1986-1987 Season).

⁵⁴³ The Alexander Consulting Group, “Summary of Insurance” (31 May 1989) at s I.

⁵⁴⁴ Hockey Canada, “History of the National Equity Fund” at 1.

⁵⁴⁵ Canada Hockey Association, “Trust Agreement” (1 June 1999); Interview of Brian Cairo (6 September 2022): Hockey Canada advised that certain teams within Hockey Québec had provincial coverage and thus did not contribute from September 1, 1993 and August 31, 1995.

⁵⁴⁶ The contributing members at the time the Program was established included different organizations/associations than today. At the time the self-insurance program was operating, the following entities were considered contributing members: British Columbia Amateur Hockey Association, the Alberta Amateur Hockey Association (now Hockey Alberta), the Saskatchewan Amateur Hockey Association (now Saskatchewan Hockey), the Manitoba Amateur Hockey Association (now Hockey Manitoba), the Thunder Bay Amateur Hockey Association (now Hockey Northwestern Ontario), the Ontario Hockey Federation, the Ottawa and District Hockey Association (now Hockey Eastern Ontario), the Prince Edward Island Hockey Association (now Hockey PEI), the New Brunswick Amateur Hockey Association (now Hockey New Brunswick), the Nova Scotia Hockey Association (now Hockey Nova Scotia), the Newfoundland and Labrador Hockey Association (now Hockey Newfoundland and Labrador), the Fédération Québécoise de Hockey sur Glace (now Hockey Quebec) and the Canadian Hockey League; see Canada Hockey Association, “Trust Agreement” (1 June 1999) at s 1; see also “Hockey Canada By-Laws, Regulations and History” (May 2022) at s 9.1, online (pdf): *Hockey Canada* <<https://cdn.hockeycanada.ca/hockey-canada/Corporate/About/Downloads/2022-23-bylaws-e.pdf>>.

⁵⁴⁷ Canadian Amateur Hockey Association, “General Liability Fund and Excess Insurance Plus Comprehensive Accident Insurance Brochure” (1986-1987 Season) at 2-4; The Alexander Consulting Group, “Summary of Insurance” (31 May 1989) at 1-7.

agreement has been in force since at least 1988.⁵⁴⁸ Hockey Canada has advised that the agreement was renewed annually.

Under the Co-operators Agreement, a Claims Management Committee, which included representatives from the CAHA and the Co-operators, would administer claims.⁵⁴⁹ However, the CAHA bore the responsibility of reporting, investigating, defending and settling all claims made under the Program.⁵⁵⁰ The Co-operators Agreement also included an excess commercial liability policy. The policy existed to insure all Members and Participants for injuries, and provided the CAHA coverage of up to \$6 million in the event a claim exceeded the NEF balance at a given time.⁵⁵¹ To the best of Hockey Canada's knowledge, the NEF had sufficient funding to respond to all claims and the excess policy was never invoked.⁵⁵² The Co-operators Agreement also required the CAHA to maintain an escrow trust fund. It is unclear if and how the escrow trust fund was used and if it was linked to the NEF or the settlement of claims.⁵⁵³

We have not been provided with any constituting documents for the NEF. The CAHA first reported the NEF in its audited financial statement for the 1987-1988 fiscal year.⁵⁵⁴ The financial statement clearly advises that the CAHA was involved in defending legal actions resulting from accidents and injuries sustained by "participants in CAHA play."⁵⁵⁵ The statement provides that the NEF balance was accumulated as a precaution against current and potential future claims against the CAHA, Members, and Participants.⁵⁵⁶ Indeed, in 1987, the NEF had a balance of \$445,117, which rose to \$981,435 in 1988.⁵⁵⁷

On September 1, 1988 the CAHA created the Health and Accident Fund to provide supplementary medical and dental coverage to Participants, which continues to operate today as the Health Benefit Trust Fund.⁵⁵⁸

The December 1989 Board of Directors meeting minutes document the first NEF-funded settlement, which involved a player in one of the leagues of the CHL who became paralyzed from

⁵⁴⁸ Canadian Amateur Hockey Association & Cooperators General Insurance Company, "Agreement" (1 September 1993) at ss 3, 7: replacing the agreement between the parties dated September 1, 1988; see also Cooperators General Insurance Company Insurance Policy No. 1135073 (1 September 1988).

⁵⁴⁹ Canadian Amateur Hockey Association & Cooperators General Insurance Company, "Agreement" (1 September 1993) at ss 5, 7: replacing the agreement between the parties dated September 1, 1988.

⁵⁵⁰ Interview of Sam Ciccolini (24 August 2022).

⁵⁵¹ Interview of Sam Ciccolini (24 August 2022).

⁵⁵² Interview of Sam Ciccolini (24 August 2022).

⁵⁵³ Canadian Amateur Hockey Association & Cooperators General Insurance Company, "Agreement" (1 September 1993) at ss 3, 7: replacing the agreement between the parties dated September 1, 1988.

⁵⁵⁴ Canadian Amateur Hockey Association, "Audited Financial Statement 1987-88 fiscal year."

⁵⁵⁵ Canadian Amateur Hockey Association, "Audited Financial Statement 1987-88 fiscal year" at 9.

⁵⁵⁶ Canadian Amateur Hockey Association, "Audited Financial Statement 1987-88 fiscal year" at 9.

⁵⁵⁷ Canadian Amateur Hockey Association, "Audited Financial Statement 1987-88 fiscal year" at 9.

⁵⁵⁸ Canadian Amateur Hockey Association, "Audited Financial Statement 1987-88 fiscal year" at 9.

an injury sustained during a hockey game.⁵⁵⁹ The minutes indicate that the terms and amount of the settlement were not disclosed due to confidentiality requirements.⁵⁶⁰

Hockey Canada has advised that the NEF originally operated as a vehicle to receive premiums from Participants to fund the Program.⁵⁶¹ We have been advised that Participants paid an annual fee of approximately \$11.50 – consisting of a \$1.50 membership fee and a \$10.00 self-insurance premium – to the CAHA through their Member.⁵⁶² The membership fee was deposited into the CAHA’s Operating Fund whereas the self-insurance premium made its way into the NEF and the Health and Benefit Trust Fund. The organization then used the NEF funds to pay the annual premium to the Co-operators as well as any claims made against the CAHA, its Members and all Participants.⁵⁶³

The Program continued to operate until 1995.

iii. 1995–2016: The initial commercial insurance phase

On February 1, 1995, Supplementary Letters Patent were issued to the CAHA, changing its name to the Canadian Hockey Association.⁵⁶⁴ Concerned with the increase of serious spinal injuries in amateur hockey across Canada and the liability that could flow from them, the organization, on September 1, 1995, purchased commercial liability insurance policies instead of continuing the Program. These new policies provided a myriad of coverages including general liability, personal injury and medical expense coverage to the CAHA, its Members and all Participants.⁵⁶⁵ As under the former Program, Participants paid an annual fee to the CAHA through the Members. A portion of this fee then remained and grew in the NEF and covered the insurance premiums for the commercial policies, any deductibles, and any uninsured or underinsured claims.⁵⁶⁶

In 1998, the Canadian Hockey Association merged with Hockey Canada bringing every aspect of Canadian Hockey, both amateur and international competition, under one umbrella known as Hockey Canada.⁵⁶⁷

1. Purchase of sexual misconduct coverage

In 1998, largely in response to the abuse committed by Graham James, Hockey Canada expanded its commercial liability policy to provide sexual misconduct coverage for Hockey Canada, its

⁵⁵⁹ Hockey Canada, Board of Directors, *Minutes of Meeting* (held on 1-3 December 1989) at 240.

⁵⁶⁰ Hockey Canada, Board of Directors, *Minutes of Meeting* (held on 1-3 December 1989) at 240.

⁵⁶¹ Interview of Glen McCurdie (31 August 2022).

⁵⁶² All Participants paid the same insurance fee; however, referees paid a different membership fee that was dependent on the level of hockey they were working in.

⁵⁶³ Interview of Glen McCurdie (31 August 2022).

⁵⁶⁴ Industry Canada, “Canadian Amateur Hockey Association Supplementary Letters Patent” (1 February 1995).

⁵⁶⁵ Interview of Barry Lorenzetti (24 August 2022).

⁵⁶⁶ Interview of Glen McCurdie (24 August 2022).

⁵⁶⁷ “Learn about the history of Hockey Canada” (last visited 21 August 2022), online: *Hockey Canada* <www.hockeycanada.ca/en-ca/corporate/history>; for further information about the history of the CAHA and Hockey Canada please see Chapter IV of this Report.

Members and its Participants.⁵⁶⁸ We understand that, as a condition of this coverage, known and suspected acts of past sexual misconduct were excluded from coverage, and the insurer required that Hockey Canada provide a list of all individuals suspected of having committed sexual misconduct during the self-insured period (i.e. 1986–1995).⁵⁶⁹ Hockey Canada, working with its Members, compiled a list of known perpetrators it provided to the insurer; claims in relation to those known perpetrators were excluded from coverage under the new sexual misconduct insurance.⁵⁷⁰ The current policy document states a retroactive coverage date of December 31, 1998. All incidents related to the known perpetrators are expressly excluded from coverage.⁵⁷¹ A risk remained that historic events might give rise to claims of various types that would not be statute barred. Concerns grew that further late-reported claims might be brought against Hockey Canada, its Members or Participants. In response, the NEF continued to accrue funds in reserve to cover any potential uninsured, historic claims.

2. The Participants Legacy Trust Fund

On June 1, 1999, Hockey Canada entered into a Trust Agreement to settle the Legacy Trust in order to respond to historic claims. The Legacy Trust provided that Hockey Canada could use funds on behalf of its Members and the CHL to respond to late reported claims for incidents occurring prior to September 1, 1995, in the event the NEF balance was insufficient.⁵⁷² Approximately \$7.1 million was transferred from the NEF to benefit the Members who had contributed to the former Program.⁵⁷³ In other words, all Members and the CHL, except Hockey North, are beneficiaries of the Legacy Trust and receive an annual distribution, comprised of realized annual investment income, based on their respective contribution levels made to the NEF from 1986 to 1995.⁵⁷⁴ Hockey Canada is not a beneficiary of the Legacy Trust, but Hockey Canada’s current and former Chief Financial Officers are among its trustees. These annual distributions do not relate to funding potential or actual liabilities nor risk management. However, the Legacy Trust does permit trustees to transfer \$2.1 million per occurrence (with no aggregate limit) from the Legacy Trust to the NEF to pay late-reported claims relating to events that occurred from 1986 to 1995.⁵⁷⁵ Hockey Canada itself does not receive any annual distributions from the Legacy Trust and does not control distributions. However, as noted, current and former Hockey Canada officers serve among its trustees.

⁵⁶⁸ Sexual Misconduct was defined as any: (a) sexual or physical abuse or sexual or physical molestation of any person, including but not limited to, any sexual involvement, sexual conduct or sexual contact, regardless of consent, with a person who is a minor or who is legally incompetent; or (b) sexual exploitation, including but not limited to, the development of, or the attempt to develop, a sexual relationship, whether or not there is apparent consent from the individual.

⁵⁶⁹ Interview of Sam Ciccolini (24 August 2022).

⁵⁷⁰ AIG Insurance Company of Canada, “Endorsement No 21: Sexual Misconduct Liability Endorsement” (effective 1 September 2020); Interview of Sam Ciccolini Canada (24 August 2022).

⁵⁷¹ Interview of Sam Ciccolini (24 August 2022).

⁵⁷² Hockey Canada, “Financial Statements” (year end 30 June 2000) at note 9.

⁵⁷³ Canada Hockey Association, “Trust Agreement” (1 June 1999).

⁵⁷⁴ Application made to the Court of Queen’s Bench of Alberta by the Trustees of the Legacy Trust (25 January 2019). The Trust Agreement was renewed to May 15, 2039 with no modifications.

⁵⁷⁵ Canada Hockey Association, “Trust Agreement” (1 June 1999) at Article V, s 5.1(e).

Schedule A to the Legacy Trust Agreement is a Tail Coverage Agreement, executed in May 1999, directing that all claims from the self-insured period (1986 to 1995) are to be paid by the NEF.⁵⁷⁶ Hockey Canada has advised that the Legacy Trust operates to provide additional funding in the event the NEF has insufficient funding to respond to historic, uninsured claims on behalf of Members and the CHL. The Legacy Trust essentially acts as an excess policy, accessible once the NEF has been exhausted. The Legacy Trust was originally set to terminate on May 15, 2020, the so-called “division date.” However, in 2019, Hockey Canada filed a court application in Alberta, with written consent from all beneficiaries of the Trust (i.e., the beneficiary Members and the CHL), seeking to vary the division date of the Trust.⁵⁷⁷ The Affidavit of Hockey Canada’s Chief Financial Officer, filed in support of the application, explained that the Trust was set to terminate on the division date, but only if no unpaid claims remained outstanding, and that Hockey Canada expected more claims (both related and unrelated to sexual misconduct) to arise after the original division date.⁵⁷⁸ Thus, the prime motivator for the application was “to be able to settle or deal with further Claims which were intended to be dealt with through the establishment of this Trust”.⁵⁷⁹ Indeed, the consent forms signed by all beneficiaries of the Trust acknowledged this recommendation from the Trustees and indicated that the beneficiaries “agree[d] with this advice”.⁵⁸⁰

Hockey Canada has advised that the only payments that have been made out of the Legacy Trust are the annual distributions paid to the beneficiaries and the legal fees associated with renewing the trust agreement to May 15, 2039.⁵⁸¹ For example, the earnings distributed from the Legacy Trust to Members in 2019 totalled \$318,931. The distribution is based on the Members’ respective contribution levels to the Self-Insurance Program from 1986 to 1995. This resulted in the OHF receiving the largest share, at 20.76% (\$66,210), followed by Hockey Alberta at 17.39% (\$55,462) and BC Hockey at 16.27% (\$51,890). The Members who received the lowest number of distributions were Hockey Québec (0.56% - \$1,786), Hockey PEI (1.21% - \$3,859) and HNO (1.53% - \$4,879). A third party trust firm, who manages the trust fund investments, makes these distributions. The Legacy Trust has not funded any settlements.⁵⁸²

Hockey Canada has no formal policy governing the Legacy Trust, beyond the Trust Agreement. Notably, the Tail Coverage Agreement includes conditions requiring that Hockey Canada provide a certain amount of disclosure about the status of the NEF to Members, as discussed below.

⁵⁷⁶ Canadian Hockey Association, “Tail Coverage Agreement” (24 May 1999) at ss 1-2.

⁵⁷⁷ Application made to the Court of Queen’s Bench of Alberta by the Trustees of the Legacy Trust (25 January 2019).

⁵⁷⁸ Affidavit of Brian Cairo, sworn 23 January 2019, filed in support of the Application to vary the Legacy Trust, at para 13; Notes from Call on Legacy Trust between Brian Cairo, Brian Cameron, Sean Kelly, Glen McCurdie and Johanna Bond (19 January 2018).

⁵⁷⁹ Affidavit of Brian Cairo, sworn 23 January 2019, filed in support of the Application to vary the Legacy Trust, at para 13.

⁵⁸⁰ Exhibit “B” to the Affidavit of Brian Cairo, sworn 23 January 2019, filed in support of the Application to vary the Legacy Trust. Hockey Canada made a presentation at the 2018 Spring Congress to its Members, explaining the various options on how to move forward with the Legacy Trust, and providing the recommendation to extend the division date to May 15, 2039. This direction was approved unanimously at the same Spring Congress.

⁵⁸¹ Interview of Brian Cairo (6 September 2022).

⁵⁸² Interview of Sam Ciccolini (24 August 2022).

3. Transfers to Pillar Funds

From 1999 to 2008, the NEF continued to operate as planned, receiving annual fees from Participants to fund insurance premiums, deductibles, and settle uninsured and underinsured claims. Hockey Canada also established several internally restricted funds known as the “Pillar Funds,” the most relevant of which for present purposes being the Insurance Rate Stabilization Fund (“**IRS Fund**”).⁵⁸³

The IRS Fund forms another part of Hockey Canada’s risk management matrix. Created and approved by the Board of Directors during the 2007–2008 fiscal year,⁵⁸⁴ the IRS Fund acts as a buffer against future increases in insurance rates, as stated in Hockey Canada’s audited financial statements.⁵⁸⁵ As discussed below, it is apparent that the IRS Fund is now also used as a reserve fund, which is not indicated on the financial statements. Hockey Canada has no formal policy governing the IRS Fund. Hockey Canada has authorized several inter-fund transfers from the NEF to the other Pillar Funds over the years, the vast majority of these going to the IRS fund.⁵⁸⁶ These inter-fund transfers are approved by the Board of Directors and included in the audited financial statements Members receive prior to the annual meeting.

In September 2022, during our review, Hockey Canada’s Audit and Finance Committee approved a draft Pillars Policy which provides clarity on the purpose of the Pillar Funds and outlines the authorization process for inter-fund transfers (this policy has yet to be approved by the Board). This draft policy clarifies that the IRS Fund may be used to support four purposes:

- to offset any significant increases in third party insurance premiums to mitigate increases in insurance fees Hockey Canada charges Members;
- to pay liability settlements for claims related to Hockey Canada’s uninsured period, including fiscal years 1986–87 to 1994–95;
- to support insurance-related strategic plan initiatives; and
- to cover start-up expenses related to a Hockey Canada self-insured insurance plan.

The draft policy provides that any payments from the IRS Fund would require Board approval following a recommendation from the Risk Management Committee. Additionally, any transfer or re-allocation of funds between Hockey Canada Operating Fund, Health Benefit Trust or NEF to the Pillar Funds, or between the Pillar Funds would require Board approval following a motion at a Director’s meeting. Finally, transfers of NEF year-end surplus, if applicable, to the IRS Fund would require a Board motion on an annual basis. The Board of Directors has not yet approved the

⁵⁸³ Hockey Canada, “Audited Financial Statement” (June 2007-2008) at 14; the other Pillar Funds are the Growth Fund, Facilities Fund, Branch Support Fund, International Event Housing Support Fund, and Technology. Please consult the Audited Financial Statements for more information about the purposes of each of these funds.

⁵⁸⁴ Hockey Canada, “Audited Financial Statement” (June 2007-2008) at 13.

⁵⁸⁵ Hockey Canada, “Audited Financial Statement” (June 2007-2008) at 13.

⁵⁸⁶ See Hockey Canada, “Audited Financial Statement” (June 2015-2016, June 2016-2017, 2017-2018, 2018-2019, 2019-2020).

draft policy.⁵⁸⁷ However, we are advised by Hockey Canada that it does currently transfer NEF year-end surpluses, when they arise, to the IRS Fund with Board approval.

4. Removal of reserve funds from financial statements and surplus transfers

In 2015, a substantial portion of the NEF consisted of designated reserve funds for possible uninsured or underinsured claims described by Hockey Canada as “general reserves for concussion and sexual abuse.”⁵⁸⁸ On the advice of its auditors, Hockey Canada removed the presentation of the reserves from the 2015–2016 audited financial statements, which had been listed as liabilities in previous financial statements.⁵⁸⁹ The auditors believed it was incorrect to list the reserves as liabilities since it was not possible to identify to whom specifically the liabilities would be payable or their amount. Effectively, this presentation change decreased reported liabilities on Hockey Canada’s balance sheet and increased the reported balance of the NEF by several million dollars.⁵⁹⁰ In turn, Hockey Canada had to restate the 2015 NEF opening balance to account for this increase, which it disclosed in note 16 of its 2015–2016 audited financial statement.⁵⁹¹ The auditors advised us that, in their view, Hockey Canada had overestimated its liabilities during that period.⁵⁹² When asked how they had estimated those liabilities, Hockey Canada informed us that they had relied on past claims but beyond that, it is not clear to us how these liabilities were estimated.

We were advised by Hockey Canada’s Chief Financial Officer that the intent was to ensure the general reserves were clearly identifiable and remained separate from annual insurance transactions and other transactions in the NEF. In addition, Hockey Canada advised that the “artificial” growth of National Equity balance based on an accounting presentation change created an increased chance of lawsuits by individuals attracted to the larger balance in the fund.⁵⁹³ Therefore, on November 17, 2016, the Board approved the transfer of \$10.25 million in reserve funds from the NEF into the IRS Fund “for the purpose of providing financial support against potential future non-insured claims.”⁵⁹⁴ In so doing, the Board expanded the scope of the IRS Fund to include a reserve sub-fund for uninsured claims. Indeed, the minutes from the Board meeting during which the transfer was approved note that the transfer was not intended to change the original purpose of the fund, but “simply add to its purpose.”⁵⁹⁵ This expanded purpose is not reflected in the audited financial statements, which show the IRS Fund as a fund to buffer insurance premium increases.

The summary notes of the 2016 Annual Winter Congress (which took place on November 19, 2016) indicate that Members were “advised of Board approval of transfer of funds from Equity

⁵⁸⁷ Hockey Canada, “Draft Pillars Policy” (2022).

⁵⁸⁸ Hockey Canada, “History of the National Equity Fund” at 1.

⁵⁸⁹ Interview of Tim Sothern (24 August 2022).

⁵⁹⁰ Interview of Tim Sothern (24 August 2022); Interview of Brian Cairo (24 August 2022); see also Hockey Canada, “Audited Financial Statement” (2015-2016).

⁵⁹¹ Hockey Canada, “Audited Financial Statement” (2015-2016) at 18.

⁵⁹² Interview of Tim Sothern (24 August 2022).

⁵⁹³ Hockey Canada, “History of the National Equity Fund” at 4.

⁵⁹⁴ Hockey Canada, Board of Directors, *Minutes of Meeting* (held on 17 November 2016) at 4, item 5.4.

⁵⁹⁵ Hockey Canada, Board of Directors, *Minutes of Meeting* (held on 17 November 2016).

Fund to the [IRS Fund] for the purpose of providing financial support against potential future non-insured claims.”⁵⁹⁶

From 2016 to present, any surplus generated from investments in the NEF has been transferred to the IRS Fund.⁵⁹⁷ These inter-fund transfers are approved by the Board and included in Hockey Canada’s audited financial statements. For example, during a November 16, 2017 meeting, the Board of Directors approved three inter-fund transfers: \$723,000 from the IRS Fund to the NEF (which Hockey Canada indicated was required to pay settlements relating to uninsured claims against Gordon Stuckless and Graham James), \$2,651,180 from the NEF back to the IRS Fund, and \$1,827,479 from the Growth Fund to the Operating Fund.⁵⁹⁸ Neither the minutes for the 2017 annual meeting (November 18, 2018) nor those for the 2017 Winter Congress (November 16–18, 2017) mention the transfers. However, the \$2,651,180 transfer to the IRS Fund and the \$1,827,479 transfer to the Operating Fund are noted on the 2017–2018 financial statements, and the \$723,000 transfer to the NEF is included in notes for the 2016–2017 fiscal year.⁵⁹⁹

iv. 2016–Present: The current phase

The NEF, the IRS Fund and the Legacy Trust continue to operate to date. Hockey Canada has advised that the IRS Fund contains two sub-funds: the reserve fund and the funds to buffer insurance premium increases. These sub-funds are not listed separately on the audited financial statements. Instead, only the total amount of funds contained in the IRS Fund is displayed, but Hockey Canada maintains that Members are aware of the two so-called sub-funds.⁶⁰⁰ Hockey Canada also advised that they maintain an internal document to track the balance of the sub-fund reserve; however, the specific balances are not routinely provided to the Members.⁶⁰¹

Until December 2021, Hockey Canada’s Vice President of Risk and Risk Management managed the NEF, with the assistance of the former Director of Insurance and Risk Management. However, following the departure of these two individuals from Hockey Canada, it appears that the responsibility for the management of the fund was in transition, which may have initially caused confusion within Hockey Canada as to who was responsible for the fund. We were initially told the CFO was involved in NEF management. Next, Hockey Canada informed us that the Director of Sport Safety (a position created in May 2022) played an important role in managing the fund. When asked about the subject, the Director of Sport Safety denied having such a role, and clarified that she was only involved in the NEF insofar as insurance had a certain level of interaction with the Safe Sport initiative. However, she was not involved in NEF management from an insurance perspective. After obtaining these responses, certain Hockey Canada executives again informed us that the Director of Sport Safety managed the fund, but with the assistance of legal counsel. Most recently, the CFO provided us with a chart according to which all matters involving insurance reserves, renewals and claims, as well as settlement expenses were handled by Associate Counsel in Insurance and Risk Management (a position created in August 2022) and General Counsel. The

⁵⁹⁶ Hockey Canada, Winter Congress, *Annual Meeting Summary* (held on 19 November 2016).

⁵⁹⁷ Interview of Brian Cairo (24 August 2022).

⁵⁹⁸ Hockey Canada, Board of Directors, *Minutes of Meeting* (held on 16 November 2017) at 8.

⁵⁹⁹ See Hockey Canada, “Audited Financial Statement” (2016-2017, 2017-2018).

⁶⁰⁰ Interview of Brian Cairo (6 September 2022).

⁶⁰¹ Interview of Brian Cairo (6 September 2022).

chart also indicated that the Director of Sport Safety only touches on NEF matters insofar as they concern Safe Sport-related expenses. It would appear that the Risk Management Committee and the Audit and Finance Committee also play a role. The Audit and Finance Committee consists of between four and eight members, in addition to the CEO and President/COO as members *ex officio*. While Hockey Canada designated its CFO as a resource to the Audit and Finance Committee in the 2021-2022 season, the CFO is not a member of the Committee. Hockey Canada also has a Risk Management Committee, which includes a Committee Chair chosen by the Board from its Directors, between four and eight members, and the CEO and President/COO as members *ex officio*. The Committees meet to discuss various financial risk management items, including ongoing lawsuits and claims against Hockey Canada, its Members and Participants.⁶⁰²

The Risk Management Committee, which reports to the Board, is responsible for ensuring the development and implementation of a comprehensive risk management program and for monitoring compliance with program standards and objectives.⁶⁰³ Among its key duties, the Risk Management Committee oversees and makes recommendations with respect to Hockey Canada insurance policies, and makes recommendations relating to hazard, operational, strategic and financial risks as they arise.⁶⁰⁴ Hockey Canada advised that individual claims are dealt with by its staff who deal with insurance, the representatives of the insurer who may cover the claim, and subject matter experts as required (e.g., legal counsel).⁶⁰⁵ In addition, Hockey Canada's CFO and the Current Chair of the Risk Management Committee advised that the Committee does not deal with individual claims, and that information relating to individual claims is only shared with the Committee if further direction is required, which is rare.⁶⁰⁶ Information is shared with Members and the Board on a case-by-case basis according to the given risk, and this would occur *in camera*.⁶⁰⁷ Additional details on Hockey Canada's claims management process follow below.

Hockey Canada's Board has never formally approved a process for funding under and uninsured claims that exceed the balance available in the NEF, nor has it adopted any written policy to that effect (or regarding any of the NEF, the IRS Fund or the Legacy Trust, for that matter). However, we understand that Hockey Canada would address such claims first by transferring money from the IRS Fund reserve sub-fund, and if necessary, use the remaining IRS Fund money designated to buffer against insurance premium rate increases. For claims against Legacy Trust beneficiaries, we understand that Hockey Canada would transfer funds from the Legacy Trust, and if necessary, request further funding from the Members under the Tail Coverage Agreement before resorting to the IRS Fund buffer money.

⁶⁰² Interview of Glen McCurdie (31 August 2022).

⁶⁰³ "Hockey Canada Terms of Reference," (18 March 2022) s 5.3, online: *Hockey Canada* <<https://cdn.hockeycanada.ca/hockey-canada/Corporate/About/Downloads/hockey-canada-terms-of-reference-e.pdf>>; "Hockey Canada By-Laws, Regulations and History" (May 2022), s 47.1, online (pdf): *Hockey Canada* <<https://cdn.hockeycanada.ca/hockey-canada/Corporate/About/Downloads/2022-23-bylaws-e.pdf>>.

⁶⁰⁴ "Hockey Canada Terms of Reference," (18 March 2022) s 5.3, online: *Hockey Canada* <<https://cdn.hockeycanada.ca/hockey-canada/Corporate/About/Downloads/hockey-canada-terms-of-reference-e.pdf>>.

⁶⁰⁵ Email to Nadia Effendi from Mary Anne Veroba (17 October 2022).

⁶⁰⁶ Email to Nadia Effendi from Mary Anne Veroba (17 October 2022); Email to Nadia Effendi from Blaire Peterson, (13 October 2022).

⁶⁰⁷ Email to Nadia Effendi from Mary Anne Veroba (17 October 2022).

At present, the NEF is significantly depleted and projected to be in a deficit by 2023.⁶⁰⁸ Going forward, Hockey Canada will need to make important decisions about how it will continue to manage its risks and retain sufficient funding in reserves to meet its potential liabilities.

1. Funds received and funds paid out of the NEF

Currently, NEF funds accumulate from past surpluses, income on investments, and annual registration fees paid by Members (currently set at **\$23.80** per Participant).⁶⁰⁹

The annual registration fee paid to Hockey Canada breaks down as follows:

Fund	Fee description	Amount
Operations fund	Registration/Operations Fee	\$3.00* ⁶¹⁰
NEF	Directors and Officers Insurance	\$2.00
	General Commercial Liability, including sexual misconduct coverage	\$8.90
	Safety and Administration	\$2.75
	Total (NEF)	\$13.65
Health and Benefit Trust Fund	Major Medical and Dental Coverage	\$2.00
	Accidental Death and Dismemberment	\$5.15
	Total (Health and Benefit Trust Fund)	\$7.15
Total Insurance		\$20.80
Total (All Funds)		\$23.80

The Members also charge an additional \$0.50 insurance and risk management fee, which they recover from each Participant.⁶¹¹ Therefore, the total cost of insurance per Participant is \$21.30. This amount accords with the \$21.30 illustrated in the insurance fee section in Hockey Canada's information guide titled: "Safety Requires Teamwork & Safety for All Management and Insurance Fees."⁶¹² This guide is publicly available on Hockey Canada's website and provided to Members

⁶⁰⁸ Hockey Canada, "2022/2023 Budget Review PowerPoint" (April 2022).

⁶⁰⁹ It is our understanding that some Participants are charged further administration fees from their local association or Member.

⁶¹⁰ Note: this fee was reduced to \$1.50 during the 2020/2021 season and \$0 during the 2021/2022 season because of the pandemic; see also Questions answered by Brian Cairo, Chief Financial Officer of Hockey Canada (26 August 2022).

⁶¹¹ Interview of Brian Cairo (24 August 2022).

⁶¹² "Safety Requires Teamwork & Safety for All" (revised 2021-2022) at 59, online (pdf): *Hockey Canada* <<https://cdn.hockeycanada.ca/hockey-canada/Hockey-Programs/Safety/Insurance/Downloads/2022/2021-22-safety-requires-teamwork-revised-e.pdf>>.

for distribution to their Participants. In fact, we understand that a version of this guide has existed and has been distributed to Participants since 1987.⁶¹³

Notably, deductibles or uninsured claims are not mentioned as a part of the annual registration fee nor are they mentioned in the guide provided to Participants.

The Risk Management Committee is responsible for determining the rate to charge Participants to cover insurance premiums. Hockey Canada wants to avoid increasing the premiums every year. Therefore, the Risk Management Committee will charge Participants for the cost of the premiums set by the insurance company and an additional margin which is deposited into the NEF.⁶¹⁴

The rates of insurance premiums charged to Participants remained the same from 2000 to 2017. In 2017 premiums increased as Hockey Canada decided to pass on to Participants the cost of Directors and Officers Insurance where previously this expense was borne by Hockey Canada itself.⁶¹⁵

In a Memo to its Members dated July 2022, Hockey Canada advised that the NEF is used to pay insurance premiums, deductibles, uninsured and underinsured claims, in addition to funding a wide range of safety, wellbeing and wellness initiatives, including “counselling and treatment for players”.⁶¹⁶ Hockey Canada maintains it has a longstanding practice of reviewing the NEF’s purposes with Members annually. Hockey Canada advised that it has offered counselling services to players affected by various incidents (including injury, sexual misconduct, and post-traumatic stress disorder) not linked to active claims. Hockey Canada advised that these services could, in some cases, resolve issues before formal claims were made and offer treatment to the affected player. These expenditures were not consistently recorded in the financial statements or general ledger.⁶¹⁷ Indeed, our review of the NEF general ledger from 2014 to present does not clearly indicate that the NEF funded counselling services or treatments for Participants. If such services were indeed provided to potential claimants and funded by the NEF, it is concerning that they were not recorded in a consistent manner. We also have no indication that Members would have been advised when such services were offered. We have now been advised by Hockey Canada that these services are funded from the Health and Benefit Trust.

The following table sets out the proportion of the NEF used to cover various categories of expense from 2014 to 2022.

⁶¹³ The Alexander Consulting Group, “Summary of Insurance” (31 May 1989) at s II; Canadian Amateur Hockey Association, “General Liability Fund and Excess Insurance Plus Comprehensive Accident Insurance Brochure” (1986-1987 Season).

⁶¹⁴ Interview of Brian Cairo (13 September 2022).

⁶¹⁵ Interview of Brian Cairo (13 September 2022).

⁶¹⁶ Brian Cairo, “Memo to Members: Message from Hockey Canada regarding National Equity Fund” (July 2022) at 5; we were also informed by Hockey Canada on September 12 that the NEF had funded counselling and treatment for players between 2014 and present.

⁶¹⁷ Interview of Brian Cairo (13 September 2022).

Category of Expense	Description	Percentage of Total Expenditures paid out of NEF from 2014-2022
1. Settlements for uninsured and underinsured claims	All settlements paid out of the NEF. This amount is inclusive of deductibles paid on insured claims.	2-26%
2. Salaries	Salaries paid to four to five of Hockey Canada employees responsible for the administration of the NEF, including the Senior Manager for Insurance Member Services, and the new Director of Sport Safety.	3-6%
3. Insurance Policies	Premiums and brokerage fees paid to maintain Hockey Canada's commercial insurance policies.	67-86%
4. Grants	Donations to various organizations, telephone helplines, support for concussion research, and funding various initiatives	1-8%
5. Professional Services	General professional services, consultant fees, licence/service fees, and all legal fees, including lawyer fees from settlements, investigations, and non-settlement-related legal matters (i.e. corporate matters).	3-10%
6. Travel/Accommodations /Meals	Expenses submitted by employees with respect to activities related to the administration of the fund, including the administration of insurance and claims	0-1%
7. Reserve Adjustment	An amount set aside within the NEF for potential liabilities, adjusted for actual settlement payouts.	-14-14%*
8. Investments, Banking, and Accounting	Interest and bank fees, investment management fees, foreign exchange gain/loss.	0-1%

*Note: negative values represent adjustments to funds set aside within the NEF to pay settlements; where actual settlement payments were smaller than anticipated, the balance of the reserve is released within the NEF, thus showing as a “negative” expenditure.

From 2014 to 2022, the majority of the disbursements from the NEF are for insurance premiums (67% to 86%) so it is clear that the NEF does not operate purely as a reserve fund for uninsured or underinsured claims. Settlements for these uninsured and underinsured claims range from 2% to 26% of the total disbursements from the NEF. The reserve fund also pays the salaries of four to five Hockey Canada employees whose roles relate to or involve administering the NEF. However, these salaries represent a very small percentage (3% to 6%) of the expenses paid from the NEF in a given year.

From 1989 to 2022, the NEF covered 21 settlements for uninsured or underinsured claims.⁶¹⁸ 10 of the 21 settlements related to injuries and accidents in relation to which the claims exceeded available insurance coverage and included claims related to Ontario Human Rights Tribunal complaints.⁶¹⁹

The remaining 11 claims relate to sexual misconduct matters. Nine were historic sexual misconduct claims involving three perpetrators: Graham James, Gordon Stuckless and Brian Shaw. As these claims stemmed from historic events that occurred prior to 1998 and involved perpetrators Hockey Canada had identified to its insurer, they were excluded from the sexual misconduct insurance. For some of these matters, no formal civil claim was issued. Instead, the injured parties made a complaint to Hockey Canada, which the latter investigated and ultimately settled before any civil claims were commenced.⁶²⁰ The tenth claim, involving a historical sexual assault claim against a referee, was denied coverage by Hockey Canada’s insurer because the insurer maintained that the perpetrator was known to Hockey Canada and should have been disclosed in the list of named perpetrators.

Hockey Canada settled the eleventh matter in May 2022, which concerned allegations of sexual misconduct made against players on the 2018 World Junior Team. Hockey Canada was a named Defendant in the action, along with the CHL and eight players not specifically named. We understand that Hockey Canada and its insurer continue to discuss the scope of the sexual misconduct insurance policy as it relates to its application for acts committed by players against a non-participant in an off-ice setting. With respect to the May 2022 case, there was concern that a significant amount of the claim would not be covered by insurance. Hockey Canada proceeded to discuss the case with their insurer who advised that Hockey Canada was permitted to settle the matter on its own.⁶²¹

Some of the 21 settlements are subject to non-disclosure agreements. Accordingly, their terms and amounts remain confidential. While controversial more recently, the use of non-disclosure agreements or confidentiality clauses as part of a settlement agreement has been a common practice and can serve the interests of survivors who wish to retain anonymity. Other settlements are either

⁶¹⁸ Documentation provided by Brian Cairo, Chief Financial Officer of Hockey Canada (2 September 2022).

⁶¹⁹ Interview of Glen McCurdie (12 September 2022).

⁶²⁰ Interview of Brian Cairo (6 September 2022).

⁶²¹ Email to BFL Canada from AIG (11 May 2022).

not subject to confidentiality agreements at all, or only partially covered (e.g., not disclosing the amount).⁶²²

B. Claims management process

i. The insurance policies

Unlike the Comparator Associations, Hockey Canada provides general liability insurance not only to national team athletes, but also to the Members and all associations, leagues, Participants and teams forming part of them.

Hockey Canada’s reporting obligations towards its insurer are set out in each of its insurance policies. For example, the 2020-2022 Commercial General Liability Policy provides that the insured “must see to it that [the insurer is] notified promptly of an “occurrence” which may result in a claim when the manager or secretary of the local association is made aware of the “occurrence” [...]”.⁶²³

Aside from these reporting obligations set out in the insurance policies, Hockey Canada currently has no formal policy in place to deal with claims (this is true for insured claims, as well as under and uninsured claims). Until recently, it was unclear how affected individuals would make claims or complaints known to Hockey Canada (for example, whether they would need to communicate to Hockey Canada via their provincial sport organization). It was also unclear how each claim or complaint would then be handled within Hockey Canada, whether an investigation would take place, and what information would be shared with Members. However, Hockey Canada advised that it frequently reinforces with Members and local associations the importance of raising any actual or potential claim as soon as possible, as delaying notice to the insurer could affect available insurance coverage.⁶²⁴

All claims or potential claims are submitted to Hockey Canada’s lawyer in charge of Insurance & Risk Management. Once a claim/potential claim is in Hockey Canada’s hands, it is passed on to their broker and independent adjuster, Crawford & Company (“**Crawford**”), who then reports it to the insurer. If the insurer determines an investigation is required given the nature of the matter reported, such investigation is handled by Crawford.⁶²⁵ Hockey Canada provides instructions when requested, but otherwise the insurance company has carriage over the claim once it is reported to it.⁶²⁶ In other words, Hockey Canada does not owe its insurer any specific duty to investigate a matter that is reported to them, but it is nonetheless required to cooperate with the investigation.⁶²⁷

⁶²² Email to Mathieu Dompierre from Brian Cairo (14 September 2022).

⁶²³ AIG Insurance Company of Canada, *Commercial General Liability Policy, Policy no 3630507* (1 September 2020 – 1 September 2022), section IV, article 5 a).

⁶²⁴ Email from Brent Craswell (5 October 2022).

⁶²⁵ Email from Brent Craswell (5 October 2022).

⁶²⁶ Email from Sean Kelly (27 September 2022).

⁶²⁷ AIG Insurance Company of Canada, *Commercial General Liability Policy, Policy no 3630507* (1 September 2020 – 1 September 2022), section IV, article 5 c).

We also note that the 2020-2022 Commercial General Liability Policy provides that Hockey Canada must not, “except at their own cost, voluntarily make any payment, assume any obligation, or incur any expense, other than for first aid, without [the insurer’s] consent”.⁶²⁸

Lastly, if the insurer is of the view that the claim/potential claim is not covered by the insurance, we were advised that, depending on the nature of the claim, Hockey Canada would negotiate with the insurer based on the language of the insurance policy. This could eventually lead to a coverage application and interim steps could be taken while the dispute over coverage is being dealt with.⁶²⁹ Where it is determined that a claim/potential claim is not covered by the insurance, Hockey Canada would use the NEF to deal with the matter.

ii. The OSIC

As indicated in Chapter V, it is up to the NSOs to determine which participants will be covered by the UCCMS and incidentally, who will be benefiting from the OSIC process. Even after the participants have been identified, some questions would still remain in terms of the OSIC jurisdictional authority. For example, if the participant is the subject of a complaint, but the alleged behaviour occurred outside of the NSO’s environment, it is unclear whether the OSIC would have the authority to proceed with the complaint.

In addition, most NSOs are choosing not to extend the OSIC’s jurisdiction to the provincial level by selecting national level only participants, such as National team players and coaches. They do so notably to reduce the costs associated with the program, but also because some provinces already have their own provincial mechanisms (e.g. in Québec, the Complaints Officer of the protection of the integrity in the practice of sport). However, depending on the circumstances, it may not always be clear whether a participant falls under the national or the provincial jurisdiction. For example, a player who is affiliated with a Member and play for a provincial team may also be part of the National team and play some games at the national level. In addition, since not every province and territory has their own maltreatment complaints and investigation processes, which would be equivalent to the OSIC at the national level, some if not most Participants may not have access to this type of mechanism.

Because of these jurisdictional issues, it is important for the NSO that becomes a Program Signatory of the OSIC to maintain, in parallel, an independent third party mechanism to deal with complaints that would fall outside of the OSIC’s jurisdiction.

On October 27, 2022, Hockey Canada advised that it had become a Program Signatory to the OSIC program. It advised that it had obtained the consent forms from all of its Directors and Hockey Canada Standing Committee members and virtually all Hockey Canada employees. It further advised that it was in the process of collecting the consent from the various Hockey Canada players

⁶²⁸ AIG Insurance Company of Canada, *Commercial General Liability Policy, Policy no 3630507* (1 September 2020 – 1 September 2022), section IV, article 5 d).

⁶²⁹ Email from Brent Craswell (18 October 2022).

as these teams were being formed. We understand that training on OSIC and the Independent Third Party processes will be provided to the teams in the coming weeks.⁶³⁰

iii. The Independent Third Party

Hockey Canada has developed its own independent and confidential complaint mechanism, known as the Independent Third Party (“ITP”).⁶³¹ The ITP performs a triage function to determine whether a complaint should be dealt with at the local, provincial or national level. During this screening, the ITP will determine whether it has jurisdiction and whether the allegation is sufficient to establish a policy or Code of Conduct breach. If it determines it has no jurisdiction, the ITP informs the complainant and directs them to the entity with jurisdiction to pursue the complaint or allegation. Where it determines that a national investigation is warranted, the ITP assumes a case management role, with absolute discretion to select and hire the investigator. While Hockey Canada ultimately reimburses the ITP for the investigator’s costs, it has no input on investigator selection. The ITP can impose preliminary or interim measures pending adjudication of the claim, and will appoint a mediator before selecting an investigator. Once the investigator makes their findings, the ITP selects members for a Discipline Panel, with whom it administers the discipline proceedings. Finally, the Discipline Panel makes the final decision, which it may make public at its discretion.

Even after it becomes an OSIC Program Signatory, Hockey Canada has advised that the ITP will continue to operate in conjunction with the OSIC for claims that fall outside of the OSIC’s jurisdiction (e.g. for complaints which involve an alleged violation of a Hockey Canada policy, such as Hockey Canada’s Code of Conduct, that do not amount to a violation of the UCCMS). For this reason, Hockey Canada has adopted a Discipline & Complaints Policy, which was approved by the Board on September 28, 2022, in order to “provide a fully independent and procedurally fair manner to handle all [complaints] which remain under its jurisdiction even as it signs on to [the] OSIC”.⁶³²

iv. Possible conflicts regarding the different processes

We have briefly outlined the various mechanisms that might be triggered when a claim is brought forward, namely Hockey Canada’s general liability insurance, the OSIC, as well as Hockey Canada’s ITP. In certain circumstances, criminal proceedings could also come into play. The question that arises is whether there is any conflict between these mechanisms.

We have already indicated how the OSIC and the ITP (i.e. the “sport process”) could interact. If the same complaint is brought forward through the sport process as well as the criminal process, most NSOs will usually stay the proceedings until the criminal proceedings are completed.

As for the insurance versus the sport process, it is likely they can both run in parallel considering that their purpose is different: the first is intended to respond to claims for damages, the latter deals

⁶³⁰ Emails to Nadia Effendi from Natasha Johnston (28 October 2022).

⁶³¹ “Hockey Canada Safety Programs,” online: *Hockey Canada* <<https://www.hockeycanada.ca/en-ca/hockey-programs/safety>>; Hockey Canada, “Governance Review Question pertaining to OSIC” (received 28 September 2022).

⁶³² Hockey Canada, Discipline & Complaints Policy (1 October 2022).

with sanctions and other measures that could be put in place to protect the victim. In addition, since Hockey Canada insurance policies apply to both provincial and national level Participants, whereas the OSIC process most likely only applies to national level Participants, the insurance process may be triggered and follow its course even though the OSIC does not have jurisdiction for the same allegations.

In the same vein, since the OSIC does not have an obligation to notify the NSO when a participant files a complaint, the insurance process will only get triggered if the persons involved in the OSIC process (e.g. the respondent) report the occurrence in accordance with the reporting obligations set out above. Considering that there are no formal policies in place to deal with claims, and that a person involved in the OSIC process may not be inclined to report the occurrence, there may be situations in which there is a delay before the insurance process is engaged.

C. Key observations on the NEF and its role within the risk management matrix

Considering the above, we make the following observations in respect of the NEF and its role within the risk management matrix.

Was Hockey Canada's use of the National Equity Fund to fund uninsured liabilities which were met by the Fund appropriate?

Yes. We will not be commenting on particular cases given that this review, under the Terms of Reference, is not an assessment of Hockey Canada's response to any particular incident or issue. That said, the establishment of reserve funds to address the risk of uninsured and underinsured claims is not only sound, but the failure to do so would be a serious oversight. It is appropriate to use NEF funds to address potential uninsured and underinsured liabilities for Hockey Canada and/or any Participant for whose benefit the reserve is maintained. However, we note the absence of policies or procedures governing the purposes or functions of the NEF or the process for its use (though we were provided with a signing authority document for the fund). The same applies for the IRS Fund and the Legacy Trust. This is problematic because Members have no written documentation or source informing them how the three funds are managed and how they interrelate. Moreover, the lack of written policies or procedures in this regard signals that Members (and the Board itself) have no point of reference to guide their application in particular cases or against which to assess Board decisions regarding their use and management. In other words, there is no set standard, such as a published policy, and therefore Members have little information available to them to assess the appropriateness of the criteria considered by the Board when addressing claims. Some concern has been expressed that the Board's decisions are not recorded in the minutes of Board meetings. While it may often be the case that much of the consideration of claims must be kept confidential, final decisions should be recorded in the minutes to the extent that any legal obligations of confidentiality permit.

Second, there is a certain level of overlap among the three funds (particularly the NEF and the IRS Fund) which is a potential source of confusion. Both the NEF and the IRS Fund are used for purposes that are not fully disclosed in the financial statements. The NEF is not used solely to accumulate funds for uninsured and underinsured claims. Hockey Canada uses the NEF to collect money for annual insurance premiums from Participants, pay those premiums, and transfer any surplus reserve funds to the IRS Fund from time to time. The latter two uses are not reflected in

the description of the purpose of the NEF disclosed in the financial statements (although the inter-fund transfers are disclosed). Presently, the balance of the NEF is significantly depleted whereas the IRS Fund contains a comparatively large balance. For its part, the IRS Fund is described as a fund to ensure future insurance rate increases are buffered whereas in fact, it is also a significant reserve fund for uninsured and underinsured claims. As explained above, this sub-fund is not disclosed on Hockey Canada's financial statements. Hockey Canada advises that Members approved the initial transfer to the sub-fund and approved each subsequent transfer. Hockey Canada also maintains that Members have many opportunities to ask questions regarding the sub-fund (including during annual meetings and special presentations on the financial statements), though we note that the sub-fund balance is not explicitly disclosed unless requested.

We make similar observations concerning the Legacy Trust within the risk management matrix. The Legacy Trust Agreement says that it was established to respond to historic claims against its beneficiaries. The Tail Coverage Agreement (which preceded the IRS Fund) provides that Hockey Canada will use the NEF first for such claims. Now Hockey Canada has adopted an informal approach that would see claims run first through the NEF, then the reserve sub-fund in the IRS Fund, then to the Legacy Trust, and finally to the remaining funds in the IRS Fund. To our knowledge, the Legacy Trust was not designed with the IRS Fund in mind and no formal policy exists to govern how Hockey Canada is to respond to claims.

D. Transparency of NEF to membership, players, and the public

The second main issue is whether the purpose and use of the NEF have been sufficiently transparent. Hockey Canada has no specific policies prescribing disclosure of these matters.

i. Disclosure provided to Members

The Tail Coverage Agreement, which we understand still applies, is the only documentation imposing specific disclosure requirements on Hockey Canada vis-à-vis Members, hockey associations, and leagues regarding the NEF.⁶³³

The Tail Coverage Agreement has three requirements, which we will consider in turn:

1. Hockey Canada must update Members on the NEF at every annual meeting of Hockey Canada.

With respect to the first requirement, Hockey Canada provides an update on the NEF at the Annual General Meeting, insofar as Members receive information regarding its financial status. However, this update does not always address ongoing uninsured claims or recent settlements paid out of the NEF.

Hockey Canada clearly marks and segregates the NEF on the annual financial statement. The notes to the financial statements also provide an explanation of the NEF's purposes.

Hockey Canada provides a copy of the annual audited financial statement to Members at least 21 days prior to the annual meeting. Hockey Canada also prepares and provides Members with a

⁶³³ Canadian Hockey Association, "Tail Coverage Agreement" (24 May 1999) at s 2.

supplementary document which explains the content of the financial statements in plain language to help Members better understand the financial information contained in the statements. The supplement includes discussion of inter-fund transfers and provides Members with an overview of the balance of Operating Fund, Health Benefit Trust, and NEF from 2012 to present.⁶³⁴ Members then approve the statements at the annual meeting. The audited financial statements provide a clear breakdown of the NEF's annual revenue and expenditures. The expenditures section includes a line item for "insurance claims." Hockey Canada's independent financial auditors advise that this line item accounts for the total funds paid out of the NEF annually to cover insurance deductibles and fund settlements for uninsured or underinsured claims.

The annual meeting minutes from 2014 to 2022 do not reveal that any discussions about the NEF took place during the annual meetings held during that period. Hockey Canada maintains that Members do in fact discuss the NEF as needed, and that these discussions – specifically in respect of under and uninsured claims – are held *in camera*. However, a number of Members interviewed noted that these topics were rarely discussed at length, and no Members interviewed could recall specifically what was discussed.

The CFO makes a presentation regarding inter-fund transfers from the NEF to other Pillar funds. However, the minutes provide scant information about the substance of such presentations and *in camera* discussions. Further, Hockey Canada noted that its CFO offers Members semi-annual presentations approximately two weeks before to the Spring and Winter Congresses to discuss the budget (spring) and the draft financial statements (winter). Attendance at these presentations includes Member Presidents, Executive Directors and financial officers (where applicable), giving them the chance to ask questions about Hockey Canada's financials. No meeting minutes are taken.

2. Hockey Canada must report when new claims, settlements or judgments, or valuation of existing claims may result in changes to the NEF reserves exceeding \$500,000.00.

As for this second requirement of the Tail Coverage Agreement, Hockey Canada has not adopted any disclosure procedure to report to Members when a claim, settlement or judgment exceeds \$500,000. Based on our review of the settlements paid out of the NEF, since 1999 (when the Tail Coverage Agreement was concluded), it appears that at least six matters met the threshold and thus required disclosure. Our review of Members' meeting summaries over that period indicates that Members did not receive formal notice of these matters. However, Hockey Canada has advised that all of these discussions would occur *in camera* and that they did not keep minutes of those *in camera* portions of the meetings.⁶³⁵

A review of Board of Director meeting minutes from 2014 onwards reveals that the Board discussed on occasion ongoing civil actions involving Hockey Canada, as well as insurance coverage options and updates, including discussions involving sexual misconduct coverage. The Board appears to have discussed the Legacy Trust; however, the discussions appear limited to conversations about renewing the Trust Agreement and extending the division date. Again, there appear to be discussions about settlements; however, the minutes provide minimal description and

⁶³⁴ Hockey Canada, "Supplement to the 2020-2021 Audited Financial Statements."

⁶³⁵ Interview of Brian Cairo (13 September 2022).

some of these conversations take place *in camera*, with no accompanying notes. Still, these discussions would not satisfy the disclosure requirement under the Tail Coverage Agreement, which requires providing formal notice to Agreement signatories, i.e., the Members.

3. Hockey Canada must update each Member immediately if ongoing claims require Members to pay additional amounts to the NEF to ensure adequate funding for claims, as actuarially valued from time to time.⁶³⁶

The third requirement imposed by the Tail Coverage Agreement has never been triggered because, as we understand, Hockey Canada has never requested further funds from the Members to respond to any uninsured claims.

ii. Members perception

Members have different perceptions of the degree of transparency related to the NEF, its function and use. Most concerning is the notion that in the view of some, but by no means all Members to whom we spoke, Hockey Canada may not have provided Members with sufficient details on inter-fund transfers, particularly in relation to the settlement of past and ongoing claims. Several Members interviewed confirmed that they knew the NEF existed, that its funding came from a portion of annual registration fees, and that it served to settle uninsured claims. Some explained that if Members ever had questions about the NEF they could always ask the Board of Directors or the Risk Management Committee. Others noted that if a Member did not know about the NEF, their own inattention to the information provided was to blame.

In contrast, some Members noted that Hockey Canada did not readily share information on the intent or the purpose of the NEF and its use, nor on incidents in relation to which the fund was engaged. Some Members noted that they knew the NEF served to respond to historic claims, but believed it would only extend to claims linked to the named perpetrators, as opposed to “protecting” predators going forward, as they put it. Indeed, these two groups of Members cite a lack of transparency on specific cases and payments from the NEF vis-à-vis stakeholders and a lack of oversight. These Members indicate that Hockey Canada could remedy the issue by providing more information on particular claim/settlement amounts and the NEF balance – even if this were done so annually – and if the use of the NEF, particularly in relation to claim settlements, were governed by a publicly available policy.

If little is disclosed about ongoing or potential claims, and how the risk management matrix would handle these claims, Members must then flag issues with the management of the NEF and other funds without being fully aware of the facts. Said differently, Members can only raise issues if they are able to identify them. Still, it is important to be sensitive to the privacy interests of survivors and those affected by sexual misconduct, particularly where non-disclosure agreements have been put in place. We recommend that Hockey Canada take steps to provide timely disclosure of publicly available information to its Members regarding ongoing and potential claims. Once a settlement is reached, we recommend that Hockey Canada disclose all publicly available information (i.e., what was provided in the claim) while respecting the restrictions of any non-disclosure agreements in force. For example, where a non-disclosure agreement only precludes the

⁶³⁶ Canadian Hockey Association, “Tail Coverage Agreement” (24 May 1999) at s 2.

disclosure of a settlement amount, Hockey Canada could inform its members of the nature of the claim, the fact that a settlement was reached and how/when the settlement would be funded.

iii. Disclosure provided to players and the public

Hockey Canada uses a portion of Participants' annual registration fees (\$13.65 per Participant) to maintain the NEF. When Participants register they are provided with a breakdown of the registration fees; however, this breakdown does not reveal the portion of the registration fees that are set aside to fund uninsured and underinsured claims.

Hockey Canada's website has a section dedicated to Insurance Information and Resources. The website provides that each Participant pays an annual fee into the Hockey Canada Insurance Program, which covers liability insurance, accidental death and dismemberment, major medical and dental insurance, risk management and administration, directors and officer's liability insurance and sexual misconduct liability insurance.⁶³⁷ Notably, the website does not provide any information about the use of annual fees to fund uninsured and underinsured claims. Hockey Canada recently advised Members that \$13.65 of a Participant's annual registration fee is deposited into the NEF to maintain insurance coverage.⁶³⁸ However, Members were not informed about what proportion of the \$13.65 is used to fund uninsured and underinsured claims. It does not appear that Hockey Canada has directly advised Participants about the \$13.65 deposited into the NEF every year to pay premiums, deductibles, and to cover uninsured losses.

Hockey Canada's communication structure is hierarchical. Hockey Canada provides information to its Members who then disseminate it to associations, teams, and Participants, as the case may be. Because there is no direct communication channel to Participants, Hockey Canada must rely on Members who then rely on associations and teams to share important information with Participants. This increases the possibility of knowledge gaps between individual players across Canada. For example, not all Members include a breakdown of their annual fees on their websites.

E. Best practices for risk management and reserve funds

Risk management includes the application of management policies, procedures and practices to identify, assess, manage, monitor and communicate risk.⁶³⁹ Hockey Canada's insurance brokers and independent auditors have confirmed that it is in the best interest of the organization to maintain a fund for uninsured liabilities. They explained that the absence of a reserve fund, such

⁶³⁷ "Learn about Hockey Canada's Insurance Program," online: *Hockey Canada* <<https://hockeycanada.ca/en-ca/hockey-programs/safety/essentials/insurance>>.

⁶³⁸ Brian Cairo, Memo to Member Presidents and Executive Directors/CEOs, "Message from Hockey Canada regarding National Equity Fund (July 2022).

⁶³⁹ Hugh Lindsay, "20 Questions Directors of Not-For-Profit Organizations Should Ask About Risk" (2009) at 4, online (pdf): *Chartered Professional Accountants Canada* <[20-Questions-NFP-Directors-Should-Ask-About-Risk-2009 \(1\).pdf](#)>.

as the NEF, would be a poor risk management strategy.⁶⁴⁰ This view is not controversial, and is supported by the literature.⁶⁴¹

Reserve funds allow charities and not-for-profit organizations to fund new strategic directions, plan for capital reinvestment, respond to uninsured losses and reduce the impact of market-related and sector-specific risks.⁶⁴² Reserve funds can be “unrestricted,” meaning that they do not have to be “restricted” for a particular use.⁶⁴³ The NEF is an unrestricted reserve fund, unlike Hockey Canada’s Pillar Funds, which are internally restricted for specific uses.⁶⁴⁴ However, while the funds in the NEF are not restricted *per se*, there should exist a policy and procedure stating the purpose of the NEF and prescribing its use to ensure it remains a viable reserve.⁶⁴⁵

Merely carving out and labelling a portion of an organization’s net asset balance a “reserve” does not constitute a best practice reserve. Instead, an organization’s reserve fund should be a distinct pool of net assets that an organization manages to achieve a specified set of objectives.⁶⁴⁶

Hockey Canada discloses the purpose, revenue and expenditures of the NEF in its annual financial statements. However, since Hockey Canada is accountable to multiple constituents, including its Members, Participants, Sport Canada, and the general public, it must ensure the accrual and use of NEF fund are transparent. Best practices include implementing formal, written policies surrounding reserve funds that clearly articulate the purpose of the reserve and its connection to

⁶⁴⁰ Interview of Sam Ciccolini (24 August 2022); Interview of Tim Sothern (24 August 2022); Interview of Barry Lorenzetti (24 August 2022).

⁶⁴¹ For example, a 2020 article from the *Nonprofit and Voluntary Sector Quarterly* canvassed empirical data from 600 not-for-profit organizations in the United States to demonstrate that organizations with more operating reserves were less likely to reduce operating hours, lose staff, or experience difficulty acquiring supplies or vendor services during the advent of the 2019 Covid-19 Pandemic; see also Mirae Kim & Dyana P Mason, “Are You Ready: Financial Management, Operating Reserves, and the Immediate Impact of COVID-19 on Nonprofits” (2020) 49:6 *Nonprofit and Voluntary Sector Quarterly* at 1191, online: <<https://journals.sagepub.com/doi/10.1177/0899764020964584>>; see also Hugh Lindsay, “20 Questions Directors of Not-For-Profit Organizations Should Ask About Risk” (2009) at 16, online (pdf): *Chartered Professional Accountants Canada* <[20-Questions-NFP-Directors-Should-Ask-About-Risk-2009-1.pdf](https://www.cpacanada.ca/~/media/CPA/~/media/20-Questions-NFP-Directors-Should-Ask-About-Risk-2009-1.pdf)>.: “An organization’s capacity to take opportunities, respond to urgent needs and prevent disasters all require it to have the capacity to ‘finance’ risk. Not-for-profit organizations frequently have limited financial resources for funding new projects and recovering from unexpected setbacks. There are essentially two ways in which they can strengthen their financial position: maintaining financial reserves, and buying insurance.”

⁶⁴² Grant Thornton, “Planning ahead: Improving financial health with reserves planning” (13 December 2017) at 3, online (pdf): *Grant Thornton* <<https://www.grantthornton.ca/globalassets/1.-member-firms/canada/insights/pdfs/planning-ahead-improving-financial-health-with-reserves-planning.pdf>>.

⁶⁴³ “Operating Reserves with Nonprofit Policy Examples,” online: *Propel Nonprofits* <<https://www.propelnonprofits.org/resources/nonprofit-operating-reserves-policy-examples/>>.

⁶⁴⁴ For example the Technology Fund is restricted to fund future technologies and the International Event Housing Fund which is to be used to host Hockey Canada’s international events (see Hockey Canada, “Audited Financial Statements”).

⁶⁴⁵ “Operating Reserves with Nonprofit Policy Examples,” online: *Propel Nonprofits* <<https://www.propelnonprofits.org/resources/nonprofit-operating-reserves-policy-examples/>>.

⁶⁴⁶ Grant Thornton, “Planning ahead: Improving financial health with reserves planning” (13 December 2017) at 3, online (pdf): *Grant Thornton* <<https://www.grantthornton.ca/globalassets/1.-member-firms/canada/insights/pdfs/planning-ahead-improving-financial-health-with-reserves-planning.pdf>>.

the organization.⁶⁴⁷ The reserve policy should clearly describe authorization for the use of the reserve fund and outline requirements for reporting and monitoring. Without a policy or procedure, an organization runs the risk of misusing funds and depleting the reserve gradually to the point that it is no longer available when needed.

A reserve policy can be contained within an organization's other financial policies or may stand alone. Having a written and approved policy can help to ensure that the Board of Directors of Hockey Canada as well as its Members and Participants understand the authority and operational guidelines which apply to the use of the fund.⁶⁴⁸

It is difficult to determine how much money an organization should accrue in a reserve fund. However, the accounting firm, Grant Thornton, recommends the following four steps to quantify the appropriate target for a reserve fund:

1. Build a baseline five-year financial forecast.
 - Whether the reserve is meant to mitigate against future financial consequences or accumulate assets to execute major projects, these goals have a “multi-year time horizon”. “By developing a five-year forecast management can see financial trends that are not evident in annual budgets.”⁶⁴⁹
2. Conduct a detailed analysis of potential risks.
 - Management needs to identify, quantify, and assign likelihoods to potential downside performance within the organization's short-and-long-term financial plan.
3. Quantify the risks.
 - Once the risks are identified, this information can be synthesized, “by applying probability-weighted net present value adjusted averages of risk exposure across critical budget lines.”⁶⁵⁰

⁶⁴⁷ Grant Thornton, “Planning ahead: Improving financial health with reserves planning” (13 December 2017) at 3, online (pdf): Grant Thornton <<https://www.grantthornton.ca/globalassets/1.-member-firms/canada/insights/pdfs/planning-ahead-improving-financial-health-with-reserves-planning.pdf>>; Hugh Lindsay, “20 Questions Directors of Not-For-Profit Organizations Should Ask About Risk” (2009) at 16, online (pdf): *Chartered Professional Accountants Canada* <[20-Questions-NFP-Directors-Should-Ask-About-Risk-2009 \(1\).pdf](https://www.cpac.ca/20-Questions-NFP-Directors-Should-Ask-About-Risk-2009-1.pdf)>.

⁶⁴⁸ “Operating Reserves and Policy Examples,” online: *Propel Nonprofits* <<https://www.propelnonprofits.org/resources/nonprofit-operating-reserves-policy-examples/>>.

⁶⁴⁹ Grant Thornton, “Planning ahead: Improving financial health with reserves planning” (13 December 2017) at 5, online (pdf): Grant Thornton <<https://www.grantthornton.ca/globalassets/1.-member-firms/canada/insights/pdfs/planning-ahead-improving-financial-health-with-reserves-planning.pdf>>.

⁶⁵⁰ Grant Thornton, “Planning ahead: Improving financial health with reserves planning” (13 December 2017) at 6, online (pdf): Grant Thornton <<https://www.grantthornton.ca/globalassets/1.-member-firms/canada/insights/pdfs/planning-ahead-improving-financial-health-with-reserves-planning.pdf>>.

4. Establish the target reserves and funding approach.
 - Once an organization knows the appropriate amount of funds that should be maintained in a reserve, management is now in a position to recommend the target reserve level to the Board of Directors and determine its approach to accumulate or set aside funds for the approved amount.⁶⁵¹

While not all organizations have written reserve fund policies, examples abound. The Shooting Federation of Canada's ("SFC") Reserve Fund Policy⁶⁵² is an example of an operating reserve fund policy. It establishes that the fund serves "to provide continued funding of operations and to ensure financial stability." Its purpose is to define the reserve fund, the intention of maintaining the fund, and the methods under which the Fund is managed. The Policy quantifies the reserve requirement, falling between six months' (the minimum) and a year's (the maximum) worth of standard operating revenue needed to cover the previous year's expenses plus any contractual obligations. The quantum of the reserve is to be reviewed annually by the Board to ensure it is sufficient, and the funds are to come from unrestricted money. The Policy further explains that the reserve can only maintain the total of funds that meet its reserve requirements, and that interest is to remain in the fund. Moreover, the Policy mandates that the reserve fund offers a meaningful contribution to strategic initiatives and that the money should be managed to provide maximum long-term consistency and stability of return. It also requires that the SFC approve and review the parameters for managing the fund, that it provide the necessary oversight of the fund, and that it report annually to its members on the fund status and the value of the reserve requirement. Finally, the Policy states that Board approval is required for any transactions outside of the approved budget or reserve that affect the reserve fund.

Ontario Artistic Swimming ("OAS") includes a short policy on reserve funds within its Finance Policy.⁶⁵³ It stipulates that the fund is meant to provide an internal source of funds for "situations such as an unanticipated loss in funding, delay in grant payment, or uninsured losses" – but not to replace a permanent loss of funds or to eliminate an ongoing budget gap. Additionally, it provides a minimum quantum of money required in the fund, and provides that the Finance Committee must review any reserve fund on an annual basis to ensure that its funds have been invested securely. Most notably, the Policy states that expenditures from the reserve fund must be approved by a two-thirds majority vote of the Board. The Executive Director must identify the need for access to the fund and confirm that the use of reserve funds is consistent with the purpose of the reserves, as set out in the Policy. The Executive Director must also examine the reason for the shortfall and the availability of other sources of funding. Finally, the Policy states that the annual budget should reflect the proposed contribution to the reserve fund and any anticipated projection of reserve fund use to cover expenses over and above identified revenues.

⁶⁵¹ Grant Thornton, "Planning ahead: Improving financial health with reserves planning" (13 December 2017) at 6, online (pdf): Grant Thornton <<https://www.grantthornton.ca/globalassets/1.-member-firms/canada/insights/pdfs/planning-ahead-improving-financial-health-with-reserves-planning.pdf>>.

⁶⁵² Shooting Federation of Canada, "Policy and Procedures Manual" (11 September 2020) at 155-156.

⁶⁵³ "Finance Policy" (November 2021) at 3, online (pdf): Ontario Artistic Swimming <<https://ontarioartisticswimming.ca/wp-content/uploads/2022/02/OAS-Finance-Policy-Approved-November-2021.pdf>>.

Another example comes from the Northern Ontario Curling Association (“NOCA”). The NOCA Operating Reserve Policy⁶⁵⁴ provides that the Operating reserves provide an “internal source of funds for situations such as a sudden increase in expenses, one-time unbudgeted expenses, unanticipated loss in funding, or delay in grant payments or uninsured losses” and for “one-time, nonrecurring expenses that will build long-term capacity.” They are not intended to replace permanent losses of funds nor to replace an ongoing budget gap. Similar to the OAS Policy, the NOCA Policy prescribes the minimum balance of the fund in relation to the amount needed to maintain operations for a set period, and that the quantum is to be reviewed annually and adjusted to reflect current need. However, it also notes that the quantum, sourced from unrestricted monies, must be reported to the Finance Committee and the Board, and included in the regular financial reports. The Policy then lays out a three-step process to use the fund, comprised of 1) identifying the need for funds and assessing the appropriateness of using the reserve consistent with the Policy; 2) obtaining approval from the Board by providing a description of the analysis conducted in the previous step and a plan for replenishing the reserve; and 3) reporting and monitoring on the reserve, with the Finance Chair responsible for maintaining the balance of the fund, ensuring use complies with the Policy and reporting to the Board, and that the Executive Director must maintain records of use of funds and plans for replenishment.

These examples show how a written reserve fund policy – even a short one – can improve oversight of such a fund. Hockey Canada should establish such a policy, with a particular focus on where funds are collected, how they are and can be used, what types of approvals are needed to use the funds, and how Hockey Canada must report to the Board, Members, Participants, and the public when it uses the NEF. These restrictions will ensure that the NEF has a clear purpose, that its balance is representative of the quantum needed to serve that purpose, and that the funds are only used in ways that are consistent with that purpose.

F. Conclusion

Over the course of its existence, the purpose of the NEF has changed. What began as a vehicle to fund the self-insurance Program has evolved to cover insurance premiums and to constitute a reserve to address under or uninsured claims. In recent years, a substantial portion of the NEF was transferred to the IRS Fund, which holds a “sub-fund” set aside for future under or uninsured claims. The NEF has funded 21 settlements linked to under and uninsured claims (11 of which relate to sexual misconduct) which represent between 2% and 26% of its total expenditures over the last eight years. Over that same period, between 67% and 86% of NEF expenditures covered insurance policies.

We turn to the questions posed to us in the Terms of Reference.

Was Hockey Canada’s use of the National Equity Fund to fund uninsured liabilities which were met by the Fund appropriate?

Yes. The establishment of reserve funds to address the risk of uninsured and underinsured claims is not only sound, but the failure to do so would be a serious oversight. It is appropriate to use NEF

⁶⁵⁴ “Operating Reserve Policy” in *Policy Directory* (4 August 2016) at 32-33, online (pdf): *Northern Ontario Curling Association* <<https://curlno.ca/wp-content/uploads/2019/12/Policy-Directory-121119.pdf>>.

funds to address potential uninsured and underinsured liabilities for Hockey Canada and/or any Participant for whose benefit the reserve is maintained. We will not be commenting on particular cases given that this review, under the Terms of Reference, is not an assessment of Hockey Canada's response to any particular incident or issue.

Is there appropriate oversight concerning payments out of the NEF?

No. Hockey Canada has no written policy governing the NEF; however, its stated purpose is noted in the annual financial statement. Though the fund forms part of the risk management matrix, questions arise regarding what role the fund actually plays within that matrix. Indeed, some Members have criticized Hockey Canada's lack of oversight of the NEF, particularly regarding the absence of a publicly available policy governing the fund. Additionally, Hockey Canada has adopted an informal procedure for dealing with under and uninsured claims, which begins at the NEF. However, the procedure is not widely known by Members, nor has it received formal Board approval.

Is the use of the National Equity Fund sufficiently transparent within the organization and in reports to stakeholders?

No. While Hockey Canada discloses the balance of the NEF and inter-fund transfers on its audited financial statements, Members do not receive adequate information regarding these funds and their use. Hockey Canada maintains that Members discuss and have opportunities to ask questions on the NEF and its funding of under and uninsured claims. However, these discussions have occurred *in camera*, and our review of the minutes from Member meetings at which settlements, inter-fund transfers, and financial statements were discussed provide no clarity on the nature, scope and frequency of such discussions. It also appears that Members and Participants may not have been fully aware of the scope of claims the NEF would fund, namely claims linked to sexual misconduct beyond the named perpetrators. Participants, whose registration fees are the primary source of funding for the NEF, have not been adequately informed about what proportions of fees go to fund under and uninsured claims.

Like the NEF, the IRS Fund is not governed by any written policy. Its purpose stated on the annual financial statements no longer reflects its entire purpose. While the total balance of the fund is disclosed on the financial statements, it is unclear what proportion of the fund is reserved in the "sub-fund" for under and uninsured claims, and that balance is not disclosed to Members on the financial statements. In light of the fact that the NEF balance is largely depleted, it will be particularly important for Hockey Canada to codify how the IRS Fund is to interact with the NEF in respect of under and uninsured claims.

IX. BOARD OVERSIGHT OF SENIOR MANAGEMENT

As discussed above in this report, a board of directors must ensure the appropriate management of the organization, and this in turn requires the board to select the governance model for the organization best suited to that end. The available resources, the strategic vision of the organization, and a variety of other factors inform that choice.

The third item of the Terms of Reference examines whether the Hockey Canada Board exercises an appropriate degree of oversight over senior management relative to similar organizations, and asks:

- a. Is the Board's current structure, as a volunteer Board with accountability for oversight of the organization, appropriate and in the best interests of hockey in Canada?
- b. Is there a clearly defined process describing what items staff must report to the Board (policy vs. operations)?
- c. Is the reporting structure to the Board (staff and committees) comprehensive enough to ensure the work of Hockey Canada is efficient, effective, and of the highest quality?
- d. What role should the Board play in operations versus policy and strategy?

We examine below the last issue first.

Hockey Canada has undertaken several governance reviews in the past that led to a significant reduction in the size of its Board and the adoption of a governance model described by several Directors as a "policy" or "governance" structure. Our discussions with Directors and other stakeholders reveal, however, that the Board's current activities frequently extend beyond those of a policy board into operational decision-making. The shift towards operational activities partly explains why Hockey Canada's directors spend significantly more time performing their functions than their counterparts in the Comparator Associations mentioned above.

We believe that it is time for the Board to step back and re-examine the issue of what governance model best achieves Hockey Canada's strategic vision. It must then implement that model, and periodically review it to ensure it continues to serve the best interests of the organization. This will require consideration of how best to utilize the volunteer Board. At this time of significant change in the landscape of hockey and this organization, we consider that a governance model falling somewhere between a policy board and a management board would be most effective to achieve Hockey Canada's goals and to align the organization with its vision. This will require significant change to its governance structure.

As part of this process, Hockey Canada should strengthen its oversight of senior management. In particular, it needs to implement policies and procedures to ensure that senior management's reports to the Board disclose sufficient, timely, and relevant information tied directly to what the Board requires to operate efficiently and effectively. We believe these changes will both improve

the Board’s capacity for appropriate oversight while reducing the time commitment of Directors to more manageable levels.

A. A board of directors has a legal duty to manage or supervise management

As set out above in Chapter VI, pursuant to section 124 of the CNCA, the directors of a not-for-profit corporation shall “manage or supervise the management of the activities and affairs” of the corporation.⁶⁵⁵ The term “activities” includes “any conduct of a corporation to further its purpose and any business carried on by a body corporate,” and affairs “means the relationships among a corporation, its affiliates and the directors, officers, shareholders or members of those bodies corporate.”⁶⁵⁶ Reflecting this, Hockey Canada’s bylaws state that “[t]he Board shall manage, or supervise the management of, the activities and affairs of Hockey Canada, and is accountable to the Members which it serves.”⁶⁵⁷

Under the CNCA, the terms “manage or supervise” encompass “a broad spectrum of duties including: ensuring the organization adheres to and carries out the goals of the corporation; setting long-term objectives in accordance with these goals; ensuring financial stability; assessing the corporation’s performance; establishing policies; and being the public face of the corporation.”⁶⁵⁸

Directors may engage and supervise the management, rather than managing themselves, because “many corporations are too large and intricate for directors to manage the day-to-day activities of the corporation.”⁶⁵⁹ The extent to which directors will delegate activities often depends on the governance model they choose and the specific organizational structure of the corporation.⁶⁶⁰

B. What role should the Board play in operations versus policy and strategy?

While Hockey Canada has striven towards a policy model of governance since 2016, the Board has continued to engage in many operational aspects of the organization.

In our view, a governance model situated between a policy board and a management board would best suit the organization in the current period of change. To find exactly where the Board should fall within the bounds of the two competing governance models, it must clarify its own role and that of senior management. This should include a formal statement of the role and function of the

⁶⁵⁵ *Canada Not-for-profit Corporations Act*, SC 2009, c 23, s 124.

⁶⁵⁶ *Canada Not-for-profit Corporations Act*, SC 2009, c 23, s 2(1).

⁶⁵⁷ “Hockey Canada By-Laws, Regulations and History” (May 2022), s 25.1, online (pdf): *Hockey Canada* <<https://cdn.hockeycanada.ca/hockey-canada/Corporate/About/Downloads/2022-23-bylaws-e.pdf>>.

⁶⁵⁸ Burke-Robertson, Carter & Man, *Corporate and Practice Manual for Charities and Not-for-Profit Corporations*, (Toronto: Thomson Reuters Canada, 2022) at § 9:10 (Proview).

⁶⁵⁹ Donald J Bourgeois, *The Law of Charitable and Not-for-Profit Organizations*, 5th ed (Toronto: LexisNexis Canada, 2016) at 34.

⁶⁶⁰ A board’s authority to delegate is also limited by restrictions set out in the CNCA. For example, pursuant to subsection 138(2), a director cannot delegate its power to: submit to the members any question or matter requiring the approval of members, fill a vacancy among the directors or in the office of public accountant or appoint additional directors, issue debt obligations, approve financial statements, adopt, amend or repeal by-laws, nor its power to establish contributions to be made, or dues to be paid, by members. See *Canada Not-for-profit Corporations Act*, SC 2009, c 23, s 138(2).

Board as well as active monitoring and management of those roles through ongoing communication with senior management.

As described below, the chosen governance model will dictate the degree to which the Board involves itself in policy decisions vis-à-vis operational decisions. Strategic decisions are linked to the organization's strategic plan, and involve long term, big picture decisions about its growth and direction.⁶⁶¹ On the other hand, operational decisions in the short and medium term are how the organization carries out its strategic decisions in the short and medium term.⁶⁶² Think of policy as the captain steering the ship towards a particular destination, and the operations as the deckhands working its sails to give the ship momentum.

i. The board chooses its governance model

A board must “guide the corporation in meeting its objects.”⁶⁶³ From this obligation, its directors must determine how they will govern the organization and how they will manage or supervise its management. Subject to certain constraints,⁶⁶⁴ boards exercise ultimate authority to choose their governance model.⁶⁶⁵ There is “no one best governance model for every not-for-profit corporation.”⁶⁶⁶ Instead, the board must decide the appropriate governance model for their organization given its purposes, goals, resources, stakeholders' needs, and other variables. While many models of governance exist, the common range includes working or operational boards at one end of the spectrum, true policy governance boards⁶⁶⁷ at the other, and hybrid or “management” boards in the middle.⁶⁶⁸

1. Working board model

On one end of the spectrum, boards of not-for-profit corporations may deal directly with operations, blurring the line between the roles of the staff and the board.⁶⁶⁹ In this governance model, the board of directors has operational responsibilities; not only must the board plan the

⁶⁶¹ LD Withaar, “Difference Between Strategy & Operational Decisions”, *Houston Chronicle* (3 June 2019), online: <<https://smallbusiness.chron.com/difference-between-strategy-operational-decisions-31075.html>>.

⁶⁶² LD Withaar, “Difference Between Strategy & Operational Decisions” *Houston Chronicle* (3 June 2019), online: <<https://smallbusiness.chron.com/difference-between-strategy-operational-decisions-31075.html>>.

⁶⁶³ Anne Corbett & James M Mackay, *Guide to Good Governance: Not-for-Profit and Charitable Organizations*, 2nd ed (September 2013) at 70.

⁶⁶⁴ Some constraints include the letters patent or articles or similar constating documents, bylaws, enabling legislation and special legislation/regulations, special members/owner declarations or agreements, affiliation or association agreements, funding and related service agreements. See Anne Corbett & James M Mackay, *Guide to Good Governance: Not-for-Profit and Charitable Organizations*, 2nd ed (September 2013) at 32.

⁶⁶⁵ Anne Corbett & James M Mackay, *Guide to Good Governance: Not-for-Profit and Charitable Organizations*, 2nd ed (September 2013) at 32.

⁶⁶⁶ Anne Corbett & James M Mackay, *Guide to Good Governance: Not-for-Profit and Charitable Organizations*, 2nd ed (September 2013) at 32-33.

⁶⁶⁷ See John Carver, *Boards That Make a Difference: A New Design for Leadership in Nonprofit and Public Organizations*, 3rd ed (San Francisco: Jossey-Bass, 2011).

⁶⁶⁸ Mel Gill, “Governance Do’s and Don’ts” (23 April 2001) at 3. In practice, most boards operate somewhere between working boards and policy boards; see also Donald J Bourgeois, *The Law of Charitable and Not-for-Profit Organizations*, 5th ed (Toronto: LexisNexis Canada, 2016) at 152.

⁶⁶⁹ Anne Corbett & James M Mackay, *Guide to Good Governance: Not-for-Profit and Charitable Organizations*, 2nd ed (September 2013) at 33, 35.

organization's strategic vision and set its objectives, financial and otherwise, it must also implement that vision and take practical steps to meet those objectives.⁶⁷⁰ For example, the board will perform both top-level financial planning and preparing operation budget sheets.

This working board model is typically used when an organization is formed, or when it has few or no staff to take care of the operations.⁶⁷¹ It will often consist of committed and knowledgeable directors who worked their way through the organization as volunteers.⁶⁷²

2. Management board model

A management board delegates the day-to-day operations of the organization to its staff, but retains some involvement in specific operating discussions and decisions (e.g., via committees).⁶⁷³ Overall, the board makes significant efforts to focus primarily on strategic issues.⁶⁷⁴ This style of governance is often used in periods of transition or crisis in which the organization requires the board to be more hands-on in the day-to-day operations.⁶⁷⁵

3. Policy governance model

At the other end of the governance spectrum from the working board, the pure policy board⁶⁷⁶ focuses on strategy. Its work centres on determining the organization's goals (i.e., the mission, vision, and values); overseeing broad policy directions and the strategic plan; establishing metrics for monitoring chief executive performance; and monitoring the organization's performance.⁶⁷⁷ Accordingly, the Board tasks the CEO with implementing the strategic plan, following the policies, and abiding by any executive limitations the board sets.⁶⁷⁸

⁶⁷⁰ "3 Key Differences Between a Working and Governance Board for a Nonprofit" (22 March 2022), online: *NMBL Strategies* <<https://www.nmbstrategies.com/blog/key-differences-board-of-directors>>.

⁶⁷¹ For example, in 2006, over half of all not-for-profit organizations in Ontario (53%) had no paid staff, and needed to be operational in nature. See Katherine Scott et al, "The Nonprofit and Voluntary Sector in Ontario: Regional Highlights from the National Survey of Nonprofit and Voluntary Organizations"" (2006) at 63, online (pdf): *Imagine Canada* <<https://imaginecanada.ca/sites/default/files/2019-11/Regional%20Report%20-%20Ontario.pdf>>.

⁶⁷² Keith Steel, *Management of Nonprofit and Charitable Organizations in Canada*, 4th ed (Toronto: LexisNexis Canada, 2018) at 197.

⁶⁷³ Anne Corbett & James M Mackay, *Guide to Good Governance: Not-for-Profit and Charitable Organizations*, 2nd ed (September 2013) at 33.

⁶⁷⁴ Keith Steel, *Management of Nonprofit and Charitable Organizations in Canada*, 4th ed (Toronto: LexisNexis Canada, 2018) at 200.

⁶⁷⁵ Keith Steel, *Management of Nonprofit and Charitable Organizations in Canada*, 4th ed (Toronto: LexisNexis Canada, 2018) at 199.

⁶⁷⁶ See John Carver, *Boards That Make a Difference: A New Design for Leadership in Nonprofit and Public Organizations*, 3rd ed (San Francisco: Jossey-Bass, 2011).

⁶⁷⁷ Anne Corbett & James M Mackay, *Guide to Good Governance: Not-for-Profit and Charitable Organizations*, 2nd ed (September 2013) at 34.

⁶⁷⁸ Anne Corbett & James M Mackay, *Guide to Good Governance: Not-for-Profit and Charitable Organizations*, 2nd ed (September 2013) at 34. This model is often referred to as a Carver policy governance model. See John Carver, *Boards That Make a Difference: A New Design for Leadership in Nonprofit and Public Organizations*, 3rd ed (San Francisco: Jossey-Bass, 2011).

Organizations operating under a policy governance model typically have highly developed policies and performance reporting for operations.⁶⁷⁹ This enables the board to deal with important issues in a way that least intrudes into the CEO's role of managing operations.⁶⁸⁰ Said differently, the board has its "noses in" but its "hands out" of operations; in its oversight role, the board monitors what is happening, but does not second-guess or intervene in operational management decisions.⁶⁸¹

ii. *Hockey Canada's current governance model*

Our interviews revealed that the Hockey Canada Board was historically quite large and much involved in operations. However, the organization reduced the Board to its current range of five to nine Directors as part of its continuance under the CNCA in 2014. In relation to its continuance, Hockey Canada had commissioned a first governance review to align its structure with the requirements of the CNCA. In 2016, Hockey Canada commissioned a second governance review, in part to help the Board transition from an operational model to a policy model.⁶⁸² We understand that Hockey Canada did not implement all the recommendations from the 2016 review.

Our review suggests that the Board's transition to a policy board was a mixed success. Our interviews revealed that Directors had conflicting understandings of Hockey Canada's governance model. Some Directors avoided detailed operational issues on an understanding that the Board followed the policy model. Other Directors indicated that the Board was "too in the weeds" and spent too much time on operational issues, rather than strategy. Others resisted the idea of transitioning to a pure policy model, holding that the Board's bylaws, policies, and its close connection to the sport worked best with a hybrid model.

Further, our review of the Board meeting agendas and minutes from the last several years revealed a focus on operational issues, particularly in the reports made by staff to the Board. Examples include a reference to an update regarding the reformatting of a Rulebook, discussions relating to the Hockey Canada Registry (the platform used to manage Participant registration), logistics for upcoming tournaments, changes to the employee manual, and updates on the staff salary review process.⁶⁸³

iii. *Comparator Associations' governance models*

The COC Code recommends that "boards should perform policy-making and risk assessment functions (and conversely, not assume operational roles) with appropriate independence from

⁶⁷⁹ Anne Corbett & James M Mackay, *Guide to Good Governance: Not-for-Profit and Charitable Organizations*, 2nd ed (September 2013) at 34.

⁶⁸⁰ Anne Corbett & James M Mackay, *Guide to Good Governance: Not-for-Profit and Charitable Organizations*, 2nd ed (September 2013) at 34.

⁶⁸¹ Anne Corbett & James M Mackay, *Guide to Good Governance: Not-for-Profit and Charitable Organizations*, 2nd ed (September 2013) at 34.

⁶⁸² Interview of Eric Sorensen, Consultant to Hockey Canada (14 September 2022).

⁶⁸³ See e.g. Hockey Canada, Board of Directors, *Minutes of Meeting* (held on 2-3 May 2019); Hockey Canada, Board of Directors, *Minutes of Meeting* (held on 30 May 2019); Hockey Canada, Board of Directors, *Minutes of Meeting* (held on 6 September 2019).

management.”⁶⁸⁴ This suggests a governance model which lies closer to the policy end of the spectrum.

Several of the Comparator Associations noted that their boards focus on policy and strategy rather than operations⁶⁸⁵. It was noted that boards on occasion become more operational, including in circumstances where staffing gaps required assistance from directors. Training, orientation processes and reminders of the boards’ role were used by Comparator Associations to help boards stay strategic rather than operational.

iv. *Considerations in choosing a governance model*

Every well-functioning organization features a “zone of accommodation” – the overlap between governance, management, and staff work.⁶⁸⁶ As an organization’s priorities change, and as the landscape in which it operates evolves, the organization must remain flexible and carefully navigate this functional overlap to ensure that each rung in the organizational structure serves an optimal role. Accordingly, most boards fall somewhere along the governance spectrum, and shift within that spectrum throughout the life of the corporation.⁶⁸⁷

In our view, Hockey Canada’s current approach to its governance model is not effectively serving the organization’s interests and must be reconsidered. As it makes its way through this period of change, we consider that the Board should adopt a governance style falling between the working board and the policy board. The Board must establish clear short, medium, and long-term visions for the organization, which will require a delicate balance of policy and operational decisions. Hockey Canada’s current mission is to “lead, develop and promote positive hockey experiences”.⁶⁸⁸ Its strategic plan identifies six “brutal facts” that “play an essential role in accelerating Hockey Canada’s success or serving as significant roadblocks to being great”.⁶⁸⁹ As a good starting point, it will be important for the organization to weigh how it can evaluate these items – and any others that emerge – in the shorter term, and how it can leverage them in the longer term to effect change at a strategic level.

When Hockey Canada achieves more stability on the Board and in the senior management team, it can re-examine its governance structure – and should do so regularly – in light of changing internal and external circumstances, to determine whether it is still in the best interests of the organization and the Board’s strategic vision.⁶⁹⁰

⁶⁸⁴ “Canadian Sport Governance Code” (April 2021) at 2, online: *Canadian Olympic Committee – NSO Sharing Centre* <<https://nso.olympic.ca/canadian-sport-governance-code/>>.

⁶⁸⁵ Curling Canada, Tennis Canada and Canada Soccer all described their boards as being strategic in nature.

⁶⁸⁶ Mel Gill, “Building Effective Approaches to Governance” (21 June 2022), online: *Nonprofit Quarterly* <<https://nonprofitquarterly.org/building-effective-approaches-to-governance-models/>>.

⁶⁸⁷ Mel Gill, “Governance Do’s and Don’ts” (23 April 2001) at 18.

⁶⁸⁸ “Mandate & Mission – Who is Hockey Canada?” (last visited 21 August 2022), online: *Hockey Canada* <www.hockeycanada.ca/en-ca/corporate/about/mandate-mission>.

⁶⁸⁹ These are structure, customer, competition, consistency, barriers and over-regulation/rules. See Hockey Canada, “Strategic Plan 2022-2026” at 5, 50.

⁶⁹⁰ Anne Corbett & James M Mackay, *Guide to Good Governance: Not-for-Profit and Charitable Organizations*, 2nd ed (September 2013) at 219-220; see also C Sorokin et al, *Nonprofit Governance and Management*, 3rd ed (Chicago: American Bar Association, 2011) at 23.

v. *Drawing a clearer line between the board and management*

A board typically delegates the “day-to-day supervision of the affairs of the organization” to the CEO, who acts as the “administrative head” of the organization.⁶⁹¹ In accordance with their fiduciary duties, directors must always ensure these delegated acts are properly fulfilled.⁶⁹² But in doing so, directors run the risk of blurring the line between the board’s role (governance) and management’s role (operations).⁶⁹³ A clear statement from the Board on its role and functions, and on those of management can mitigate that risk.⁶⁹⁴ The statement can also clarify the board’s governance model.⁶⁹⁵

1. Statement of role and functions of the board

The statutory duties of a board give rise to a number of board responsibilities and functions. Although these may vary according to the chosen governance model, many form the core of the board’s contribution to the corporation’s management. The Board of Hockey Canada should have a formal statement articulating the Board’s primary functions.⁶⁹⁶ This aligns with the COC Code, which advises that each NSO should “adopt a board mandate which delineates the roles and responsibilities of the board which, among other matters, includes the requirement to develop a multi-year strategic plan, and a succession plan for the CEO.”⁶⁹⁷

At least two Comparator Associations have a formal statement outlining the roles and responsibilities of their boards. Curling Canada has a “Delegation of Authorities Policy” that limits the authority designated to particular positions within the corporation.⁶⁹⁸ The policy’s stated purpose is to ensure the “correct balance of responsibilities is struck between governance and management.”⁶⁹⁹ It states expressly that the Board governs, and that the CEO manages. It also lists the powers expressly reserved for the Board, and describes the CEO’s role. Similarly, Canada

⁶⁹¹ Anne Corbett & James M Mackay, *Guide to Good Governance: Not-for-Profit and Charitable Organizations*, 2nd ed (September 2013) at 34; see also Sport Canada, “Pursuing Effective Governance in Canada’s National Sport Community” (November 2011) at 6-7.

⁶⁹² Anne Corbett & James M Mackay, *Guide to Good Governance: Not-for-Profit and Charitable Organizations*, 2nd ed (September 2013) at 34; see also Carol Hansell, *Corporate Governance for Directors*, (Toronto: Thomson Reuters Canada, 2019) at 49.

⁶⁹³ Anne Corbett & James M Mackay, *Guide to Good Governance: Not-for-Profit and Charitable Organizations*, 2nd ed (September 2013) at 35.

⁶⁹⁴ Sport Canada, “Pursuing Effective Governance in Canada’s National Sport Organizations” (November 2011) at 6-7; “The Effective Not-for-Profit Board: A value-driving force” (2013) at 6, online (pdf): <https://www2.deloitte.com/content/dam/Deloitte/ca/Documents/public-sector/ca-en-public-sector-effective-npo-board.pdf>; see also Anne Corbett & James M Mackay, *Guide to Good Governance: Not-for-Profit and Charitable Organizations*, 2nd ed (September 2013) at 32.

⁶⁹⁵ Anne Corbett & James M Mackay, *Guide to Good Governance: Not-for-Profit and Charitable Organizations*, 2nd ed (September 2013) at 34.

⁶⁹⁶ Anne Corbett & James M Mackay, *Guide to Good Governance: Not-for-Profit and Charitable Organizations*, 2nd ed (September 2013) at 217.

⁶⁹⁷ “Canadian Sport Governance Code” (April 2021) at 4, s B.4, online: *Canadian Olympic Committee – NSO Sharing Centre* <<https://nso.olympic.ca/canadian-sport-governance-code/>>.

⁶⁹⁸ “Policy Manual” (updated May 2021) at 26-30, online (pdf): *Curling Canada* <<https://www.curling.ca/files/2021/06/POLICY-MANUAL-May-2021-edition.pdf>>.

⁶⁹⁹ “Policy Manual” (updated May 2021) at 27, online (pdf): *Curling Canada* <<https://www.curling.ca/files/2021/06/POLICY-MANUAL-May-2021-edition.pdf>>.

Soccer has a “Governance Policies” document outlining the specific roles and responsibilities of the Directors.⁷⁰⁰

In our view, Hockey Canada should develop a similar policy. Not only will doing so help the Board realize its chosen governance model, but the policy will also ensure a more efficient and effective distribution of work across the organization, having key individuals performing the right tasks at the right time. In parallel with the development of such a policy, Hockey Canada should review section 37 of the By-laws (“Board Powers”), as well as the Terms of Reference for the Board (section 2.0) and the Directors (section 2.1), and incorporate any relevant principles in the new policy. Then those By-law provisions and Terms of Reference should be repealed and replaced with the new policy.

Such a policy should address the following:⁷⁰¹

Primary function	Description
Approving strategic goals and directions	Every not-for-profit corporation has a different purpose, mission, and vision. To achieve the corporation’s purpose, the directors, officers and staff need to clearly understand what the corporation wishes to become and how it intends to get there. ⁷⁰² Boards are not responsible for conducting the strategic planning; however, they must ensure that strategic planning is done and the goals that come out of the process “provide a reasonable plan for the corporation and [are] in its best interests.” ⁷⁰³ The strategic plan is therefore “the foundation document that provides direction to the organization” ⁷⁰⁴ to reach specific goals within a specific time frame. ⁷⁰⁵ Planning is, for the most part, performed by management and it is instead the board’s role to “shape and oversee the process.” ⁷⁰⁶ Typically, the CEO and senior staff will manage the strategic planning process. ⁷⁰⁷

⁷⁰⁰ “Governance Policies” (updated January 2022) at 5-7, online (pdf): *Canada Soccer* <https://www.canadasoccer.com/wp-content/uploads/2022/03/CSA-Governance-Policies-2022_EN.pdf>.

⁷⁰¹ List of functions drawn from Anne Corbett & James M Mackay, *Guide to Good Governance: Not-for-Profit and Charitable Organizations*, 2nd ed (September 2013) at 38.

⁷⁰² Sport Canada, “Pursuing Effective Governance in Canada’s National Sport Community” (November 2011) at 4.

⁷⁰³ Anne Corbett & James M Mackay, *Guide to Good Governance: Not-for-Profit and Charitable Organizations*, 2nd ed (September 2013) at 44.

⁷⁰⁴ Anne Corbett & James M Mackay, *Guide to Good Governance: Not-for-Profit and Charitable Organizations*, 2nd ed (September 2013) at 38.

⁷⁰⁵ Anne Corbett & James M Mackay, *Guide to Good Governance: Not-for-Profit and Charitable Organizations*, 2nd ed (September 2013) at 39; see also Business Roundtable, “Principles of Corporate Governance” (8 September 2016), online: *Harvard Law School Forum on Corporate Governance* <<https://corpgov.law.harvard.edu/2016/09/08/principles-of-corporate-governance/>>.

⁷⁰⁶ Anne Corbett & James M Mackay, *Guide to Good Governance: Not-for-Profit and Charitable Organizations*, 2nd ed (September 2013) at 44.

⁷⁰⁷ Anne Corbett & James M Mackay, *Guide to Good Governance: Not-for-Profit and Charitable Organizations*, 2nd ed (September 2013) at 44.

Primary function	Description
	<p>Once a strategic plan is in place, it should be reviewed by the board as a part of a regular annual planning cycle.⁷⁰⁸ The strategic planning review should shape operational planning and budgeting.⁷⁰⁹ There should be regular reports (e.g. quarterly, or at each board meeting) from senior management on the implementation of the strategic plan.⁷¹⁰</p> <p>The Sport Canada Report Card recommends that strategic planning be incorporated into all aspects of an organization’s operations, and that it be clearly connected and articulated to the everyday aspects of that organization.⁷¹¹ Further, the Key Performance Indicators should inform decision-making and planning, and there should exist opportunities for the organization to connect to future opportunities associated with the strategic plan.⁷¹² Further still, members and stakeholders of the organization should have ongoing opportunities to provide input that the organization may consider as part of its strategic planning process.⁷¹³</p>
<p>Establishing a framework for performance oversight</p>	<p>Determining how the organization will measure its success is a key component of effective governance.⁷¹⁴ In order to govern without becoming too involved in operations, a board should create an integrated overall performance reporting system.⁷¹⁵ This should be a “simple and clear performance reporting system to monitor overall organizational performance” and key performance areas, such as quality of services/outcomes, financial condition and performance, community engagement and organizational development.⁷¹⁶</p> <p>The system should establish “measures and indicators that quantify the performance objectives as a basis for planning targets and monitoring actual results.”⁷¹⁷ This requires that staff provide regular performance reports to the board, which allow the board to assess how well the corporation is accomplishing its objectives and determine areas needing</p>

⁷⁰⁸ Anne Corbett & James M Mackay, *Guide to Good Governance: Not-for-Profit and Charitable Organizations*, 2nd ed (September 2013) at 46.

⁷⁰⁹ Anne Corbett & James M Mackay, *Guide to Good Governance: Not-for-Profit and Charitable Organizations*, 2nd ed (September 2013) at 46.

⁷¹⁰ Anne Corbett & James M Mackay, *Guide to Good Governance: Not-for-Profit and Charitable Organizations*, 2nd ed (September 2013) at 44, 46.

⁷¹¹ Sport Canada, Report Card Phase 2 Matrices and Glossary, Government of Canada (undated), at 2.5.1.

⁷¹² Sport Canada, Report Card Phase 2 Matrices and Glossary, Government of Canada (undated), at 2.5.1.

⁷¹³ Sport Canada, Report Card Phase 2 Matrices and Glossary, Government of Canada (undated), at 2.5.1.

⁷¹⁴ Sport Canada, “Pursuing Effective Governance in Canada’s National Sport Community” (November 2011) at 2.

⁷¹⁵ Anne Corbett & James M Mackay, *Guide to Good Governance: Not-for-Profit and Charitable Organizations*, 2nd ed (September 2013) at 47.

⁷¹⁶ Anne Corbett & James M Mackay, *Guide to Good Governance: Not-for-Profit and Charitable Organizations*, 2nd ed (September 2013) at 47-48.

⁷¹⁷ Anne Corbett & James M Mackay, *Guide to Good Governance: Not-for-Profit and Charitable Organizations*, 2nd ed (September 2013) at 47; see also Sport Canada, “Pursuing Effective Governance in Canada’s National Sport Community” (November 2011) at 2.

Primary function	Description
	attention. ⁷¹⁸ Although directors should not become experts in program effectiveness and quality, directors must understand the complexities of the organization's operations for proper evaluation. ⁷¹⁹
Overseeing the financial condition and resources	<p>The sustained success of a not-for-profit corporation depends on its ongoing viability, which the Board must regularly monitor. To accomplish this, directors should oversee the financial performance and viability of the not-for-profit corporation, ensure the resources and assets are available to carry out its mission and are used effectively, and oversee and protect assets from risk.⁷²⁰</p> <p>While many directors “do not have the expertise to provide meaningful oversight to the financial area [...] [e]ach [d]irector has a legal and moral responsibility to oversee the finances.”⁷²¹ Consequently, orientation for directors “should include training in financial literacy [...] and the] financial reporting should be done in a clear and simple manner.”⁷²²</p> <p>A board must remain wary not to involve itself excessively in operational decision-making, but should take certain actions to fulfill its role. For instance, boards should approve operating and capital budgets, monitor financial performance, ensure the sufficiency and integrity of information,⁷²³ and ensure that the financial management conforms to generally accepted accounting principles.⁷²⁴ Additionally, a board “should assure itself that insurance programs are adequate [...] and maintained at appropriate levels.”⁷²⁵ Finally, boards “should be satisfied that there is an effective policy framework for managing the procurement of goods and services,” for managing contracts, and for managing investment programs.⁷²⁶</p>

⁷¹⁸ Anne Corbett & James M Mackay, *Guide to Good Governance: Not-for-Profit and Charitable Organizations*, 2nd ed (September 2013) at 47-48.

⁷¹⁹ Anne Corbett & James M Mackay, *Guide to Good Governance: Not-for-Profit and Charitable Organizations*, 2nd ed (September 2013) at 51.

⁷²⁰ Anne Corbett & James M Mackay, *Guide to Good Governance: Not-for-Profit and Charitable Organizations*, 2nd ed (September 2013) at 53.

⁷²¹ Sport Canada, “Pursuing Effective Governance in Canada’s National Sport Community” (November 2011) at 8.

⁷²² Sport Canada, “Pursuing Effective Governance in Canada’s National Sport Community” (November 2011) at 8.

⁷²³ Anne Corbett & James M Mackay, *Guide to Good Governance: Not-for-Profit and Charitable Organizations*, 2nd ed (September 2013) at 54-55; see also Business Roundtable, “Principles of Corporate Governance” (8 September 2016), online: *Harvard Law School Forum on Corporate Governance* <<https://corpgov.law.harvard.edu/2016/09/08/principles-of-corporate-governance/>>.

⁷²⁴ Sport Canada, “Pursuing Effective Governance in Canada’s National Sport Community” (November 2011) at 8.

⁷²⁵ Anne Corbett & James M Mackay, *Guide to Good Governance: Not-for-Profit and Charitable Organizations*, 2nd ed (September 2013) at 55.

⁷²⁶ Anne Corbett & James M Mackay, *Guide to Good Governance: Not-for-Profit and Charitable Organizations*, 2nd ed (September 2013) at 55.

Primary function	Description
	Lastly, the board should “obtain support from one or more committees,” ⁷²⁷ such as a Finance Committee, to help fulfil its oversight role and to provide for an appropriate level of scrutiny. ⁷²⁸
Overseeing risk management for the corporation	<p>Assessing and managing risk involves a broad view of risk, incorporating organizational risks related to liabilities and losses, business viability risks, and reputational risks.⁷²⁹</p> <p>A board should concern itself with risk in three ways. First, it must involve itself in “identifying and assessing potential risks, as well as determining how to respond to each risk, and in doing so, establish the corporation’s tolerance for risk.”⁷³⁰ Second, the board should ensure that the organization takes steps to mitigate the effects of risks, for example, by purchasing insurance, establishing contractual protections against contingencies and risks, and/or establishing contingency plans.⁷³¹ Lastly, the board “needs to assure itself that management has put in place the appropriate policies, processes and programs to prepare for, prevent, and protect the corporation from foreseeable and material risks.”⁷³²</p> <p>Some boards may choose to establish a Risk Management Committee to work with management to identify and address the risks to the corporation broadly, while others may leave the task to individual standing committees working together.”⁷³³</p> <p>The Report Card recommends that risk management and proactive mitigation be a regular and recurring feature of the Board’s operations and discussion.⁷³⁴ Ideally, the proactive risk mitigation strategy considers and incorporates business continuity planning. Moreover, the risk management strategy should focus on reducing organizational uncertainty, with an</p>

⁷²⁷ Anne Corbett & James M Mackay, *Guide to Good Governance: Not-for-Profit and Charitable Organizations*, 2nd ed (September 2013) at 56.

⁷²⁸ Sport Canada, *Pursuing Effective Governance in Canada’s National Sport Organizations* (November 2011) at 8.

⁷²⁹ Anne Corbett & James M Mackay, *Guide to Good Governance: Not-for-Profit and Charitable Organizations*, 2nd ed (September 2013) at 57-58.

⁷³⁰ Anne Corbett & James M Mackay, *Guide to Good Governance: Not-for-Profit and Charitable Organizations*, 2nd ed (September 2013) at 59; Business Roundtable, “Principles of Corporate Governance” (8 September 2016), online: *Harvard Law School Forum on Corporate Governance* <<https://corpgov.law.harvard.edu/2016/09/08/principles-of-corporate-governance/>>.

⁷³¹ Anne Corbett & James M Mackay, *Guide to Good Governance: Not-for-Profit and Charitable Organizations*, 2nd ed (September 2013) at 59.

⁷³² Anne Corbett & James M Mackay, *Guide to Good Governance: Not-for-Profit and Charitable Organizations*, 2nd ed (September 2013) at 59.

⁷³³ Anne Corbett & James M Mackay, *Guide to Good Governance: Not-for-Profit and Charitable Organizations*, 2nd ed (September 2013) at 60-61.

⁷³⁴ Sport Canada, *Report Card Phase 2 Matrices and Glossary*, Government of Canada (undated), at 2.5.2.

Primary function	Description
	<p>overall intent of helping the organization achieve strategic outcomes.⁷³⁵ In addition to having a risk registry, which is regularly maintained, the registry and the risk management practices should align and connect to strategic, operational and financial plans.⁷³⁶</p> <p>The Report Card further recommends that members and stakeholders have viable channels to communicate potential concerns, and that they have ongoing opportunities to provide input or bring potential risks to the Board’s attention.⁷³⁷</p>
Supervising leadership	<p>The CEO is the senior manager responsible to the board. The board is responsible for hiring the CEO – the organization’s senior manager – and overseeing their performance to “ensure there is effective leadership in place to manage the organization”⁷³⁸, and to ensure that the acts delegated to the CEO are properly fulfilled. The board should clearly define the CEO’s role and the board’s expectations, oversee the CEO’s annual evaluation based on established criteria, and approve a CEO succession plan.⁷³⁹ It is important for the board to develop and nurture “a productive working relationship with the CEO.”⁷⁴⁰</p> <p>As part of the CEO’s annual evaluation process, the Board should set annual goals, review reports on performance vis-à-vis these goals, obtain feedback on performance, consider it and discuss it with the CEO.</p> <p>The Sport Canada Report Card recommends that the Board clearly document the roles and responsibilities of the Board and those of the organization’s leadership, and that they have a process in place to manage their relationship.⁷⁴¹ Indeed, the performance of the most senior staff should be regularly monitored and maintained through the use of ongoing knowledge performance indicators (KPI) development and tracking.⁷⁴²</p>

⁷³⁵ Sport Canada, Report Card Phase 2 Matrices and Glossary, Government of Canada (undated), at 2.5.2.

⁷³⁶ Sport Canada, Report Card Phase 2 Matrices and Glossary, Government of Canada (undated), at 2.5.2.

⁷³⁷ Sport Canada, Report Card Phase 2 Matrices and Glossary, Government of Canada (undated), at 2.5.2.

⁷³⁸ Anne Corbett & James M Mackay, *Guide to Good Governance: Not-for-Profit and Charitable Organizations*, 2nd ed (September 2013) at 61; see also Business Roundtable, “Principles of Corporate Governance” (8 September 2016), online: *Harvard Law School Forum on Corporate Governance* <<https://corpgov.law.harvard.edu/2016/09/08/principles-of-corporate-governance/>>.

⁷³⁹ “Canadian Sport Governance Code” (1 September 2021) at 4, s B.4, online: *Canadian Olympic Committee – NSO Sharing Centre* <https://nso.olympic.ca/canadian-sport-governance-code/>; see also Anne Corbett & James M Mackay, *Guide to Good Governance: Not-for-Profit and Charitable Organizations*, 2nd ed (September 2013) at 61-66; see also Business Roundtable, “Principles of Corporate Governance” (8 September 2016), online: *Harvard Law School Forum on Corporate Governance* <<https://corpgov.law.harvard.edu/2016/09/08/principles-of-corporate-governance/>>.

⁷⁴⁰ Sport Canada, “Pursuing Effective Governance in Canada’s National Sport Community” (November 2011) at 6.

⁷⁴¹ Sport Canada, Report Card Phase 2 Matrices and Glossary, Government of Canada (undated), at 2.3.2.

⁷⁴² Sport Canada, Report Card Phase 2 Matrices and Glossary, Government of Canada (undated), at 2.3.2.

Primary function	Description
Overseeing stakeholder relationships	<p>The board must ensure that the corporation “develops effective stakeholder relationships so that it has stakeholder support for its objectives.”⁷⁴³ Stakeholders have an interest in the activities of the corporation and can impact the corporation’s well-being.⁷⁴⁴ The board should develop a framework and plan for managing stakeholder relations —an “overall policy direction for discharging its accountability, engagement, and communications efforts with stakeholders.”⁷⁴⁵</p> <p>The board generally only provides policy direction on stakeholder relationships.⁷⁴⁶ Management and the board share the implementation of this direction.⁷⁴⁷ Typically, the board chair acts as the external spokesperson for the board, and shares the responsibility of engaging external stakeholders with the CEO.⁷⁴⁸ The two must work together closely to maintain consistent messaging.⁷⁴⁹ The board should also receive periodic reports about stakeholder relationships, so that it can monitor their status.⁷⁵⁰ Some boards choose to use committees (e.g. Community Relations or Communications Committee) to provide support for this board function.⁷⁵¹</p> <p>Given the current state of affairs, the Board should pay close attention to its relationship with stakeholders. It should not ignore the importance of salvaging existing relationships. As it makes the necessary changes to its structure, purpose and functioning, the Board should work with senior management to seek out new partnerships that align with and promote the values Hockey Canada will feature at the heart of its strategic vision.</p>
Managing the board’s own governance	<p>In addition to choosing its governance model and articulating its role and functions, the board should establish policies and practices that “promote a quality board”, and define the structure and processes for how the board</p>

⁷⁴³ Anne Corbett & James M Mackay, *Guide to Good Governance: Not-for-Profit and Charitable Organizations*, 2nd ed (September 2013) at 67.

⁷⁴⁴ Anne Corbett & James M Mackay, *Guide to Good Governance: Not-for-Profit and Charitable Organizations*, 2nd ed (September 2013) at 67.

⁷⁴⁵ Anne Corbett & James M Mackay, *Guide to Good Governance: Not-for-Profit and Charitable Organizations*, 2nd ed (September 2013) at 68.

⁷⁴⁶ Anne Corbett & James M Mackay, *Guide to Good Governance: Not-for-Profit and Charitable Organizations*, 2nd ed (September 2013) at 69.

⁷⁴⁷ Anne Corbett & James M Mackay, *Guide to Good Governance: Not-for-Profit and Charitable Organizations*, 2nd ed (September 2013) at 69.

⁷⁴⁸ Anne Corbett & James M Mackay, *Guide to Good Governance: Not-for-Profit and Charitable Organizations*, 2nd ed (September 2013) at 69.

⁷⁴⁹ Anne Corbett & James M Mackay, *Guide to Good Governance: Not-for-Profit and Charitable Organizations*, 2nd ed (September 2013) at 69.

⁷⁵⁰ Anne Corbett & James M Mackay, *Guide to Good Governance: Not-for-Profit and Charitable Organizations*, 2nd ed (September 2013) at 69.

⁷⁵¹ Anne Corbett & James M Mackay, *Guide to Good Governance: Not-for-Profit and Charitable Organizations*, 2nd ed (September 2013) at 69.

Primary function	Description
	conducts its business. ⁷⁵² In turn, it should develop a mechanism to evaluate its own effectiveness and the appropriateness of its governance approach. ⁷⁵³

Beyond developing a statement of roles and policies, the Board must actively manage and reinforce the line between itself and management through clear and consistent communication with senior management.⁷⁵⁴ This can also be done via comprehensive training and orientation. Indeed, following the last election cycle, the Hockey Canada Board received comprehensive orientation in which the role of the Board was distinguished from that of senior management.⁷⁵⁵ We recommend that Hockey Canada continue this practice, particularly as the Board re-evaluates its governance structure and its relationship with senior management.

C. Is the Board’s current structure, as a volunteer Board with accountability for oversight of the organization, appropriate and in the best interests of hockey in Canada?

Nearly all not-for-profit corporations in Canada operate successfully with volunteer boards. However, our discussions with Hockey Canada have revealed that the Board requires significant and even unreasonable time commitments from its Directors and this must be addressed to ensure that a volunteer Board is appropriate for Hockey Canada. Additionally, the Board should clarify its role and that of senior management, and should reconsider how frequently and to what extent it delves into operations, instead of deferring to the remunerated staff.

i. Reducing the time commitment for Hockey Canada’s Directors

Comparator Associations estimated that their directors each commit approximately 150-200 hours annually to their organization.⁷⁵⁶ In contrast, Hockey Canada’s Directors reported spending

⁷⁵² Anne Corbett & James M Mackay, *Guide to Good Governance: Not-for-Profit and Charitable Organizations*, 2nd ed (September 2013) at 70.

⁷⁵³ Anne Corbett & James M Mackay, *Guide to Good Governance: Not-for-Profit and Charitable Organizations*, 2nd ed (September 2013) at 70-71.

⁷⁵⁴ Anne Corbett & James M Mackay, *Guide to Good Governance: Not-for-Profit and Charitable Organizations*, 2nd ed (September 2013) at 35.

⁷⁵⁵ For example, the presentation explains that a “clear division of the roles/responsibilities of the Board and Senior Management should be set out in writing (i.e. Terms of Reference)”, that the “Board’s role is to govern the organization, not to manage it”, and that “Directors should stay focused on strategic governance, not on management and operational delivery”. Hockey Canada, “Board of Directors Orientation Sessions” (21 November 2020).

⁷⁵⁶ The National Association of Corporate Directors found that directors of a not-for-profit average about 166 hours of board work a year; similarly, the National Center for Nonprofit Boards found an average of 120 hours per year. See Chris Taylor, “Your Money: Why you need time, money to serve on a volunteer board” (26 July 2017), online: *Reuters* <<https://www.reuters.com/article/us-money-volunteer-board-idUSKBN1AB2J5>>; BoardSource, “Nonprofit Governance Index – 2007” (2007) at 10, online (pdf): <https://leadingwithintent.org/wp-content/uploads/2017/09/Governance-Index_2007.pdf>.

anywhere from 400 to 500 hours annually on Board work⁷⁵⁷, including up to 80 days spent away from home, in addition to dozens of hours spent on various committees.⁷⁵⁸

Several Directors indicated that this large time commitment prevented the Hockey Canada Board from attracting a broader range of skilled Directors. The time commitment precluded individuals with inflexible, full time jobs from applying and is a potential barrier to achieving further diversity of the Board.

We make two observations on what may be contributing to the large time commitments required of Hockey Canada Directors. First, as described above, the Board's increased involvement in day-to-day operations adds unnecessary work that should be handled by staff and senior management.

Second, the Board meetings and processes could be more efficient. Directors reported that considerable time was devoted during Board meetings to routine tasks such as approving Board minutes from previous meetings. The Board should examine its processes and how it runs its meetings to reduce unnecessary time spent on simple or routine tasks. Canada Soccer, for example, has incorporated consent agendas in its Governance Policies, allowing directors to approve routine or non-controversial items together without discussion or individual motions, and thus devoting more time to strategic matters the board should be addressing.⁷⁵⁹ The same applies to Hockey Canada committees: members should streamline committee processes and participation such that time spent on committee matters not exceed what is reasonably necessary.

In our view, the Hockey Canada Board can become more effective and efficient by taking the following steps:

- Clarifying their governance model, and clarifying roles and responsibilities of the Board, staff and committees;
- Increasing the number of Directors on the Board (as discussed in Chapter VII);
- Reducing Director involvement in operational matters that do not require Board input; and
- Streamlining Board and committee processes to reduce time spent on routine or non-controversial matters (e.g., by requiring that all Board meeting agenda items relate to one or more of Hockey Canada's goals/objectives, or requiring that each agenda item have an "action required")

By taking these steps, Hockey Canada will reduce the time commitments required of Directors, thereby increasing the likelihood of attracting and retaining a competent and diverse Board of Directors. Hockey Canada will also reduce unnecessary overlap between various functions,

⁷⁵⁷ Multiple Directors noted that their directorship is nearly as or more demanding than a full-time job in terms of hours.

⁷⁵⁸ For instance, one Director reported meeting 27 times over two and a half months on a specific topic, with each meeting lasting several hours.

⁷⁵⁹ "Governance Policies" (updated January 2022) at 8, online (pdf): *Canada Soccer* <https://www.canadasoccer.com/wp-content/uploads/2022/03/CSA-Governance-Policies-2022_EN.pdf>.

ensuring that the right people are doing the right work to advance the organization’s objectives, thereby increasing the quality of its work.

ii. Hockey Canada’s Board should remain a volunteer board

Directors of not-for-profit corporations are entitled to “reasonable remuneration” under the CNCA, provided such remuneration is permitted by the articles, by-laws, and any unanimous member agreement.⁷⁶⁰ Yet, volunteer boards run nearly all Canadian not-for-profit corporations –including Hockey Canada. Hockey Canada’s By-laws and Articles of Continuance mandate that Directors shall serve without remuneration and preclude Directors from receiving any profit from their position.⁷⁶¹

Generally, the limited resources of not-for-profit corporations not only make voluntary boards a standard practice, but also in the corporation’s best interests, as those resources can be focused on advancing the corporation’s objectives rather than compensating directors.⁷⁶² Indeed, the COC Code notes that “Directors may not be remunerated for serving as director,”⁷⁶³ and all of the Comparator Associations operate with volunteer boards.

We do not recommend moving to a board that is compensated.

D. Is there a clearly defined process describing what items staff must report to the Board (policy vs. operations)?

i. Best practices for board reports by senior management

To perform its role effectively, a board must receive accurate, relevant, sufficient, and timely information.⁷⁶⁴ Beyond effectiveness, a board needs key information to meet its fiduciary obligations relating to acts it delegates to management.⁷⁶⁵ Accordingly, a board must provide clear directions to senior management on the information it requires. It can effectively do so by creating clear policies and procedures regarding reports from senior management, detailing points such as:

- report formats (e.g. written or verbal);
- when and how often the reports should be delivered;
- who is responsible for what topic (e.g. the CEO, CFO, COO, and members of staff);

⁷⁶⁰ *Canada Not-for-profit Corporations Act*, SC 2009, c 23, s 143(1).

⁷⁶¹ “Hockey Canada By-Laws, Regulations and History” (May 2022), s 39.1, online (pdf): *Hockey Canada* <<https://cdn.hockeycanada.ca/hockey-canada/Corporate/About/Downloads/2022-23-bylaws-e.pdf>>; Industry Canada, “Hockey Canada Association Articles of Continuance” (10 June 2014).

⁷⁶² Carol Hansell, *Corporate Governance for Directors*, (Toronto: Thomson Reuters Canada, 2019) at 38.

⁷⁶³ “Canadian Sport Governance Code” (1 September 2021) at 6, s B.14, online: *Canadian Olympic Committee – NSO* <Sharing Centre <https://nso.olympic.ca/canadian-sport-governance-code/>>.

⁷⁶⁴ Carol Hansell, *Corporate Governance for Directors*, (Toronto: Thomson Reuters Canada, 2019) at 49, 130.

⁷⁶⁵ Carol Hansell, *Corporate Governance for Directors*, (Toronto: Thomson Reuters Canada, 2019) at 49.

- what topics the reports should address;⁷⁶⁶ and
- how senior management will follow up on action items.

Creating clear policies for reporting ensures that a board has access to relevant information in a timely manner and promotes efficient and effective decision-making. Conversely, gaps in key information from management hinder a board's ability to avoid and address problems down the line, and make it difficult for the organization to adapt to changing circumstances. The same can be said for overly lengthy reports filled with unnecessary operational details, which may cloud or hide the information a board should focus on.

Not only can clarity in senior management's reports to a board increase organizational performance, but it can also lead to more efficient board meetings and decision-making. For example, written reports on particular topics provided ahead of board meetings can allow the board to prepare for each meeting with questions for senior management, thereby recouping time that might otherwise be spent on verbal reports. The COC Code suggests it is best practice that certain reports be delivered quarterly, in writing, that:

- all required remittances and all other payments for which directors are personally liable have been made;
- describes any breach of a material agreement, the status of any threatened or initiated claims or lawsuit, and a status update of each;
- confirms that all insurance coverage approved by the board is in full force and effect and that all premiums have been paid; and
- describes any material risks (financial or otherwise) to the NSO.⁷⁶⁷

The Board may decide that senior management should deliver reports on other topics quarterly, or request more frequent reports to the Board on the items listed above, in order to fulfill their duty to oversee the activities of senior management. Hockey Canada has advised that the Audit and Finance Committee currently provides quarterly reports to the Board on the required remittances and payments for which directors are personally liable that have been paid. Similarly, they advised that the Board receives a formal financial report at each Board meeting. We recommend that the Board evaluate its needs from each area of senior management and implement a reporting practice commensurate with the quantity and type of information needed from each area.

Lastly, Hockey Canada advised that the Executive Assistant to the Board maintains a list of action items from Board meetings. Having a process in place to follow up on action items flagged in relation to senior management's reports is indeed essential. We recommend that the Board continue this practice, and that it adopt a practice or procedure of following up on items regularly

⁷⁶⁶ For example: matters requiring Board approval; risk and compliance updates; progress on goals/strategic plan implementation; organizational performance; key accomplishments; financial management updates; and staff turnover and staff morale information.

⁷⁶⁷ "Canadian Sport Governance Code" (1 September 2021) at 7-8, s E.4, online: *Canadian Olympic Committee – NSO Sharing Centre* <<https://nso.olympic.ca/canadian-sport-governance-code/>>.

(for example, noting action items from one Board meeting to the agenda for the following meeting).

ii. Reporting practices

Some Comparator Associations had policies governing senior management’s obligation to report to the board, though without any standard practice. Curling Canada’s Delegation of Authorities Policy emphasizes the importance of the board receiving adequate and timely reports regarding senior management’s use of delegated authority, particularly involving unbudgeted items or the use of discretionary authority.⁷⁶⁸

Some examples of the types of reporting requirements contained in the Comparator Associations’ policy documents include:

- Requiring that reports to the Board on “important policy matters” to be in written form with background information and a description of the issues for discussion;⁷⁶⁹
- Outlining the specific items senior management must present on at regular board meetings;⁷⁷⁰
- Creating specific reporting obligations for the CEO where there is a breach of delegated authority;⁷⁷¹
- Making risk management a standing item on the agenda so that staff (if applicable) can provide updates, as required;⁷⁷² and
- Implementing reporting requirements for operational committees, which also have terms of reference requiring that they submit reports semiannually as a part of the CEO’s report to the Board.⁷⁷³

Although not all Comparator Associations had comprehensive reporting policies and procedures, the policies outlined above align with the best practices noted in the preceding section.

As far as Hockey Canada is concerned, the By-laws require that:

⁷⁶⁸ “Policy Manual” (updated May 2021) at 28, online (pdf): *Curling Canada* <<https://www.curling.ca/files/2021/06/POLICY-MANUAL-May-2021-edition.pdf>>.

⁷⁶⁹ “Governance Policies” (updated January 2022) at 7, online (pdf): *Canada Soccer* <https://www.canadasoccer.com/wp-content/uploads/2022/03/CSA-Governance-Policies-2022_EN.pdf>.

⁷⁷⁰ “Governance Policies” (updated January 2022) at 7-8, online (pdf): *Canada Soccer* <https://www.canadasoccer.com/wp-content/uploads/2022/03/CSA-Governance-Policies-2022_EN.pdf>.

⁷⁷¹ “Policy Manual” (updated May 2021) at 30, online (pdf): *Curling Canada* <<https://www.curling.ca/files/2021/06/POLICY-MANUAL-May-2021-edition.pdf>>.

⁷⁷² Canada Basketball, “Risk Management Policy” (2019), s 20, online (pdf): <https://assets.website-files.com/5d24fc966ad064837947a33b/5e25e16e0482df4cd643b52e_Risk%20Management%20Policy.pdf>.

⁷⁷³ “Athletics Canada Bylaws” (January 2022), s 113, online: *Athletics Canada* <<https://athletics.ca/wp-content/uploads/2022/01/Athletics-Canada-Bylaws-January-2022.pdf>>.

- the CEO “report to the Board through the Chair of the Board”⁷⁷⁴ and “[report] operational outcomes to the Board”;⁷⁷⁵
- the CFO “render an account of all transactions and of the final condition of Hockey Canada to the Board and the President and Chief Operating Officer, at such other times as the Board and the President and Chief Operating Officer may request”;⁷⁷⁶ and
- the CFO must provide an annual report on the financial status of Hockey Canada to be delivered at the annual meeting, unless otherwise determined by the Board;⁷⁷⁷ this report must include the complete list of Members’ Board of Directors or similar executive body, which must be submitted annually to the CFO of Hockey Canada.⁷⁷⁸

In practice, these requirements provide little to no instruction to senior management on what, when and how they should report to the Board. Indeed, while Hockey Canada’s senior management informed us that the Board instructed them to provide written reports, Directors explained that it is standard practice for senior management to provide an oral report at most Board meetings. Directors also shared that they wished they received written reports in advance of meetings.

Typically, the CEO, and COO provide separate oral reports at Board meetings, covering a variety of topics, which may be accompanied by written reports. The CFO invariably provides oral reports supplemented with written reports. However, these reports do not necessarily invite dialogue between the presenters and the Board. Moreover, Directors informed us that these reports can take several hours to review and are too granular or operational.

It would therefore serve the interests of Hockey Canada for the Board to adopt a more detailed policy on senior management-Board relations that identifies the key information the Board needs to monitor the organization’s strategic vision and success. As noted below, this ultimately affects the effectiveness and efficiency of the Board, and the quality of its work.

We understand that Hockey Canada has begun implementing key alignment tools for Board reporting and discussion, including an Initiative Tracker, a Calendar of Commitments, and the Hockey Canada Scorecard (to track the organization’s progress across all areas of business, including organizational development, continued financial stability and Member engagement).⁷⁷⁹ We also understand that Hockey Canada has developed a number of templates for Board reporting, including the Initiative Charter (all initiatives must be chartered and approved), an approved PowerPoint Template, approved Task Team and Working Group templates, and an upcoming

⁷⁷⁴ “Hockey Canada By-Laws, Regulations and History” (May 2022), s 40.2, online (pdf): *Hockey Canada* <<https://cdn.hockeycanada.ca/hockey-canada/Corporate/About/Downloads/2022-23-bylaws-e.pdf>>.

⁷⁷⁵ “Hockey Canada By-Laws, Regulations and History” (May 2022), s 40.3(c), online (pdf): *Hockey Canada* <<https://cdn.hockeycanada.ca/hockey-canada/Corporate/About/Downloads/2022-23-bylaws-e.pdf>>.

⁷⁷⁶ “Hockey Canada By-Laws, Regulations and History” (May 2022), s 40.9, online (pdf): *Hockey Canada* <<https://cdn.hockeycanada.ca/hockey-canada/Corporate/About/Downloads/2022-23-bylaws-e.pdf>>.

⁷⁷⁷ “Hockey Canada By-Laws, Regulations and History” (May 2022), s 40.9, online (pdf): *Hockey Canada* <<https://cdn.hockeycanada.ca/hockey-canada/Corporate/About/Downloads/2022-23-bylaws-e.pdf>>.

⁷⁷⁸ “Hockey Canada By-Laws, Regulations and History” (May 2022), s 11.2, online (pdf): *Hockey Canada* <<https://cdn.hockeycanada.ca/hockey-canada/Corporate/About/Downloads/2022-23-bylaws-e.pdf>>.

⁷⁷⁹ Hockey Canada, “The A,B,C’s - Three Leadership Processes Focusing on Results” (15-17 April 2019) at 13-18.

Word Template.⁷⁸⁰ We recommend that Hockey Canada continue to develop and use tools of these kinds to improve the flow of key communication to the Board in all areas. Further, we recommend that the Board formalize the use of these tools across the organization (e.g., through a policy) for increased consistency in Board reporting, which is intimately linked to transparent, effective and efficient decision-making.

E. Is the reporting structure to the Board (staff and committees) comprehensive enough to ensure the work of Hockey Canada is efficient, effective, and of the highest quality?

No. As we discussed above, Hockey Canada lacks a clearly defined reporting structure, which at times causes the Board to step into the operational areas that senior management should handle. Moreover, senior management have insufficient guidance on the type of information the Board needs, when they need it, and in what format it should be presented. This can unduly lengthen meetings and make it more difficult for the Board to hone in on information directly affecting the strategic objectives. In other words, the Board may fail to see the forest for the trees.

From another perspective, the Board and board committees often work inefficiently, causing unnecessary use of time and resources (e.g. meeting too frequently, devoting excessive time to routine matters meetings).

Both of these dimensions add to the large time commitment of Directors, which may act as a barrier to attracting and retaining qualified and diverse candidates to Board positions.

F. Conclusion and summary of recommendations in light of observations and best practices

Terms of Reference Question	Response
3. Does the Board exercise an appropriate degree of oversight of senior management as compared to similar organizations?	- No. The roles of senior management and the Board are not clearly defined nor distinguished. This, at times, leads to the Board involving itself too deeply in day-to-day operations. Moreover, the reporting relationship, particularly regarding the transfer of key information, is informal and unstructured. The Board should follow the example of the Comparator Associations by putting in place policies to formalize and clarify these gaps, and should look to increase efficiencies in its Board and Committee processes.

⁷⁸⁰ Hockey Canada, “The A,B,C’s - Three Leadership Processes Focusing on Results” (15-17 April 2019) at 19.

Terms of Reference Question	Response
<p>a. Is the Board’s current structure, as a volunteer Board with accountability for oversight of the organization, appropriate and in the best interests of hockey in Canada?</p>	<p>Yes and No. Volunteer boards (rather than compensated boards) are standard practice in the not-for-profit sector.</p> <ul style="list-style-type: none"> - With more clearly defined roles and functions, increasingly efficient Board and committee processes, and an increase in the number of Directors sitting on the Board, Hockey Canada can reduce the time commitment required of its directors, and thus attract even more qualified and diverse candidates. This, in turn, will help Hockey Canada maintain and pursue its strategic vision. - We recommend that board training include the role of the board vis-à-vis the role of management, with a focus on the governance style adopted by the board and examples of what that means in practice
<p>b. Is there a clearly defined process describing what items staff must report to the Board (policy vs. operations)?</p>	<ul style="list-style-type: none"> - No. Hockey Canada lacks policies and procedures governing what senior management is required to report to the Board, when, and in what format. The Board should work to create clear reporting guidelines and policies to ensure the upward flow of information key to the Board’s role, while filtering out information of an operational nature.
<p>c. Is the reporting structure to the Board (staff and committees) comprehensive enough to ensure the work of Hockey Canada is efficient, effective, and of the highest quality?</p>	<ul style="list-style-type: none"> - No. See above under “b.” respecting the need to develop a reporting policy.
<p>d. What role should the Board play in operations versus policy and strategy?</p>	<ul style="list-style-type: none"> - The Board must choose a governance model that allows the corporation to implement its strategic plan. Though the governance model best suited for

Terms of Reference Question	Response
	<p>Hockey Canada may change over time, and the Board is responsible for determining what model works best for the organization, we recommend for the time being a model that falls somewhere between a management board and a policy board.</p> <ul style="list-style-type: none"> - The Board must reassess its governance model regularly in order to ensure it remains the most effective to implement the corporation's strategic vision. In doing so, it must reinforce the roles of management and of the Board through communication, policies and training/orientation.

X. STRUCTURE OF THE SENIOR MANAGEMENT OF HOCKEY CANADA

The fourth item in the Terms of Reference asks whether “the Senior Management Team [is] properly structured and constituted to oversee the operations of Hockey Canada, from the grassroots level to the high-performance level.”

A. Criteria for assessment and best practices

Generally, the senior management team of an organization is responsible for the effective execution of the organization’s operations in accordance with the strategic plan that has been approved by the board of directors. With this in mind, we have developed the following criteria in order to evaluate the current structure and constitution of Hockey Canada’s senior management:

- (i) Are the roles, responsibilities and expectations of the Senior Management Team clearly articulated?
- (ii) Does the senior management structure conform to Hockey Canada’s By-Laws?
- (iii) Is there good alignment between the objects and strategic plan of Hockey Canada and the leadership resources devoted to their pursuit, as well as between the major challenges facing the organization and the leadership resources being devoted to addressing them?

In analyzing these criteria, we have considered what we have learned in our interviews, our other research and our study of the practices of Comparator Associations.

B. Current structure and constitution of Hockey Canada’s Senior Management Team

Hockey Canada’s management is currently divided into two levels: (i) the Executive Leadership Team and (ii) the Senior Leadership Team.

i. The Executive Leadership Team

The Executive Leadership Team is composed of the President/Chief Executive Officer (the “**President/CEO**”), the Chief Financial Officer (“**CFO**”), the Senior Vice President Hockey Operations & Development (“**SVP Hockey Operations & Development**”), the Senior Vice President Legal/General Counsel (“**General Counsel**”) and the Vice President, People Culture & Inclusion (“**VP PC&I**”).

We note that Hockey Canada’s current organizational chart does not reflect what the By-laws provide for the composition of the Corporate Officers. According to the By-laws, the Officers of Hockey Canada include the CEO, the President and Chief Operating Officer (“**COO**”), the CFO

and the Chief Business Development Officer (“**CBDO**”).⁷⁸¹ In addition, “President” is defined as “the President and Chief Operating Officer of Hockey Canada”.⁷⁸²

We were advised by Hockey Canada that the CBDO position was vacated in the spring of 2020 and a decision was made by the CEO and President/COO at the time not to fill this position.

As for the COO position, it has not been filled since July 1, 2022. In fact, when the former CEO retired on July 1, 2022, he was replaced by the person who then held the title of President/COO, and both roles were merged to become President/CEO. We understand that this may have only been a transitional measure as there was an intention to eventually fill the COO position.

Below is a description of the current Executive Leadership Team based on the job descriptions and information provided by Hockey Canada.

1. President & Chief Executive Officer

The CEO’s functions and responsibilities are identified in the By-laws, which notably provide that “the CEO of Hockey Canada shall, subject to oversight by the Board, be responsible for the general supervision and direction of the business and affairs of Hockey Canada”.⁷⁸³ As for the President, he is responsible “for overall management of Hockey Canada’s day-to-day activities, subject to the oversight of the CEO and the Board, and shall exercise such additional authority as may from time to time be assigned by the CEO”.⁷⁸⁴

The most recent employment agreement that was applicable to Hockey Canada’s President/CEO did not provide for any specific duties other than “to follow the directions of the Board, and [...] to assume such titles and responsibilities as may be directed by the Board with respect to any subsidiaries or affiliates of [Hockey Canada].” In addition, the agreement provided that the President/CEO “shall have the general duties and responsibilities of previous chief executive officers of [Hockey Canada], and such other duties as may be determined from time to time by the Board, to the best of [the President/CEO’s] ability.”

2. Chief Financial Officer

The CFO is responsible for developing a financial strategy with metrics tied to that strategy and the ongoing development and monitoring of control systems designed to preserve the organization’s assets and for reporting accurate financial results. The CFO also has primary day-

⁷⁸¹ “Hockey Canada By-Laws, Regulations and History” (May 2022), s 40.1, online (pdf): *Hockey Canada* <<https://cdn.hockeycanada.ca/hockey-canada/Corporate/About/Downloads/2022-23-bylaws-e.pdf>>.

⁷⁸² “Hockey Canada By-Laws, Regulations and History” (May 2022), s 1v), online (pdf): *Hockey Canada* <<https://cdn.hockeycanada.ca/hockey-canada/Corporate/About/Downloads/2022-23-bylaws-e.pdf>>.

⁷⁸³ “Hockey Canada By-Laws, Regulations and History” (May 2022), s 40.3, online (pdf): *Hockey Canada* <<https://cdn.hockeycanada.ca/hockey-canada/Corporate/About/Downloads/2022-23-bylaws-e.pdf>>.

⁷⁸⁴ “Hockey Canada By-Laws, Regulations and History” (May 2022), s 40.7, online (pdf): *Hockey Canada* <<https://cdn.hockeycanada.ca/hockey-canada/Corporate/About/Downloads/2022-23-bylaws-e.pdf>>.

to-day responsibility for planning, implementing, managing and controlling all financial-related activities.⁷⁸⁵

3. Senior Vice President Hockey Operations & Development

The SVP Hockey Operations & Development is responsible for two main areas: national teams and development.⁷⁸⁶ With respect to the first area, the SVP Hockey Operations & Development leads the planning, preparation and organization of Women's, Men's and Para Hockey National Teams and ensures professional representation of Hockey Canada at all international events.⁷⁸⁷ With respect to the second area, this SVP is responsible for advancing the vision and strategic direction of Hockey Canada, including planning, coordinating and driving accountability for Hockey Development content in the areas of coaching, officiating and players.⁷⁸⁸

There used to be two positions for these areas: one Senior Vice President, National Teams, and one Vice President, Hockey Development. When this latter position became vacant in September 2020, the two areas were placed under one SVP.

Three directors report to the SVP Hockey Operations & Development: Director, Hockey Operations, Women's National Team, Director, Hockey Operations, Player Personnel, Men's National Team, and Director, Hockey Operations, NextGen Development.

4. Senior Vice President Legal/General Counsel

The General Counsel acts as principal legal officer responsible for directing all legal actions for the organization and providing legal advice for Executive/Senior Leadership and the Board on corporate matters as required.⁷⁸⁹

The job description associated with this position provides that the General Counsel must oversee and ensure identification and management of insurable or hazard risks, generate department staff reports and plans, analyze insurance/risk management issues and assist with defining and overseeing risk solutions.

Three employees report to the General Counsel: two associate counsel (one supporting the National Appeals Committee, one handling the insurance and general litigation files), and the VP Sport Safety (as described below).

⁷⁸⁵ Hockey Canada, Job Description, "Chief Financial Officer (CFO)" (November 2020).

⁷⁸⁶ Hockey Canada currently has no job description for the SVP Hockey Operations & Development. This position was created when the Senior Vice President, National Teams, who assumed the portfolio of the Vice President, Hockey Development when this position became vacant, was promoted to the position of SVP Hockey Operations & Development. Since this role is a combination of these two other positions, we relied on their job descriptions.

⁷⁸⁷ Hockey Canada, Job Description, "Senior Vice President National Teams" (December 2018).

⁷⁸⁸ Hockey Canada, Job Description, "Vice President, Hockey Development" (December 2018).

⁷⁸⁹ Hockey Canada, Job Description, "SVP Legal/General Counsel" (January 2022).

5. Vice President, People Culture & Inclusion

The VP PC&I is the head of the human resources department. As part of the Executive Leadership Team, this person works to develop and drive comprehensive workforce talent strategies designed to position Hockey Canada as a leader in sport. According to the job description, the VP PC&I is responsible for playing a key role in aligning workforce and talent attraction strategies to the corporate strategy. The person occupying this role is notably responsible for ensuring a workplace that supports diversity and inclusion.⁷⁹⁰

ii. *The Senior Leadership Team*

The Senior Leadership Team is composed of the Executive Director, Hockey Canada Foundation (“**ED HCF**”), the Vice President Business Development & Partnerships (“**VP BD&P**”), the Director, Financial Services (“**Director of Finance**”), the Vice President Events & Properties (“**VP Events & Properties**”), the Senior Vice President Strategy, Operations & Brand (“**SVP Operations**”), the Vice President Member Engagement (“**VP Member Engagement**”), and the Vice President of Sport Safety (“**VP Sport Safety**”). Below is a description of each of these roles based on the job descriptions and information provided by Hockey Canada.

1. Reporting to the President/CEO

1.1 Vice President Events & Properties

The role and responsibility of the VP Events & Properties is to promote Hockey Canada in the communities through world-leading events. This is done by leading the bid process to identify Canadian communities to host International Ice Hockey Federation (IIHF) and Hockey Canada events in Canada, and by developing key relationships with Members and a thorough understanding of their hosting strategies and needs.⁷⁹¹

1.2 Senior Vice President Strategy, Operations & Brand

The SVP Operations is responsible for two main areas: operations and marketing.⁷⁹² First, this position is responsible for advancing the vision and strategic direction of Hockey Canada; including planning, coordinating and driving accountability for overall operational strategies.⁷⁹³ Second, the SVP Operations is in charge of developing and implementing Hockey Canada’s communication strategy including media relations and brand marketing.⁷⁹⁴

We were advised by Hockey Canada that although the SVP Operations appears in the Senior Leadership Team of the organizational chart, this person is an integral part of the Executive

⁷⁹⁰ Hockey Canada, Job Description, “VP, People, Culture & Inclusion” (August 2019).

⁷⁹¹ Hockey Canada, Job Description, “Vice President, Events and Properties” (November 2016).

⁷⁹² Hockey Canada currently has no job description for the SVP Operations. This position was created when the Vice President, Operations, who assumed the portfolio of the Vice President, Marketing & Communication when this position became vacant, was promoted to the position of SVP Operations. Since this role is a combination of these two other positions, we relied on their job descriptions.

⁷⁹³ Hockey Canada, Job Description, “Vice President, Operations” (June 2018).

⁷⁹⁴ Hockey Canada, Job Description, “Vice President, Marketing & Communications” (November 2016).

Leadership Team. In fact, as a result of the COVID-19 pandemic, the SVP Operations was invited to join the meetings with the Executive Leadership Team in order to receive updates that would affect this person's responsibilities. This evolved over time, and now the SVP Operations attends the entire meetings, including any in-camera discussions.⁷⁹⁵

1.3 Vice President Member Engagement

The VP Member Engagement is the primary liaison between Hockey Canada and the Members regarding the delivery of their strategic objectives, with a view to ensuring that strong, dynamic, long-term professional relationships are formed and managed successfully within all levels of hockey, and all departments within Hockey Canada.⁷⁹⁶

Eight employees report directly to the VP Member Engagement: the four regional directors for each of the West, Ontario, Quebec, and the Atlantic region; one Director, Women & Girls Hockey (“**Director Women & Girls**”); and three managers.⁷⁹⁷ We discuss below the role of the Director, Women & Girls Hockey.

Similarly to the SVP Operations, the VP Member Engagement was invited to join the Executive Leadership Team meetings because of the implications that resulted from the COVID-19 pandemic. However, we were advised that contrary to the SVP Operations, the VP Member Engagement does not attend the entire meetings.⁷⁹⁸

2. Reporting to the CFO

2.1 Executive Director of the Hockey Canada Foundation

The ED HCF is the senior officer of the Hockey Canada Foundation, in charge of overseeing the operations of the Foundation.⁷⁹⁹ Since this review does not address the role or operation of the Hockey Canada Foundation, we will not review the functions and duties associated with this position.

2.2 Vice President Business Development & Partnerships

The VP BD&P is responsible for growing and maximizing Hockey Canada's revenue through new and existing streams including sponsorships, digital assets, events and licensing, as well as to develop key relationships with Members and a thorough understanding of their sponsorship strategies and opportunities.⁸⁰⁰

⁷⁹⁵ Email from Denise Pattyn (24 October 2022).

⁷⁹⁶ Hockey Canada, Job Description, “Vice President – Member Engagement” (June 2018).

⁷⁹⁷ The organization chart shows that although there are five manager positions, two of these are currently vacant. See Hockey Canada, “Organization Chart - Member Engagement” (June 2022).

⁷⁹⁸ Email from Denise Pattyn (24 October 2022).

⁷⁹⁹ Hockey Canada, Job Description, “Executive Director, Hockey Canada Foundation” (November 2016).

⁸⁰⁰ Hockey Canada, Job Description, “Vice President, Business Development & Partnerships” (November 2016).

2.3 Director, Financial Services

The Director of Finance’s functions and duties include the supervision of Hockey Canada’s overall financial matters (including Operations, the Health and Benefit Trust, the National Equity Fund, the Pillar Funds and the Hockey Canada Foundation) and the development and control of financial policies and procedures.⁸⁰¹

3. Reporting to the General Counsel

3.1 Vice President of Sport Safety

The VP Sport Safety is a newly created position that was filled for the first time in May 2022. The position provides leadership and expertise in safeguarding best practices, and risk management considerations in the hockey ecosystem through leading and engaging the development of quality sport safety strategies that ensure organizational compliance to its safe sport policies, protocols and relevant legislation. The VP Sport Safety responds to the needs of the Members in the identification and delivery of safe sport training, policies and processes in order to foster a safe environment within which Participants and all those involved have positive hockey experiences.⁸⁰²

C. Assessment of the Structure and Constitution of Hockey Canada’s Senior Management Team

- i. *Are the roles, responsibilities and expectations of the Senior Management Team clearly articulated?*

1. General comments

Other than for the President/CEO, discussed below, we believe that the roles and responsibilities of the Senior Management team are generally well articulated. That being said, we have noted some inconsistencies in the job descriptions that were provided to us.

Some documents are not finalized (i.e. are still in draft) and/or have not been recently updated to reflect the current management structure. For example, as detailed above, Hockey Canada currently has no job description for the SVP Hockey Operations & Development; this person needs to rely on the job description of the former roles of Senior Vice President, National Teams and Vice President, Hockey Development, which have been merged together. Some job descriptions still refer to the CBDO even though this position no longer exists.

Since organizations, like Hockey Canada, continuously evolve, we recommend that the job descriptions be updated regularly, and that members of the Senior Management team be reminded of their roles and responsibilities on a regular basis. In addition, these roles and responsibilities must be properly understood at the board level to enable the Board to provide appropriate oversight of the affairs and affairs of the organization through their supervision of the CEO, as discussed in Chapter IX.

⁸⁰¹ Hockey Canada, Job Description, “Director, Financial Services” (September 2022).

⁸⁰² Hockey Canada, Job Description, “Vice President Sport Safety” (October 2021).

In addition, as was suggested to us by former senior staff, it would be appropriate to ensure that, as staff is hired, sufficient onboarding is provided to them. We understand that Hockey Canada is a complex organization that can become quite technical in some areas. For this reason, we believe that, for the staff to properly understand their roles and responsibilities, they need to acquire some broader background knowledge regarding the organization at an early point in their time with the organization.

2. President/CEO

Defining the organization's leadership requirements is an important early step in the process of selecting a new CEO.⁸⁰³ There are basic characteristics that are expected from the president of an organization, such as leadership, self-awareness, and influence. Other specific qualities and skills have to be identified based on the current and anticipated future needs of the organization. Indeed, these qualities and skills will likely vary over time.

This exercise of identifying the competencies, skills, attributes and experience sought in a new CEO is “a key board responsibility that should not be delegated to the organization's human resources staff or external consultants (although both can offer useful input)”.⁸⁰⁴ In developing their new CEO leadership profile, a board should:

- “consider the organization's mission, strategy, strategic challenges, stage of maturity, depth of talent, history, stakeholders and culture;
- explicitly address the impact of the current CEO's style and legacy;
- consider engaging staff to build morale and support for the next CEO (by interviewing employees for their opinions on the current state of the [organization] and the characteristics needed in the next CEO)”.⁸⁰⁵

In light of the above, Hockey Canada's Board should identify what is important for the organization and the skills and qualities that the President/CEO must have in order to pursue those important matters successfully. This exercise is particularly important in the current context. It is of great importance that Hockey Canada regain the trust of its stakeholders and the broader public and it needs a CEO who can successfully lead the organization's efforts to do so.

⁸⁰³ Dr. Peter Stephenson & Dr. Guy Beaudin, “20 Questions Directors of Not-for-Profit Organizations Should Ask About CEO Succession” (2016) at 6, online (pdf): *Chartered Professional Accountants of Canada* <<https://www.cpacanada.ca/en/business-and-accounting-resources/strategy-risk-and-governance/not-for-profit-governance/publications/nfp-directors-20-questions-on-ceo-succession>>.

⁸⁰⁴ Dr. Peter Stephenson & Dr. Guy Beaudin, “20 Questions Directors of Not-for-Profit Organizations Should Ask About CEO Succession” (2016) at 7, online (pdf): *Chartered Professional Accountants of Canada* <<https://www.cpacanada.ca/en/business-and-accounting-resources/strategy-risk-and-governance/not-for-profit-governance/publications/nfp-directors-20-questions-on-ceo-succession>>.

⁸⁰⁵ Dr. Peter Stephenson & Dr. Guy Beaudin, “20 Questions Directors of Not-for-Profit Organizations Should Ask About CEO Succession” (2016) at 7, online (pdf): *Chartered Professional Accountants of Canada* <<https://www.cpacanada.ca/en/business-and-accounting-resources/strategy-risk-and-governance/not-for-profit-governance/publications/nfp-directors-20-questions-on-ceo-succession>>.

Does the CEO need strong hockey experience? The three immediate past CEO's had such experience and it is no doubt one of the attributes that would be useful to Hockey Canada's CEO. However, we have observed that other NSOs, such as Tennis Canada, have CEOs who have no background in the sport but bring other important skills and qualities to the role. In our view, a significant history in the sport is a desirable but not necessary qualification for the position.

We also know that the organization's culture starts at the top. Not only does the CEO need to lead by example, they need to have the courage and determination to steer the organization in a new direction if the Board decides that is necessary.

Lastly, we believe that the duties and responsibilities of the role should be better defined and communicated in the position description and the employment contract. This will be of assistance in recruiting, in guiding the CEO as to the key responsibilities of the role and in performance evaluation by the Board.

ii. Does the senior management structure conform to Hockey Canada's By-Laws?

As detailed above, Hockey Canada's senior management structure does not conform to the By-laws, which provide that the Officers of Hockey Canada include the CEO, the COO, the CFO and the CBDO,⁸⁰⁶ but in fact the COO and CBDO positions are not currently in the management structure. Accordingly, we recommend that the By-laws be amended to remove the reference to these two positions.

We believe the By-laws, as amended, would give the CEO and the Board the flexibility to add or remove the COO and the CBDO positions (and/or any other Officer level positions) as they deem necessary. In fact, as currently drafted, the By-laws provide that the Officers of Hockey Canada include "any other individual holding an Officer position created under By-Law 40.11". By-Law 40.11 indicates that "[the] CEO, with the approval of the Board, may create additional Officer level positions to perform such duties and to have such powers as the CEO and the Board mutually agree."⁸⁰⁷

We are of the view that the need for some officer positions, such as the COO, may depend on the circumstances (such as the people already in place in the organization, or the needs of the organization at a particular point in time) and that the By-laws should not restrict the organization in this regard. For this reason, and especially considering that a new CEO has not been appointed at the time of the submission of this report, we believe that the determination of which officer positions are appropriate is a decision best made by the organization once a CEO is in place.

The By-laws should be further amended so that the term "President" is defined as "the President and Chief Executive Officer of Hockey Canada".

⁸⁰⁶ "Hockey Canada By-Laws, Regulations and History" (May 2022), s 40.1, online (pdf): *Hockey Canada* <<https://cdn.hockeycanada.ca/hockey-canada/Corporate/About/Downloads/2022-23-bylaws-e.pdf>>.

⁸⁰⁷ "Hockey Canada By-Laws, Regulations and History" (May 2022), ss 40.1 and 40.11, online (pdf): *Hockey Canada* <<https://cdn.hockeycanada.ca/hockey-canada/Corporate/About/Downloads/2022-23-bylaws-e.pdf>>.

- iii. *Is there good alignment between the objects and strategic plan of Hockey Canada and the leadership resources devoted to their pursuit, as well as between the major challenges facing the organization and the leadership resources being devoted to addressing them?*

As previously mentioned in Chapter IV, Hockey Canada’s main operations and business lines are composed of four categories: regulating amateur hockey in Canada, growing and developing the game, representing Canada on the world stage, and business development. Hockey Canada’s mission statement is to “lead, develop and promote positive hockey experiences” and its vision is to be “world sport leaders.”⁸⁰⁸ Hockey Canada’s values include “making hockey more than scoring goals and winning games.”⁸⁰⁹

We heard several times in the course of our review that Hockey Canada’s senior management team would benefit from additional positions, including a Vice President Women & Girls, and a Vice President Hockey Development. These suggestions are supported by Hockey Canada’s 2022-26 Strategic Plan. It sets out initiatives relating to the implementation of a women and girls hockey plan, support of local hockey in a variety of ways, and expanding to new audiences.⁸¹⁰ Each of these initiatives would benefit from enhanced leadership at the senior level of Hockey Canada. We support the addition of these Vice President roles; each would assist Hockey Canada in achieving its mission to “lead, develop and promote positive hockey experiences”.⁸¹¹ These two senior management positions would work hand in hand given that Hockey Canada’s goal is to connect grassroots to the national team, inspire the young generation and make them feel like they are part of something bigger.⁸¹²

The individuals in these VP positions will require assistance to fulfill their mandates. However, we have not been asked to comment on staffing below the senior management team and we have therefore focused our recommendations on that level.

1. Vice President Women & Girls

Women’s hockey is a critical part of the Hockey Canada mandate.

As noted in Chapter VII, the Female Hockey Policy Committee (“**FHP Committee**”), which was established in 2019, is responsible, among other things, for monitoring the needs of female hockey players. Our discussions with members of the FHP Committee emphasized that the committee looks at females in hockey, not just female-only hockey but also females in mixed hockey. One of its key themes is that representation matters, in all roles and in all levels, and that Hockey Canada should lead in that regard. One of the goals of the FHP Committee is to remove barriers to a

⁸⁰⁸ “Mandate & Mission – Who is Hockey Canada?” online: *Hockey Canada* <www.hockeycanada.ca/en-ca/corporate/about/mandate-mission>.

⁸⁰⁹ “Hockey Canada 2020-21 Annual Report” at 8, online (pdf): *Hockey Canada* <<https://cdn.hockeycanada.ca/hockey-canada/Corporate/About/Downloads/2020-21-annual-report-e.pdf>>.

⁸¹⁰ Hockey Canada, “Strategic Plan 2022-2026” at 21–22.

⁸¹¹ “Mandate & Mission – Who is Hockey Canada?” online: *Hockey Canada* <www.hockeycanada.ca/en-ca/corporate/about/mandate-mission>.

⁸¹² Interview of Hockey Canada Senior Staff (Pat McLaughlin, Darren Cossar, Dana Gladstone, Natasha Johnston, Scott Salmond, Sean Kelley) (7 September 2022).

positive experience for females in the sport. This includes looking at leadership both at Hockey Canada and across the Members. While the FHP Committee has worked diligently, as discussed in Chapter VII, there are limitations on what it can achieve as a volunteer committee.

At about the same time that Hockey Canada created the FHP Committee, it also created the position of Director Women & Girls, described above. This was partly in response to submissions made by stakeholders as well as Hockey Canada's internal analysis.⁸¹³ The Director Women & Girls is responsible for leading the delivery of strategic recruitment, retention objectives, continued sustainability and growth of women and girls hockey programs nationally. This position leads a collaborative approach within the hockey ecosystem for the advancement of women in key roles (such as players, coaches, officials and leaders). The Director Women & Girls must work closely with others at Hockey Canada, its Members and external stakeholders to assist in understanding the existing environment and barriers to participation and to make recommendations to create a more inclusive space. In addition, the Director is responsible for incorporating recommendations from the Female Hockey Policy Committee and the Female CDM (Canadian Development Model) Task Team.⁸¹⁴

We understand from our interviews that the intent was to elevate the Director Women & Girls to a senior leadership role when the timing was right.⁸¹⁵ Based on our conversations with stakeholders, including Hockey Canada staff and former staff, FHP Committee members, Directors and other stakeholders, that time has arrived.

Having a dedicated individual at the senior leadership table would enhance opportunities and future growth. It would also send a strong message to all Participants about the importance of female hockey. The Director Women & Girls was the first step towards this. We note that at least two Comparator Associations, namely Tennis Canada and Basketball Canada, have a person within their senior management who is solely responsible for women's sport. This step also aligns with the 2022-26 Strategic Plan that includes suggestions to increase the visibility and growth of women and girls hockey.

We thus recommend that the Director Women & Girls position be elevated to a Vice President position, as part of the Senior Leadership Team, reporting to the President/CEO.

2. Vice President Hockey Development

As indicated in Chapter IV, we heard in several interviews that Hockey Canada needs to focus on both high performance and grassroots hockey. Many stakeholders noted a perception that the grassroots element did not receive sufficient attention.

Historically, Hockey Canada separated the VP role related to hockey development, with a focus on grassroots, and the VP role related to hockey operations. As noted above, these roles were combined in 2020. The SVP Hockey Operations & Development is currently responsible for both

⁸¹³ Interview of Female Hockey Policy Committee (Stephanie White, Chair, and Barry Reynard, Board Liaison) (17 October 2022).

⁸¹⁴ Job Description, Hockey Canada Director, Women & Girls Hockey (February 2022).

⁸¹⁵ Interview of Tom Renney, former CEO of Hockey Canada (20 October 2022).

national teams (and therefore on ensuring Canada's representation on the world stage) and for hockey development. At present, the functions that would be performed by a new VP Hockey Development position are spread between the departments of Member Engagement and Hockey Operations. These arrangements contribute to a lack of consistent focus on grassroots issues. We believe that creating a position dedicated to the development of hockey at the grassroots level within the senior management team would be an important step to correct this. This position would bolster the management resources directed to a core object of Hockey Canada: "growing and developing the game." The 2022-26 Strategic Plan emphasizes the need to be customer focused and to support local hockey.

The new VP Hockey Development would need to continue working in close partnership with the Member Engagement department, given that the sharing of information and the implementation of programs to the grassroots level is done via the Members.

We note that almost all the Comparator Associations have someone within their senior management whose main mandate is concerned with players and program development, and/or grassroots.

D. Conclusion

Is the Senior Management Team properly structured and constituted to oversee the operations of Hockey Canada, from the grassroots level to the high-performance level?

We believe that some changes are needed. We recommend that:

- The job descriptions be regularly updated to reflect the current management structure, and that each member of the Senior Leadership team be reminded of their roles and responsibilities on a regular basis;
- As it recruits the CEO, the Board identify the most important needs of the organization in order to engage a President/CEO who can successfully pursue those matters;
- The duties and responsibilities associated with the role of President/CEO be better defined;
- The By-laws be amended to remove the reference to the COO and CBDO positions, and to modify the definition of President;
- Hockey Canada replace the Director Women & Girls position with a senior leadership position which would be responsible for women's hockey (VP Women & Girls); and
- Hockey Canada divide the SVP Hockey Operations & Development position in order to have one position responsible for hockey development (VP Hockey Development) and one person responsible for national teams (VP Hockey Operations).

XI. GOVERNANCE TO IMPROVE CONFIDENCE

The fifth item in the Terms of Reference calls for other recommendations for actions that the Board of Directors and senior management could take in the area of governance to improve the confidence Canadians have in Hockey Canada. This invites consideration of the relationship between the organization's governance and the confidence of its stakeholders. That, in turn, raises several questions:

- a. What is "confidence? And how does it relate to sound governance?
- b. What is the current level of confidence in Hockey Canada?
- c. What actions in relation to governance would improve the level of confidence while ensuring that there is in place continuous, effective governance?

We will address these questions in turn.

A. What is "confidence" and how does it relate to sound governance?

Confidence and good governance are directly related; both are fundamental to the success of the organization. Stakeholder confidence – that is belief in the powers, trustworthiness and reliability of the organization – is critical for the organization's ability to pursue its vision and to fulfill its purposes. This is particularly the case with respect to not-for-profit corporations such as Hockey Canada that have important public interest mandates. Good governance establishes and strengthens stakeholder confidence. That confidence helps to ensure that the organization fulfils its public interest mandate.

The importance of confidence is reflected in the purposes of the corporation's legislation and in key principles of good governance. The CNCA provides a framework for accountable and transparent governance. These elements are especially important for corporations in the not-for-profit sector because they must establish and maintain a high level of public confidence in order to succeed. It follows that accountability and transparency are not just important within the organization's internal governance; they are also key elements of the organization's relationship with stakeholders and the broader public. They include responsibility to understand and be effective in meeting the community's needs – the needs that the organization exists to serve.

The directors of a not-for-profit corporation therefore have responsibilities that transcend providing oversight of the organization's day-to-day operations. They also must ensure that the organization has effective relationships with its stakeholders to secure their support for its objectives. Boards need to consider accountability, transparency and engagement because these provide a foundation for building and maintaining healthy and productive relationships with stakeholders. The ultimate end of all of this is to ensure that the organization is, and is perceived to be, fulfilling its societal purposes in the public interest.

Given the loud and repeated calls for dramatic change of culture in hockey, these qualities of accountability, transparency and engagement and these healthy and productive relationships with stakeholders are especially important for Hockey Canada. As Minister Pascale St-Onge has put it,

there is a systemic problem of sexual violence and toxic masculinity in Canada’s hockey culture.⁸¹⁶ As the national governing body for hockey in Canada, Hockey Canada is rightly expected to play an important role in helping to change this culture. It must ensure that it has the knowledge, skills and resources to do so. It will also have to demonstrate the sort of accountability and transparency that make for healthy and productive relationships with stakeholders.⁸¹⁷ Those relationships must be based on confidence in the capacity of Hockey Canada to lead this change.

Confidence is concerned with both reality and reasonable perception. In this respect, there is a useful parallel between confidence and impartiality. Impartiality, like confidence, is not only concerned with an actual state of mind but also with the perception of a reasonable and properly informed person. Decision-makers, for example, must not only be, in fact, impartial. They must also be *perceived* to be impartial by reasonable and informed people. Similarly, confidence must be justified in fact, but also in perception.

B. What is the current level of confidence in Hockey Canada?

Confidence is an intangible quality that is constantly in flux. As a result, assessing the extent to which people have confidence in organizations or institutions is notoriously difficult. However, there can be no serious debate that the level of confidence in Hockey Canada on the part of government, sponsors, some Members and the broader public has sunk to dangerously low levels. The leadership of the organization has lost the confidence of important stakeholders. Elected officials, including the Prime Minister, the Minister of Sport and some parliamentarians along with some Members, sponsors and many other parties, have called for a wholesale change of leadership.⁸¹⁸ The number, profile and intensity of these calls are such that it is unrealistic to think that they are just a passing media frenzy. To ensure effective and continuous governance, these calls must be answered.

Whether the concerns with the current leadership are objectively justified is not the point and it is not part of my mandate to address that issue. There is no doubt that Hockey Canada has been served by directors who are passionate about hockey, deeply committed to the organization’s mission, vision and values and who donate large amounts of time and energy – often unreasonably

⁸¹⁶ Ashley Burke, “Hockey culture suffers from a 'systemic problem' of sexual violence, minister says” (29 September 2022): online: *CBC* <<https://www.cbc.ca/news/politics/hockey-culture-systemic-problem-minister-of-sport-says-1.6601431>>.

⁸¹⁷ See Chapter VI of this Report.

⁸¹⁸ Graeme Bruce, “Tracking the fallout of the Hockey Canada scandal” (8 October 2022), online: *CBC* <<https://www.cbc.ca/news/canada/hockey-canada-leadership-change-pressure-1.6608506>>; “Canadian Tire ends Hockey Canada partnership; PM Justin Trudeau suggests starting a new federation” (6 October 2022), online: *The Athletic* <<https://theathletic.com/3664547/2022/10/06/canadian-tire-hockey-canada-sponsorship/>>; “Which corporate sponsors have paused or pulled their support for Hockey Canada?” (12 October 2022), online: *CTV News* <<https://www.ctvnews.ca/sports/which-corporate-sponsors-have-paused-or-pulled-their-support-for-hockey-canada-1.6098822>>; “Nike suspending sponsorship relationship with Hockey Canada” (7 October 2022), online: *Sportsnet* <<https://www.sportsnet.ca/hockey/article/nike-suspending-sponsorship-relationship-with-hockey-canada/>>; “A list of the Hockey Canada sponsors pulling their support” (11 October 2022), online: *The Globe and Mail* <<https://www.theglobeandmail.com/canada/article-hockey-canada-sponsors/>>; Bianca Bharti, “Canadian Tire permanently cuts ties with Hockey Canada over sexual assault allegations,” (6 October 2022), online: *Financial Post* <<https://financialpost.com/news/retail-marketing/canadian-tire-cuts-ties-hockey-canada>>.

large amounts – to the organization’s governance. However, confidence is not only a matter of objective fact, but of reasonable perception and there is an overwhelming perception on the part of important stakeholders that the leadership of Hockey Canada does not deserve their confidence.

C. What actions should be taken to regain confidence?

i. Current Directors of Board not to seek re-election

It is easy to call for significant change, but much harder to bring it about. It is harder still to do so in an orderly and thoughtful manner that allows the organization to function while this significant change occurs. As we see it, Hockey Canada needs some significant changes to its Board composition and Board recruitment processes as outlined earlier in this report. These changes, however, will take time because they require careful deliberation by the Members and the Board and a number of technical steps before they could be implemented.

For that reason, on October 10, 2022, we issued a further interim report, in the form of a memorandum to the Board of Directors of Hockey Canada recommending the following:

It is not realistic to think that these sorts of changes can be properly considered and put into effect in the next few weeks. The need for change, however, is urgent. For that reason, I recommend that Hockey Canada in the current election cycle and with the assistance of the nominating committee put in place a Board and Board Chair who agree to serve for only one year. The idea is that those new directors will serve as a transition Board. They will have four main tasks to accomplish during their year in office. First, they should respond, in conjunction with the Members, to the suite of governance changes that I will be recommending in my final report. Second, they should address the many public concerns about the senior management team of the organization. Third, they should begin to repair the fractured relationships with stakeholders. Finally, they should ensure operational stability. While I acknowledge the dedication and tireless work of the current members of the Board, my view is that the best interests of Hockey Canada would be served if all directors retired from office when their current terms expire at the December 17th annual meeting of Members and not put their name forward for re-election. I am not recommending that all of the directors immediately retire for the following reasons. The corporation would not be able to act without a board. Their immediate resignation would also trigger the board vacancy provisions of the By-laws and the CNCA, which provide for a process that would nonetheless take time to implement; in other words, that would not offer a quicker way to get new individuals on the board of directors. In addition, the next director recruitment and election cycle is well underway, allowing the Nominating Committee to immediately identify suitable candidates for nomination at the December 17th election.

The new directors and the Members should as soon as possible revise the Board structure and nominations process in line with my recommendations so that the new structure is in place for the 2023 election year. As part of this process, the

Board should retain a top-notch board-recruiting firm. That firm should assist Hockey Canada with revising the skills matrix for directors and the Chair of the Board, revising the constitution and mode of appointment of the Nominating Committee and assist with populating both that committee and the Board. All of this should be in place for elections for the full Board and the Chair of the Board in 2023. As a first step towards rebuilding confidence in Hockey Canada, it will be critical for the transition Board to conduct the recruitment process for new Directors in a transparent and independent manner.

On October 11, 2022, the Hockey Canada Board of Directors announced that none of the current Directors would seek re-election allowing for an entirely new board of directors to be elected at the upcoming election on December 17, 2022.

Following a meeting of the Members, on October 11, 2022, Hockey Canada asked for clarification with respect to the following items:

1. Should the Nominating Committee be presenting the Members with a slate of candidates equal to the number of available positions on the Board, or should they be providing a list that exceeds the number of available positions, so that the Members may choose which shortlisted candidates to elect?
2. Does your recommendation that the By-Laws provide that no more than 60% of the Directors are of the same gender fall within the scope of the “process” changes referenced in your report that should be implemented immediately, or is it one that should wait to be considered by the Members following receipt of your Final Report?

We advised as follows:

1. This is something for the Members to address, but we do have some views. There would be value in having the Nominating Committee select and put forward a recommended slate of only 9 candidates that the Members would then be asked to vote on or approve as part of the election process. We will be recommending that the organization use the services of a board recruiting firm for the 2023 election and onward (and we would recommend that one be retained to assist this cycle if there is time), working, of course, with the matrix that the members would support. Then the nominating committee, working with such a firm, should be able to come up with high-quality candidates. Our concern is that, especially now, many of the sorts of directors the organization needs might not agree to serve unless they know who else will be on the Board. Similarly, they might not want to take the risk of not getting elected if the Members get to select the directors from a list of candidates that exceeds the number of vacancies on the Board. So we would like to see the Members get to the point that they have sufficient confidence in the nomination process that a slate of high-quality candidates recommended by the Nominating Committee could be approved.

We think that this approach however would need to be carried out thoughtfully and in consultation with the Members. The Nominating Committee should give some thought to honing the list of skills, competencies and qualities that are currently needed on the Board and sharing it with the Members to get their input on it; that list would be more comprehensive than the one that currently appears in the call for nominations. We feel strongly that the Members ought to be engaged and consulted as part of the current nominations process not only because there has been a call for greater engagement and transparency, but also because of the need for the Members and the broader public to begin rebuilding their trust in the organization and the director recruitment and nominations process.

2. We agree that having not more than 60% of one gender on the board was part of the recommendation that were meant for the longer term. That being said, given Hockey Canada is starting with a clean slate, we expect that enhanced diversity in all its aspects can be part of the Nominating Committee review process.

On October 15, 2022, at a special meeting, the Members adopted By-Law amendments giving the Nominating Committee the authority to evaluate all candidates proposed for election and to create a short list of nominees based on skills, competencies and current needs of the Board.⁸¹⁹ They also adopted the following amendments to the By-Law:

27.2 All nominations for the position of elected Director must be submitted to the Chair of the Nominating Committee, at least sixty (60) days prior to the commencement of the Annual Meeting, and shall include a resume of the candidate's credentials and a written statement by the candidate expressing a willingness to serve as a Director. The Nominating Committee shall forward the materials of all shortlisted candidates to the Members at least thirty (30) days prior to the commencement of the Annual Meeting. For the 2022 elections only, the dates described above shall be reduced to thirty-seven (37) days and nineteen (19) days respectively.

30.1 Elected Directors shall serve a two (2) year term unless otherwise specified in the By-Laws. The term shall commence at the end of the Annual Meeting at which they were elected and terminates at the end of the Annual Meeting occurring approximately two (2) consecutive years thereafter. Directors elected at the 2022 Annual Meeting shall serve a one (1) year term, terminating at the end of the Annual Meeting occurring approximately one year thereafter.

31.1 The Members shall elect the Chair of the Board for a two (2) year term at each Annual Meeting where elections occur using the procedure generally described in By-Law 28. For the 2022 elections only, the Chair shall serve a one (1) year term, terminating at the end of the Annual Meeting occurring approximately one year thereafter.

⁸¹⁹ Hockey Canada, "Approved By-Law Changes (October 2022 Special Meeting)".

31.2 Nominations for the position of Board Chair must be submitted to the Nominating Committee who will create a short list of candidates to be placed on the election ballot for the Chair position.

31.3 The Nominating Committee shall send the shortlist of candidates for the Chair of the Board position, along with any supporting documentation, to the Members at least thirty (30) Days prior to the commencement of the Annual Meeting. For the 2022 elections only, such short list shall be provided to the Members at least nineteen (19) days prior to the commencement of the Annual Meeting.

31.5 Following the election of the Chair of the Board at the Annual Meeting, elections for the remaining vacant positions on the Board shall proceed, using the procedure generally described in By-Law 28. Candidates who ran for the Board Chair position unsuccessfully, but who were also shortlisted by the Nominating Committee under By-Law 27, shall be included on the ballot for those vacant positions.

We welcome these amendments. We note that the one-year term provision for the current election cycle does not preclude the Chair and Directors elected this year from being nominated and elected in the next electoral cycle, provided they meet the needs and selection criteria identified by the Nominating Committee for the 2023 election cycle.

ii. Change to voting structure

During our review, another change that was called for by some Members and stakeholders related to the voting structure for members.

Hockey Canada has had a system of weighted voting for Members for some time, whereby Hockey Québec and the OHF get more votes than the other Members. We understand that, historically, this was meant to reflect the number of Participants registered with each Member. Hockey Canada's 2020-21 Annual Report⁸²⁰ sets out the following information regarding player⁸²¹ numbers nationally; the percentage numbers were calculated using that information:

Members	Players Number	Players % of Total	Current Votes⁸²²
Hockey North	3,474	0.90	2
Hockey Northwestern Ontario	4,418	1.08	2

⁸²⁰ "Hockey Canada 2020-21 Annual Report" at 25, online (pdf): *Hockey Canada* <<https://cdn.hockeycanada.ca/hockey-canada/Corporate/About/Downloads/2020-21-annual-report-e.pdf>>.

⁸²¹ An analysis on Participant numbers per Member could also be done.

⁸²² Two votes represents approximately 6% of the total votes; Five votes represents approximately 16% of the total votes.

Members	Players Number	Players % of Total	Current Votes⁸²²
Hockey PEI	5,557	1.45	2
Hockey Newfoundland and Labrador	10,052	2.62	2
Hockey New Brunswick	14,418	3.75	2
Hockey Nova Scotia	15,751	4.10	2
Hockey Eastern Ontario	19,285	5.02	2
Hockey Manitoba	20,910	5.44	2
Hockey Saskatchewan	27,134	7.06	2
BC Hockey	39,056	10.17	2
Hockey Québec	39,265	10.22	5
Hockey Alberta	62,778	16.34	2
Ontario Hockey Federation	122,383	31.85	5
Total	384,211	[100%]	32

Currently, assuming all 32 votes are cast at a meeting, a resolution requiring a simple majority to pass would necessitate at least 17 votes.⁸²³

During the period 2011-2012, Hockey Canada took several steps to bring the corporation into compliance with the new requirements of the CNCA. As part of that process, Hockey Canada's Governance Committee examined the voting rights of Members. In November 2012, the Committee asked the Board, which at the time included the 13 Member Presidents, to complete a survey on a variety of governance reform topics, including voting rights. The Board was presented with options that included equal voting, weighted voting (status quo), and weighted voting based on registration.⁸²⁴ The survey results were split almost equally between equal voting and the status quo weighted voting system. Following further discussion with the Board at the 2012 Semi-Annual Meeting,⁸²⁵ the matter was brought forward for a final decision at a Board meeting in April 2013,

⁸²³ Under the CNCA, an ordinary resolution means a resolution passed by a majority of the votes cast on that resolution. If not all of the Members are present at a meeting, passing an ordinary resolution would require a majority of the votes cast by the Members actually at the meeting.

⁸²⁴ The possibility of making all five national leagues members and giving them each one vote was also considered: Hockey Canada, "Governance Committee PowerPoint" (September 2012).

⁸²⁵ Hockey Canada, "Governance Committee Report and Recommendations" (November 2012); "Hockey Canada Governance Committee Report and Recommendations on Governance Structure" (16 November 2022).

at which time the Board decided to maintain the weighted voting model (i.e. five votes for each of Hockey Québec and OHF and two votes for the other Members).⁸²⁶

That voting structure was and continues to be reflected in the Articles of Continuance, which provide: “Quebec and Ontario Hockey Federation member Branches are entitled to five votes each at meetings of the Members and the other member Branches are entitled to two votes each at such meetings.”⁸²⁷ Hockey Canada’s By-laws provide that Hockey Québec and the OHF are each entitled to cast five votes “on any matter” on which Members are entitled to vote.⁸²⁸

Some Members have observed that by virtue of having three Members from the province of Ontario, including the OHF, Ontario potentially gets nine votes. As mentioned above, Hockey Quebec has five votes and each of the other Members get two votes. That being said, we were advised during our interviews that the three Ontario Members did not tend to vote as a block.

As mentioned above, the total number of votes available in the current system is 32. To take a concrete example of the implications of this system, we note that if Hockey Québec and the three Members from Ontario vote the same way, they can, collectively, exercise a total of 14 votes, which is only three votes shy of a majority.⁸²⁹ Only two additional Members would need to vote with that group (for a total of six members) to get a simple majority. However, if, by way of further example, the three Members from Ontario and Hockey Québec did not vote in favour of a matter, in order to get a simple majority, all of the remaining Members (nine) would need to vote in favour of the resolution. Similarly, if, for example, the OHF and Hockey Québec did not vote in favour of a matter, in order to get a simple majority, nine of the remaining Members would need to vote in favour of the resolution. This results, at least theoretically, in significant control resting with just two provinces.

By contrast, if each Member were entitled to the same number of votes, again assuming all Members voted at a meeting, only seven Members would need to vote in favour of a resolution for it to pass by simple majority.

During our interviews, some Members raised concerns about the impact of weighted voting, particularly as it relates to the election of Directors. They noted the significant influence that the OHF and Hockey Québec can exercise and that the current system may have impeded the Board leadership changes required for the organization.

The CNCA provides that “unless the articles otherwise provide, each member is entitled to one vote at a meeting of members.”⁸³⁰ While weighted voting is allowed if the articles so provide, the default rule under the CNCA suggests that weighted voting is intended to be the exception to the rule.

⁸²⁶ Hockey Canada, April Board of Directors’ Meeting Summary (held on 7 April 2013) at 2.

⁸²⁷ Industry Canada, “Hockey Canada Association Articles of Continuance” (10 June 2014).

⁸²⁸ “Hockey Canada By-Laws, Regulations and History” (May 2022), s 24.2, online (pdf): *Hockey Canada* <<https://cdn.hockeycanada.ca/hockey-canada/Corporate/About/Downloads/2022-23-bylaws-e.pdf>>.

⁸²⁹ The examples assume all of the Members are voting at the relevant meeting.

⁸³⁰ *Canada Not-for-profit Corporations Act*, SC 2009, c 23, s. 154(5).

There are varying views on what is the best practice with respect to member voting, with some advocating for weighted voting and others for equal voting, and some a combination of both. Indeed, this is evidenced by the Comparator Associations, which have a variety of voting structures. Curling Canada has a one member one vote approach. Athletics Canada has a weighted voting system based on the population of each province/territory and the number of individuals registered with each member, except for the purpose of electing directors, in which case each member is entitled to only one vote. Canada Basketball, which has several classes of members, has weighted voting for member associations based on the individuals registered within each association. Tennis Canada also has a weighted voting system based on the percentage that the population of the member is of the total population of Canada. Canada Soccer has a weighted voting system as well with some member associations (such as Ontario and Quebec) having more votes than others.

As noted by some authors, the concern for NSOs is that their affairs should not be controlled by just one or two provincial bodies. Virtually all sports have varying capacities and sizes across provinces and territories. Depending on the sport, Ontario, Quebec, British Columbia and sometimes Alberta often have the greatest number of participants. Care needs to be taken to ensure that they do not have the capacity through the voting structure to dominate the business of the national body.⁸³¹

The decision as to whether all members have the same number of votes is essentially a political or philosophical one: is the voting model driven by proportionality tied to fees, players or participants, or is it driven by a focus on the national organization and its mission? The answer will depend on the organization and its particular circumstances. At the same time, in an organization such as Hockey Canada, one wants to structure membership voting so that all groups have a meaningful voice in the operation of the umbrella organization.⁸³²

We believe that, given the recent events at Hockey Canada, shifting to a model where each Member gets the same number of votes, at least for the election of the Directors, would assist in rebuilding the confidence of the public and stakeholders in Hockey Canada for the following reasons.

First, a system where each member of an organization has the same number of votes ensures decisions are made with a view to the members collectively, and thus all participants, not just the largest members. This is particularly important with respect to the election of the Hockey Canada Directors, which as discussed above requires a significant overhaul in order to ensure that Hockey Canada is able to effect the change it needs. By contrast, weighted voting for electing directors creates incentives for large Members to form coalitions with a view to controlling the board. When such coalitions are successful, there is a real risk that the individuals who are elected to the Board will make decisions that favour the Members who formed part of that coalition rather than the best interests of the corporation. In our view, a voting structure that might have the practical effect of

⁸³¹ Rachel Corbett & Kevin Lawrie, “Snapshot of Voting Structures of National Sport Organizations” (9 May 2012), online: *Sport Law* <<https://sportlaw.ca/snapshot-of-voting-structures-of-national-sport-organizations/>>.

⁸³² Burke-Robertson, Carter & Man, *Corporate and Practice Manual for Charities and Not-for-Profit Corporations*, (Toronto: Thomson Reuters Canada, 2022) at § 7:11 (Proview).

fettering the duty of the directors to act in the best interests of a corporation as a whole should be discouraged.

Second, allowing larger Members to have more control over board elections undermines membership consensus and creates a potential barrier to developing new solutions to problems.

Third, each Member would have an equal voice and share equally with the other Members responsibility for the quality and diversity of the Directors that they elected. Each Director has the same fiduciary duty to do what is in the best interests of the corporation as a whole. Decision-making must be made through that lens, and not with a view to what is best for a specific member or “constituency.” Where all Members have the same voting rights for the election of Directors, there is less of a risk that an individual Director will feel beholden to a specific Member or group of Members. This is further assisted by implementing the nomination process discussed earlier in the report.

Finally, as mentioned above, it is important to ensure that there is a perception of fairness and consistency in order to rebuild confidence in Hockey Canada. The current system of weighted voting, like the current nominating process, has not produced the sort of Board that Hockey Canada needs. In addition, as is demonstrated in the chart above, the current voting structure does not appear to be based on a factor such as number of players. We believe that shifting to a system where each Member has the same number of votes, for the election of the Directors, coupled with the changes to the nominating process that we have recommended, will provide the most likely path to meaningful change. This will require the approval by both the Board and the Members at duly constituted meetings, and the filing of Articles of Amendment and revisions to the By-laws. We therefore recommend that the Board recommend to the Members this amendment to the voting structure and then make necessary changes to the governing documents if the amendments are approved.

iii. Risk management

Another key to rebuilding confidence in Hockey Canada as the national regulator of amateur hockey relates to risk management. Every venture, including not-for-profit corporations, comes with risks. Some risks materialize, and others do not: that is inevitable. Vital for any organization faced with risks is a thorough understanding of what constitutes risk, where it comes from, and perhaps most importantly, what can be done to mitigate the potential fallout of the risk.

Risk management is a core function of the Board of Directors. Normally, the Board will focus on the risk to the organization, that is, the risk arising directly from the activities of the organization itself. Yet, we consider that this focus alone is inadequate for an organization such as Hockey Canada, which is the umbrella organization in charge of Canadian amateur hockey. Beyond concerning itself with the risks arising from its own activities, Hockey Canada should support and enhance the risk management, prevention and education, of all of the organizations and Participants under its umbrella. Just as it plays an important role in ensuring that the local organizations and Participants have insurance coverage, Hockey Canada should also help ensure that the organizations have robust risk management practices in place and proper programs to educate Participants and prevent the risk, particularly in relation to the sorts of behaviours permeating the current public discourse about hockey.

We believe that this role should fall on both the Board to spearhead with the assistance of the Risk Management Committee and the Senior Vice President Legal/General Counsel. Acquiring an expanded understanding of risk management and bringing significant enhancements to Hockey Canada Board of Directors risk management capacity and orientation represents another step in the path to restoring confidence in the organization as a national sport governing body. In Chapter VII, we discussed the important role of the Risk Management Committee. The Committee ought to consider risk management more broadly, not only as it relates to the organization, but the sport more generally and how it can work with Members and Participants to make it a priority, which it will regularly report to the Board about. In Chapter X, we discussed how the Senior Vice President Legal/General Counsel is responsible for identifying and managing risks. We recommend that Hockey Canada consider expanding the duties of the Senior Vice President Legal/General Counsel to include those of a Chief Risk Officer, who would also be responsible for identifying, considering and assisting in mitigating risks the organization, and the sport generally, are facing.

APPENDIX “A” - LIST OF INDIVIDUALS/ORGANIZATIONS INTERVIEWED⁸³³

Marianne Bolhuis, General Counsel & Corporate Secretary, Canadian Olympic Committee
 Michael Brind’Amour, Former Chair and Director, Hockey Canada
 Mike Bruni, Chair of Hockey Canada Nominating Committee; Former Chair (2011-2013), Hockey Canada
 Jared Butler, Vice-President and Chief Medical Officer, Hockey Newfoundland and Labrador
 Brian Cairo, Chief Financial Officer, Hockey Canada
 Sam Ciccolini, Advisor to Risk Management Committee, Hockey Canada
 Earl Cochrane, General Secretary, Canada Soccer
 Darren Cossar, Vice President Member Engagement, Hockey Canada
 Geoff Courtnall, Former NHL Player; Head Coach, Victoria Grizzlies, BCHL; Head Coach, Victoria Vikes, BCIHL
 Gilles de Blois, Vice-President, Hockey Québec
 Paul Delparte, Former Chief Financial Officer, Hockey Canada
 Michael Downey, President & Chief Executive Officer, Tennis Canada
 Joe Drago, Former Chair (2014-2018), Hockey Canada
 Terry Engen, Director, Hockey Canada
 Tony Foresi, Former President/Chair, Ontario Hockey Federation
 Claude Fortin, President, Hockey Québec
 Graham Fraser, Chairman of the Board, British Columbia Hockey League
 Normand Gascon, Vice-President, Hockey Québec
 Mathieu Gentès, Chief Executive Officer, Athletics Canada
 Karen Gibb, Senior Vice President, Alliance Hockey
 Jeannot Gilbert, Vice-President and Secretary, Hockey Québec
 Benoit Girardin, Lawyer, Owner, LBB Sport
 Dana Gladstone, Vice President Partnership Strategy and Licensing, Hockey Canada
 Amanda Harbus, Senior Manager Finance Department, Hockey Canada
 Chris Hebb, Commissioner & Chief Executive Officer, British Columbia Hockey League
 Katherine Henderson, Chief Executive Officer, Canada Curling

⁸³³ This list is in alphabetical order. It does not include individuals who have requested their identity remain confidential. Some of these individuals were interviewed in groups rather than individually, and some more than once. Several of these individuals provided us with additional information and documents, which were considered in the course of the review. Additionally, we also received and considered submissions from individuals who we did not interview.

Victor Henriquez, Co-opted Board Member, Hockey Québec
Marin Hickox, Director, Women & Girls Hockey, Hockey Canada
Nic Jansen, Executive Director, Hockey New Brunswick
Natasha Johnston, Vice-President of Sport Safety, Hockey Canada
John Kastner, Chair of the Board, Ontario Hockey Federation
Sean Kelly, General Counsel, Hockey Canada
Arnold Kelly, President, Hockey Newfoundland and Labrador
Adam Klevinas, Lawyer, Sportlex
Christian Labbé, Vice-President, Hockey Québec
Kirk Lamb, Director, Hockey Canada
Craig Lane, President, Ontario Minor Hockey Association
Daniel Lanteigne, BNP Philanthropic Performance
Dave Leger, Executive Director, Ontario Hockey Association
Justin Lemay, Vice-President and Treasurer, Hockey Québec
Barry Lorenzetti, President and Chief Executive Officer and Founder, BFL Canada
Helen Manning, Chair, Athletics Canada
Jason Marchand, Executive Director, Northern Ontario Hockey Association
Tony Martindale, Executive Director, Alliance Hockey
Glen McCurdie, Former Vice President of Insurance and Risk Management, Hockey Canada
Phil McKee, Executive Director, Ontario Hockey Federation
Richard McLaren, Richard H. McLaren, Innovative Dispute Resolution Ltd.
Pat McLaughlin, Vice-President Strategy, Operations and Brand, Hockey Canada
Marc Mercier, Chair, Ontario Hockey Association
Will Metske, Operations Director, Ontario Hockey Federation
JD Miller, President and Co-Founder, B2ten
Isabelle Mondou, Deputy Minister of Canadian Heritage, Sport Canada
Eric Myles, Chief Sport Officer, Canadian Olympic Committee
John Neville, Director, Hockey Canada
Pat Nicholls, Director of Operations, Ontario Women's Hockey Association
Bob Nicholson, Former President and Chief Executive Officer (1998-2014), Hockey Canada
Scott Oakman, Executive Director and Chief Operating Officer, Greater Toronto Hockey League
Geneviève Paquette, Co-opted Member of the Board of Directors, Hockey Québec

Todd Pye, President, Hockey New Brunswick
Alain Régnier, Vice-President, Hockey Québec
Tom Renney, Former Chief Executive Officer (2014-2022), Hockey Canada
Barry Reynard, Director, Hockey Canada
Fran Rider, President and Chief Executive Officer, Ontario Women's Hockey Association
Michel Ruest, Senior Director, Programs, Sport Canada
Will Russell, Lawyer, Sport Law
Bobby Sahni, Director, Hockey Canada
Emmanuelle Sajous, Assistant Deputy Minister, Sport, Major Events and Commemorations, Sport Canada
Scott Salmond, Senior Vice President of Hockey Operations and National Teams, Hockey Canada
Stephen J. Shamie, Lawyer at Hicks Morley, Lawyer for Tennis Canada
Sue Shepherdson, President, Northern Ontario Hockey Association
David Shoemaker, Chief Executive Officer, Canadian Olympic Committee
Andrea Skinner, Former Interim Chair and Director, Hockey Canada
Scott Smith, President & Chief Executive Officer, Hockey Canada
Eric Sorensen, Retired Executive, and Governance Consultant
Tim Sothern, Partner, BDO
Jeff Stewart, Technical Director, Ontario Hockey Federation
Ian Taylor, Executive Director, Ontario Minor Hockey Association
Jocelyn Thibault, Executive Director, Hockey Québec
Craig Tulk, Executive Director, Hockey Newfoundland and Labrador
Mary Anne Veroba, Director, Hockey Canada
Vicki Walker, Director General, Sport Canada
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A COMMISSIONER FOR TAKING AFFIDAVITS, ETC.

CAITLIN LEACH

Séances dans la LHJMQ

Le rêve brisé de Carl Latulippe

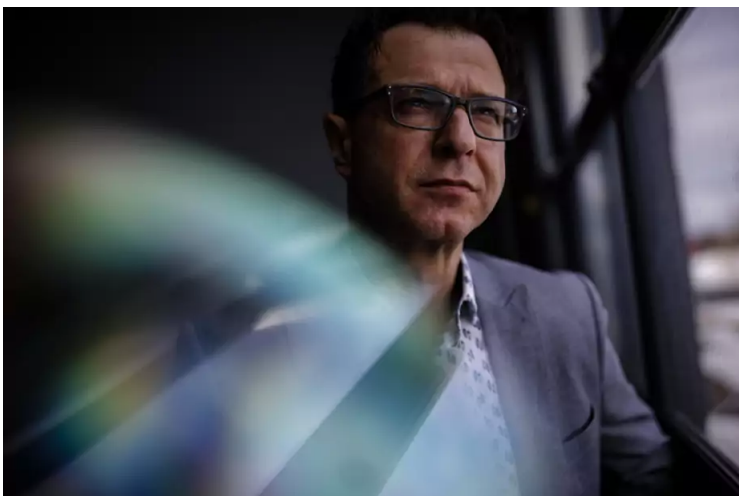


PHOTO OLIVIER JEAN, LA PRESSE

Carl Latulippe dit avoir vécu un cauchemar et s'être retrouvé au cœur d'un cycle de violence entre vétérans et joueurs recrues chez les Saguenéens de Chicoutimi.

Carl Latulippe croyait réaliser un rêve en se joignant aux Saguenéens de Chicoutimi, en 1994. Il dit avoir plutôt vécu un cauchemar et s'être retrouvé au cœur d'un cycle de violence entre vétérans et joueurs recrues qui l'a écoeuré du hockey. Son histoire fait aujourd'hui l'objet d'une enquête de la LHJMQ. Il a accepté de la raconter à *La Presse*.

Publié le 3 avril



ARIANE LACOURSIÈRE
ÉQUIPE D'ENQUÊTE, LA PRESSE



SIMON-OLIVIER LORANGE
LA PRESSE



Les « allégations de nature sexuelle » sur lesquelles enquête actuellement la Ligue de hockey junior majeur du Québec (LHJMQ) concernent des événements qui seraient survenus chez les Saguenéens de Chicoutimi en 1994-1995, a appris *La Presse*. Les témoignages de deux anciens joueurs évoquent de la violence, de l'intimidation et des agressions commises par certains vétérans sur des recrues.

Une vingtaine de joueurs des Saguenéens de l'époque et de personnes ayant gravité dans l'entourage de l'équipe nient avoir assisté ou participé à de tels événements.

Mais pour Carl Latulippe, les souvenirs sont clairs. À 16 ans, il a été repêché au premier tour par les Saguenéens. Moins d'un mois après le début de la saison, il quittait le Saguenay et voulait abandonner le hockey, troublé par les sévices qu'il aurait subis aux mains de vétérans.

Près de 30 ans plus tard, celui qui est aujourd'hui homme d'affaires dans l'industrie automobile brise le silence. « Elle n'est pas exceptionnelle, mon histoire. Ce qui est écœurant, c'est qu'elle est loin d'être unique », dit Carl Latulippe, attablé dans un restaurant de Québec.

Le 21 mars, en commission parlementaire, le commissaire par intérim de la LHJMQ, Martin Lavallée, a indiqué que « des allégations de nature sexuelle » étaient « venues [à ses] oreilles » en lien avec des événements survenus « dans les années 1990 » au sein d'une formation du circuit. « Lorsqu'on nous a informés de la situation, nous avons procédé à une quête d'informations, laquelle nous a rapidement amenés à mettre en place une enquête indépendante pour assurer d'aller au fond des choses », a-t-il ajouté. Il n'a identifié ni l'équipe concernée ni l'année des événements en question.

La Presse a été en mesure de confirmer que cette enquête vise les Saguenéens de la campagne 1994-1995, soit la saison recrue de Carl Latulippe.

Un passionné de hockey

Durant son enfance à Val-Bélair, Carl Latulippe ne comptait pas les heures passées à jouer au hockey dans la rue ou sur la patinoire familiale. Mais le traitement qu'il dit avoir subi de la part de certains vétérans chez les Saguenéens a anéanti son amour du hockey. Il n'a plus jamais mis les pieds dans un aréna après avoir quitté la LHJMQ, après deux saisons.

Les histoires d'ex-joueurs ayant été victimes de violences et d'agressions dans leurs années de hockey junior canadien font les manchettes depuis le début de février. Même si elle a rejeté leur demande d'action collective, la Cour supérieure de l'Ontario a révélé des cas de maltraitance subie depuis les années 1980 par des joueurs d'âge junior issus des trois grandes ligues canadiennes. Au Québec, le commissaire de la LHJMQ, Gilles Courteau, en poste depuis 37 ans, a quitté ses fonctions le 5 mars, quelques jours après avoir témoigné devant la commission parlementaire chargée de faire la lumière sur l'étendue du phénomène. Les versions contradictoires de Gilles Courteau avaient été exposées dans *La Presse*¹.

Pour M. Latulippe, l'important n'est pas tant que des « têtes tombent ». Mais bien que « plus aucun jeune ne subisse » ce qu'il a vécu. « Combien de carrières, mais surtout combien de vies ont été brisées par de tels agissements ? », demande-t-il.

Carl Latulippe a commencé à jouer au hockey mineur à l'âge de 5 ans. « C'était ma passion. [...] C'était la plus belle chose que je pouvais faire », dit-il. Le jeune homme au talent naturel a joué midget AAA pour les Gouverneurs de Sainte-Foy. À 15 ans, il participait au Défi mondial des moins de 17 ans. À cette époque, Latulippe rêvait de la Ligue nationale.

Chicoutimi

À 16 ans, Carl Latulippe est repêché par les Saguenéens de Chicoutimi. Il quitte la maison familiale pour le camp d'entraînement de début de saison. Le déménagement le déstabilise. « En 1994, il n'y avait pas l'internet. Mes parents n'ont jamais gagné plus de 40 000 \$ de leur vie. Je n'avais pas de téléphone. C'était loin, Chicoutimi ! », dit-il.

Dans ses premiers jours à Chicoutimi, il relate avoir été accueilli en héros et s'être fait demander d'être pris en photo par des admirateurs dans des restaurants. Mais dès que le camp d'entraînement se termine et que l'équipe est formée, le scénario change, dit-il. Carl Latulippe raconte que des vétérans imposent leurs règles. Que des recrues doivent leur verser leur maigre paye.



PHOTO OLIVIER JEAN, LA PRESSE

Plus d'une fois, des vétérans ont pris « des serviettes avec des savons dedans et ils nous frappaient avec pour que ça ne laisse pas de marques », affirme Carl Latulippe.

Carl Latulippe affirme qu'un joueur recrue s'est plaint un jour du traitement reçu et en a payé le prix en se faisant battre violemment par des vétérans.

Il estime que l'emprise de vétérans à Chicoutimi se traduisait par des gestes « répétitifs ». Plus d'une fois, des vétérans ont pris « des serviettes avec des savons dedans et ils nous frappaient avec pour que ça ne laisse pas de marques », dit-il.

L'évènement de trop pour Carl Latulippe se serait déroulé lors de l'un des premiers voyages du club, en route pour disputer un match en Abitibi. Dans l'autobus, des vétérans auraient demandé à des recrues de se dévêtir et de se masturber. Les jeunes joueurs se seraient fait dire qu'ils avaient un très court laps de temps pour éjaculer et que ceux qui n'y parviendraient pas seraient enfermés dans les toilettes de l'autobus. Pour « aider » les recrues à éjaculer, on aurait fait jouer des films pornographiques sur les télévisions communes de l'autobus, où se trouvaient des adultes, selon Carl Latulippe.

Ce dernier dit avoir été entassé avec d'autres recrues dans les toilettes de l'autobus, toujours nu. Il ignore le temps exact qu'ils ont passé dans ce réduit. Mais aujourd'hui, il a du mal à prendre l'avion. Il évite les foules. « Je suis claustrophobe », dit-il.

Peu après cette expérience, Latulippe quitte les Saguenéens. A-t-il parlé des événements à quelqu'un de la direction ? « On savait qu'il ne fallait pas y aller. Si on y allait, c'est sûr qu'on se ferait battre », dit-il.

À l'époque, le court séjour de Latulippe, un choix de première ronde, rappelons-le, a fait jaser. Ses coéquipiers avaient l'impression qu'il « s'ennuyait de sa blonde ». Les journaux en parlent. « Las de jouer sans joie et incapable de s'adapter, Carl Latulippe vient de quitter les Saguenéens de Chicoutimi », écrit le quotidien *Le Soleil* le 8 octobre 1994. « Je n'ai pas retrouvé là-bas la philosophie que j'avais du hockey. Je ne m'amusais plus », dira à l'époque Latulippe. « Je me sentais mal dans ma peau », dira-t-il aussi au *Quotidien* de Chicoutimi.



PHOTO EDOUARD PLANTE-FRÉCHETTE, ARCHIVES LA PRESSE

Témoignage de Martin Lavallée, commissaire par intérim de la LHJMQ, devant la Commission de la culture et de l'éducation de l'Assemblée nationale, chargée de faire la lumière sur la violence dans le hockey junior, le 21 mars dernier.

Expérience similaire

Un autre joueur des Saguenéens de 1994-1995, qui n'a pas gardé de lien avec Carl Latulippe, confirme sa version des faits. Il préfère que son identité ne soit pas révélée dans ce reportage afin de ne pas subir de représailles d'anciens coéquipiers, lui qui dit avoir tourné la page sur sa carrière junior. Nous le désignerons donc par le prénom fictif Luc.

« Des claques en arrière de la tête et des coups de poing sur la gueule », Luc en a vu. Beaucoup. Il témoigne aussi que des joueurs ont été enfermés dans des toilettes d'autobus.

La première saison d'une recrue était longue, raconte-t-il. Attacher les patins des vétérans, transporter leur équipement ou aller leur acheter des boissons gazeuses étaient autant d'ordres qui, s'ils n'étaient pas exécutés, engendraient des conséquences. Les premières semaines du calendrier étaient particulièrement pénibles.

Draguer une fille dans un bar valait de se faire demander de « décalisser » des lieux par les joueurs plus âgés. Les défier signifiait d'en payer le prix le lendemain à l'aréna.

Luc n'a pas assisté à des séances de masturbation forcée, mais il assure avoir vu des coéquipiers se toucher sans gêne dans l'autobus, alors qu'était diffusé un film pornographique.

Selon lui, au moins une recrue a dû, après un match sur la route, s'asseoir sur un siège d'autobus où se trouvait le sperme d'un vétéran qui, quelques minutes plus tôt, avait eu une relation sexuelle avec une jeune femme à bord du véhicule. « J'ai fait exprès parce que je savais que tu allais t'asseoir là », aurait dit ce joueur.

Encore aujourd'hui, Luc en veut à l'entraîneur-chef Gaston Drapeau, disparu en 2014. « Il aurait fallu qu'un adulte nous aide », dit-il. Au cours des dernières semaines, voyant les révélations sur le hockey junior s'accumuler dans les médias, la conjointe de Luc lui a demandé s'il avait vécu des expériences similaires. Quelques histoires rapportées en Ontario et dans l'Ouest canadien mentionnaient notamment l'insertion de bâtons de hockey dans l'anus des victimes.

« Non, ça, ça ne m'est pas arrivé, lui a-t-il répondu. Mais ç'aurait pu, tellement j'ai croisé du monde fou. »

[1. Lisez l'article « Initiations au hockey junior Des "problèmes" depuis 45 ans, a reconnu Courteau en 2021 »](#)

Perceptions différentes



PHOTO FRANCIS BLACK, GETTY IMAGES

Des personnalités aujourd'hui très connues du public faisaient aussi partie de l'édition 1994-1995 des Saguenéens et ont nié avoir été témoins de quoi que ce soit.

Dans le cadre de cette enquête, *La Presse* a parlé à 20 joueurs et personnes qui ont gravité autour des Saguenéens de l'époque. La majorité a nié avoir été témoin de quoi que ce soit.

Aujourd'hui entraîneur et directeur général des Saguenéens, Yanick Jean était un vétéran dans cette équipe en 1994-1995. Questionné pour savoir s'il a été témoin de gestes violents ou de nature sexuelle envers les recrues de l'époque, sa réponse est catégorique : « Impossible. »

Il assure que le climat recrues-vétérans était « le fun ». « On était une belle gang de gars », dit-il. Si des initiations ont eu lieu, il s'agissait de « partys d'équipe ». « Mais j'ai rien eu de ce qu'on a pu lire dans les journaux », dit-il.

Des personnalités aujourd'hui très connues du public faisaient aussi partie de cette édition des Saguenéens. Parmi elles, le gardien de but Marc Denis, devenu analyste à RDS.

Joint par *La Presse*, M. Denis a dit avoir « fait le saut » en prenant connaissance des événements allégués par les victimes. Jamais il n'a eu connaissance de violences répétées et il n'a aucun souvenir d'avoir vu un film pornographique dans l'autobus.

Il dit toutefois ressentir de l'« empathie » pour les personnes qui auraient « vécu ou perçu » des événements dont il dit ignorer l'existence. « Je suis content que les langues se délient si des personnes se sont senties brimées », a-t-il insisté. Il ne retient que du positif de sa carrière junior. « Je souhaite à tous les jeunes de passer par la LHJMQ », a-t-il ajouté. L'ancien gardien Éric Fichaud, analyste à TVA Sports, a tenu en substance les mêmes propos.

Alain Nasreddine, entraîneur adjoint chez les Stars de Dallas, disputait pour sa part sa dernière saison chez les juniors.

« Dans ce temps-là, quand tu étais une recrue, c'était tout le temps un peu difficile, mais ce n'était pas l'enfer non plus. »

— Alain Nasreddine

Aujourd'hui commentateur à RDS, André Roy était lui aussi vétéran en 1994-1995 à Chicoutimi. Il dit que si des initiations ont eu lieu, il n'a « jamais vu rien d'affaires d'histoire de bâtons et d'Antiphlogistine », référence aux révélations choquantes tirées du jugement de la Cour supérieure de l'Ontario.

« Être initié, on est passé par là comme recrue. Après, c'est une roue qui tournait. Mais il n'y avait rien de dégradant. »

— André Roy

André Roy s'est déjà fait enfermer dans des toilettes d'autobus comme recrue. Il n'a toutefois pas de souvenir de recrues contraintes de se masturber. « Il n'y a rien eu de traumatisant pour moi, dit-il. Ça a formé l'homme que je suis devenu. Ça m'a permis d'avoir une carrière par après. »

Pas de rancune

Mais pour Carl Latulippe, les souvenirs ne sont pas aussi roses. Après son court séjour chez les Saguenéens, il a conclu la saison chez les Voltigeurs de Drummondville, puis a disputé quelques matchs l'année suivante avec les Harfangs de Beauport. Il accrochera ses patins en 1996.

Le 2 mars 1996, le journal *Le Soleil* est revenu sur le départ de Carl Latulippe des Saguenéens en parlant d'un « premier choix gaspillé ». « Certains ont prétendu que les vétérans de l'équipe l'avaient pris à partie », a écrit le quotidien. Une affirmation qu'a niée à l'époque Latulippe. « Physiquement, j'étais prêt à évoluer dans le junior majeur. Mais mentalement, c'était une autre histoire. J'avais une blonde, je m'ennuyais, je descendais toujours à Québec. Finalement, j'ai tout lâché », a-t-il dit. Pourquoi ne pas avoir parlé à ce moment des faits ?



PHOTO OLIVIER JEAN, LA PRESSE
Carl Latulippe

« On dirait que ce n'était pas une option de parler de ça à l'époque. Comme si la société n'était pas prête. »

— Carl Latulippe

Après sa carrière dans la LHJMQ, Carl Latulippe éprouvera des problèmes de consommation. Est-ce attribuable à ce qu'il a vécu ? « De vous dire que c'est à cause de ça que j'ai consommé, je ne vous dirais pas ça. Mais de dire que ce n'est absolument pas à cause de ça, je ne pourrais pas vous dire ça non plus », dit-il.

Quand l'histoire de l'action collective ontarienne est sortie dans les médias en février, Carl Latulippe a d'abord écrit à l'animatrice du 98,5 Nathalie Normandeau qui a brièvement raconté son histoire en ondes, sans le nommer.

Après que *La Presse* eut communiqué avec plusieurs anciens joueurs des Saguenéens pour corroborer l'histoire de Carl Latulippe, la LHJMQ, mise au parfum de cette démarche, a elle-même amorcé une collecte d'informations, a confirmé un porte-parole du circuit. Le 20 mars, M. Latulippe a reçu un appel de Karl Jahnke, chef de l'exploitation, communications et marketing de la ligue, qui voulait entendre son récit.



PHOTO EDOUARD PLANTE-FRÉCHETTE, ARCHIVES LA PRESSE
Martin Lavallée devant la commission parlementaire de l'Assemblée nationale

Le lendemain, le commissaire par intérim de la LHJMQ, Martin Lavallée, a dit en commission parlementaire qu'une enquête indépendante avait été lancée sur des événements survenus dans les années 1990.

Carl Latulippe affirme n'avoir aucune rancune envers les vétérans qui lui ont fait la vie dure. Notamment parce que plusieurs risquent d'avoir été eux-mêmes agressés durant leurs années recrues, selon lui. « Aujourd'hui, je comprends mieux. Je ne l'accepte pas plus », dit-il. Mais chose certaine : il souhaite qu'aucun autre jeune ne subisse ce qu'il dit avoir vécu.

« L'espoir et les rêves de nos jeunes ne peuvent être anéantis par des agresseurs et des organisations qui font l'autruche », conclut-il.

L'ENQUÊTE DE LA LHJMQ

La collecte d'informations menée par la LHJMQ auprès de Carl Latulippe et de certains ex-coéquipiers a convaincu la direction de la ligue de déclencher une enquête indépendante à ce sujet. Celle-ci a été confiée à M^e Philippe Frère, du cabinet d'avocats Lavery, à qui avait été confiée, en 2019, l'enquête sur les allégations d'initiations inappropriées survenues chez le Phoenix de Sherbrooke quelques années auparavant. Par ailleurs, si la collecte préliminaire a été menée par Karl Jahnke, qui est chef de l'exploitation, communications et marketing de la LHJMQ, c'est parce que Natacha Llorens, directrice des services aux joueurs de la ligue, est en congé de maladie.

La Ligue n'a pas souhaité fournir de commentaires par rapport à ce reportage. Elle encourage toutefois les victimes potentielles à prendre la parole pour « dénoncer toutes situations problématiques qu'elles auraient pu subir dans leur carrière junior majeur ». Une adresse courriel et une ligne consacrées aux plaintes ont été créées spécifiquement pour les personnes qui voudraient signaler des abus.

Ligne téléphonique : 1-877-650-3555

[Écrivez à la LHJMQ pour formuler une plainte](#)

Note: Une version précédente de ce texte mentionnait que la firme Gestion Jean Boudreau collaborait à l'enquête indépendante qu'a commandée la LHJMQ. Ce n'est pas le cas. Nos excuses.

Abuse in the QMJHL

The broken dream of Carl Latulippe



PHOTO OLIVIER JEAN, THE PRESS

Carl Latulippe says he lived through a nightmare and found himself at the heart of a cycle of violence between veterans and rookie players with the Chicoutimi Saguenéens.

Carl Latulippe thought he was fulfilling a dream by joining the Chicoutimi Saguenéens in 1994. He says he rather lived a nightmare and found himself at the heart of a cycle of violence between veterans and rookie players that sickened him of hockey. His story is now the subject of an investigation by the QMJHL. He agreed to tell it to *La Presse*.

Posted April 3



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INVESTIGATIVE TEAM, LA PRESSE



SIMON OLIVIER LORANGE
THE PRESS



The “allegations of a sexual nature” currently being investigated by the Quebec Major Junior Hockey League (QMJHL) relate to events that allegedly occurred among the Chicoutimi Saguenéens in 1994-1995, La Presse learned. The testimonies of two former players evoke violence, intimidation and attacks committed by certain veterans on recruits.

About twenty players from the Saguenéens of the time and people who were involved in the entourage of the team deny having attended or participated in such events.

But for Carl Latulippe, the memories are clear. At 16, he was drafted in the first round by the Saguenéens. Less than a month after the start of the season, he left Saguenay and wanted to give up hockey, troubled by the abuse he allegedly suffered at the hands of veterans.

Nearly 30 years later, the man who is now a businessman in the automotive industry is breaking the silence. "It is not exceptional, my story. What is disgusting is that it is far from unique," says Carl Latulippe, seated in a restaurant in Quebec.

On March 21, in a parliamentary committee, the acting commissioner of the QMJHL, Martin Lavallée, indicated that "allegations of a sexual nature" had "come [to his] ears" in connection with events that occurred "in the 1990s" within a circuit formation. "When we were informed of the situation, we carried out a quest for information, which quickly led us to set up an independent investigation to ensure that we got to the bottom of things," he added. He did not identify either the team concerned or the year of the events in question.

La Presse was able to confirm that this investigation targets the Saguenéens of the 1994-1995 campaign, the rookie season of Carl Latulippe.

A hockey enthusiast

During his childhood in Val-Bélair, Carl Latulippe did not count the hours spent playing hockey in the street or on the family rink. But the treatment he says he suffered from some veterans of the Saguenéens has destroyed his love of hockey. He never set foot in an arena again after leaving the QMJHL after two seasons.

Stories of ex-players who were victims of violence and assault during their years in Canadian junior hockey have been making headlines since the beginning of February. Although it rejected their request for class action, the Superior Court of Ontario revealed cases of abuse suffered since the 1980s by junior-age players from the three major Canadian leagues. In Quebec, the commissioner of the LHJMQ, Gilles Courteau, in office for 37 years, left his post on March 5, a few days after testifying before the parliamentary commission responsible for shedding light on the extent of the phenomenon. The contradictory versions of Gilles Courteau had been exposed in *La Presse*.

For Mr. Latulippe, the important thing is not so much that "heads roll". But although "no young person will suffer" what he has experienced. "How many careers, but above all how many lives have been shattered by such actions?" , he asks.

Carl Latulippe started playing minor hockey at the age of 5. "It was my passion. [...] It was the best thing I could do," he says. The naturally talented young man played midget AAA for the Sainte-Foy Governors. At 15, he participated in the World Under-17 Challenge. At that time, Latulippe dreamed of the National League.

Chicoutimi

At 16, Carl Latulippe was drafted by the Chicoutimi Saguenéens. He leaves the family home for the start of the season training camp. The move destabilizes him. "In 1994, there was no internet. My parents never made more than \$40,000 in their lives. I didn't have a phone. It was far, Chicoutimi! he says.

In his early days in Chicoutimi, he recounts being greeted as a hero and being asked to be photographed by admirers in restaurants. But as soon as training camp ends and the team is formed, the scenario changes, he says. Carl Latulippe says that veterans impose their rules. That recruits must pay them their meager pay.



PHOTO OLIVIER JEAN, THE PRESS

More than once, veterans took "towels with soap in them and hit us with them so that it didn't leave marks," says Carl Latulippe.

Carl Latulippe claims that a rookie player once complained about the treatment received and paid the price by being violently beaten by veterans.

He believes that the grip of veterans in Chicoutimi resulted in "repetitive" gestures. More than once, veterans took "towels with soap in them and hit us with them so that it didn't leave marks," he said.

The event too many for Carl Latulippe would have taken place during one of the club's first trips, on the way to play a game in Abitibi. On the bus, veterans allegedly asked recruits to undress and masturbate. Young players were reportedly told that they had a very short window of time to ejaculate and those who failed to do so would be locked in the bus toilet. To "help" the recruits to ejaculate, pornographic films would have been played on the common televisions of the bus, where there were adults, according to Carl Latulippe.

The latter says he was piled up with other recruits in the toilets of the bus, still naked. He does not know the exact time they spent in this reduced. But today, he has trouble getting on the plane. He avoids crowds. "I'm claustrophobic," he says.

Shortly after this experience, Latulippe left the Saguenéens. Did he talk about the events to anyone in management? "We knew we shouldn't go there. If we went there, we would definitely be beaten," he said.

At the time, the short stay of Latulippe, a first-round pick, let's remember, was talked about. His teammates had the impression that he "missed his girlfriend". The newspapers talk about it. "Weary of playing without joy and incapable of adapting, Carl Latulippe has just left the Saguenéens of Chicoutimi," wrote the daily *Le Soleil* on October 8, 1994. hockey. I was no longer having fun," Latulippe would say at the time. "I felt bad about myself," he also told *Quotidien* de Chicoutimi.



Similar experience

Another Saguenéens player from 1994-1995, who has not kept a link with Carl Latulippe, confirms his version of the facts. He prefers that his identity not be revealed in this report so as not to suffer reprisals from former teammates, who says he has turned the page on his junior career. We will therefore designate him by the fictitious first name Luc.

"Slaps on the back of the head and punches on the face", Luc has seen. A lot. He also testified that players were locked in bus toilets.

A rookie's first season was a long one, he says. Tying veterans' skates, carrying their equipment or buying them soft drinks were all orders which, if not carried out, had consequences. The first weeks of the calendar were particularly difficult.

Flirting with a girl in a bar was worth being asked to "draw" places by older players. Challenging them meant paying the price the next day at the arena.

Luc did not attend any forced masturbation sessions, but he claims to have seen teammates touching each other without embarrassment on the bus, while a pornographic film was being shown.

According to him, at least one rookie had, after a game on the road, to sit on a bus seat containing the sperm of a veteran who, a few minutes earlier, had had sex with a young girl. woman in the vehicle. "I did it on purpose because I knew you were going to sit there," said this player.

Even today, Luc resents head coach Gaston Drapeau, who died in 2014. "An adult should have helped us," he says. Over the past few weeks, seeing the revelations about junior hockey piling up in the media, Luc's spouse asked him if he had had similar experiences. A few stories reported in Ontario and Western Canada notably mentioned the insertion of hockey sticks in the anus of the victims.

"No, that didn't happen to me," he replied. But it could have been, so many crazy people have I come across. »

[1. Read the article "Introduction to junior hockey "Problems" for 45 years, admitted Courteau in 2021"](#)

Different perceptions



PHOTO FRANCIS BLACK, GETTY IMAGES

Personalities now very well known to the public were also part of the 1994-1995 edition of the Saguenéens and denied having witnessed anything.

As part of this investigation, *La Presse* spoke to 20 players and people who gravitated

Today coach and general manager of the Saguenéens, Yanick Jean was a veteran in this team in 1994-1995. Asked whether he witnessed any violent or sexual acts towards the recruits of the time, his answer is categorical: "Impossible. »

He assures that the rookie-veteran climate was "fun". "We were a nice gang of guys," he says. If initiations took place, they were "team parties". "But I didn't get anything from what we read in the newspapers," he said.

Personalities now very well known to the public were also part of this edition of the Saguenéens. Among them, goalkeeper Marc Denis, who has become an analyst at RDS.

Reached by *La Presse*, Mr. Denis said he "took the leap" when he learned of the events alleged by the victims. He never knew of repeated violence and he has no memory of having seen a pornographic film on the bus.

However, he says he feels "empathy" for people who have "experienced or perceived" events of which he says he is unaware of the existence. "I'm happy that tongues are loosened if people felt bullied," he insisted. He retains only positive things from his junior career. "I wish all young people to go through the QMJHL," he added. Former goalkeeper Éric Fichaud, an analyst at TVA Sports, made essentially the same remarks.

Alain Nasreddine, assistant coach with the Dallas Stars, was playing his last season as a junior.

« Back then, when you were a rookie, it was a bit difficult all the time, but it wasn't hell either. »

— Alain Nasreddine

Today a commentator on RDS, André Roy was also a veteran in 1994-1995 in Chicoutimi. He says that while initiations have taken place, he has "never seen anything of sticks and Antiphlogistine history cases", referring to the shocking revelations from the Ontario Superior Court judgment.

« Being initiated, we went through it as a recruit. Afterwards, it was a wheel that turned. But there was nothing degrading. »

— André Roy

André Roy has already been locked in a bus toilet as a rookie. However, he has no recollection of recruits being forced to masturbate. "There was nothing traumatic for me," he said. It shaped the man I have become. It allowed me to have a career afterwards. »

no hard feelings

But for Carl Latulippe, the memories are not so rosy. After his short stay with the Saguenéens, he concluded the season with the Voltigeurs de Drummondville, then played a few games the following year with the Harfangs de Beauport. He will hang up his skates in 1996.

On March 2, 1996, the newspaper *Le Soleil* returned to the departure of Carl Latulippe from the Saguenéens by speaking of a "wasted first choice". "Some have claimed that the veterans of the team took him to task," wrote the daily. An assertion that Latulippe denied at the time. "Physically, I was ready to evolve in the major junior. But mentally, it was another story. I had a girlfriend, I was bored, I always went down to Quebec. Eventually, I let it all out," he said. Why didn't you talk about the facts at that time?



PHOTO OLIVIER JEAN, THE PRESS

Carl Latulippe

« Seems like it wasn't an option to talk about it back then. As if society was not ready. »

— Carl Latulippe

After his career in the QMJHL, Carl Latulippe will experience substance abuse problems. Is it attributable to what he experienced? "To tell you that it is because of that that I consumed, I would not tell you that. But to say that it's absolutely not because of that, I couldn't tell you that either," he said.

When the story of the Ontario class action hit the media in February, Carl Latulippe first wrote to 98.5 host Nathalie Normandeau who briefly told his story on the air, without naming him.

After *La Presse* contacted several former Saguenéens players to corroborate Carl Latulippe's story, the QMJHL, informed of this approach, began collecting information itself, confirmed a spokesperson for the circuit. . On March 20, Mr. Latulippe received a call from Karl Jahnke, the league's chief operating officer, communications and marketing, who wanted to hear his story.



PHOTO EDOUARD PLANTE-FRÉCHETTE, LA PRESSE ARCHIVES

Martin Lavallée before the parliamentary committee of the National Assembly

The next day, the acting commissioner of the QMJHL, Martin Lavallée, told the parliamentary committee that an independent investigation had been launched into events that occurred in the 1990s.

Carl Latulippe says he has no grudge against the veterans who made his life difficult. In particular because many risk having themselves been attacked during their rookie years,

thing is certain: he does not want any other young person to suffer what he says he has experienced.

“The hopes and dreams of our young people cannot be snuffed out by aggressors and organizations that sit in the sand,” he concludes.

THE QMJHL INVESTIGATION

The QMJHL’s collection of information from Carl Latulippe and certain former teammates convinced league management to launch an independent investigation into the matter. This was entrusted to M^e Philippe Frère, of the law firm Lavery, who had been entrusted, in 2019, with the investigation into the allegations of inappropriate initiations that occurred at the Phœnix de Sherbrooke a few years earlier. Moreover, if the preliminary collection was conducted by Karl Jahnke, who is the QMJHL’s Chief Operating Officer, Communications and Marketing, it is because Natacha Llorens, the league’s Director of Player Services, is on leave from disease.

The League declined to comment on this report. However, she encourages potential victims to speak up to “denounce any problematic situations they may have suffered in their major junior career”. An email address and complaints line have been created specifically for people who would like to report abuse.

Phone line: 1-877-650-3555

[Write to the QMJHL to file a complaint](#)

Note: A previous version of this text mentioned that the firm Gestion Jean Boudreau collaborated in the independent investigation commissioned by the QMJHL. This is not the case. Our apologies.

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***THIS IS EXHIBIT "G" REFERRED TO IN THE
AFFIDAVIT OF CATHERINE MACDONALD SWORN VIA VIDEO-LINK
BEFORE ME FROM THE CITY OF KAWARTHA LAKES, IN THE
PROVINCE OF ONTARIO, TO THE CITY OF TORONTO, IN THE
PROVINCE OF ONTARIO, ON JUNE 5TH, 2023, IN ACCORDANCE WITH O.
REG. 431/20, ADMINISTERING OATH OR DECLARATION REMOTELY.***

A handwritten signature in black ink, appearing to read "Caitlin Leach". The signature is fluid and cursive, with the first name "Caitlin" written in a larger, more prominent script than the last name "Leach".

A COMMISSIONER FOR TAKING AFFIDAVITS, ETC.

CAITLIN LEACH

2023-04-03

QMJHL statement on article published in La Presse (April 3, 2023)



by LHJMQ/QMJHL



The Quebec Major Junior Hockey League was made aware of the allegations contained in today's *La Presse* article a few days ago.

As announced two weeks ago by Interim Commissioner Martin Lavallée in front of the parliamentary commission, the QMJHL has already launched an independent inquiry to shed light on these allegations.

The League encourages potential victims to step forward and denounce problematic situations they might have experienced during their major junior careers. A dedicated email address and a 1-800 line for complaints are also accessible at all times for victims.

1-877-650-3555 / supporttovictims@lhjmq.qc.ca

2023-04-03

Déclaration de la LHJMQ à propos de l'article de La Presse (3 avril 2023)



par LHJMQ/QMJHL



La Ligue de hockey junior majeur du Québec a été mise au courant il y a quelques jours des allégations contenues dans l'article d'aujourd'hui de *La Presse*.

Tel qu'annoncé il y a près de deux semaines par le Commissaire par intérim, Martin Lavallée, devant la commission parlementaire, la LHJMQ a déjà ouvert une enquête indépendante pour faire la lumière sur ces allégations.

La Ligue encourage les victimes potentielles à prendre la parole pour dénoncer toutes situations problématiques qu'ils auraient pu subir dans leur carrière junior majeur. Une adresse courriel et une ligne 1-800 dédiées pour les plaintes sont d'ailleurs disponibles en tout temps pour les victimes.

1-877-650-3555 / soutienauxvictimes@lhjmq.qc.ca

Carcillo et al. **Canadian Hockey League et al.**
Plaintiffs and Defendants

Court File No.: CV-20-642705-00CP

ONTARIO
SUPERIOR COURT OF JUSTICE

Proceeding commenced at Toronto

Proceeding under the *Class Proceedings Act, 1992*

AFFIDAVIT OF CATHERINE MACDONALD
(JUNE 5, 2023)

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Lawyers for the Plaintiffs

Court File No.: CV-20-642705-00CP

ONTARIO
SUPERIOR COURT OF JUSTICE

B E T W E E N :

DANIEL CARCILLO, GARRETT TAYLOR and STEPHEN QUIRK

Plaintiffs

- and -

ONTARIO MAJOR JUNIOR HOCKEY LEAGUE, CANADIAN HOCKEY LEAGUE, WESTERN HOCKEY LEAGUE, QUEBEC MAJOR JUNIOR HOCKEY LEAGUE, BARRIE COLTS JUNIOR HOCKEY LTD., GUELPH STORM LTD., HAMILTON BULLDOGS FOUNDATION INC., KINGSTON FRONTENACS HOCKEY LTD., KITCHENER RANGERS JR. A. HOCKEY CLUB, LONDON KNIGHTS HOCKEY INC., MISSISSAUGA STEELHEADS HOCKEY CLUB INC., 2325224 ONTARIO INC. o/a MISSISSAUGA STEELHEADS, NIAGARA ICEDOGS HOCKEY CLUB INC., NORTHBAY BATTALION HOCKEY CLUB LTD., OSHAWA GENERALS HOCKEY ACADEMY LTD., OTTAWA 67'S LIMITED PARTNERSHIP c.o.b. OTTAWA 67's HOCKEY CLUB, THE OWEN SOUND ATTACK INC., PETERBOROUGH PETES LIMITED, 649643 ONTARIO INC. o/a 211 SSHC CANADA ULC o/a SARNIA STING HOCKEY CLUB, SOO GREYHOUNDS INC., SUDBURY WOLVES HOCKEY CLUB LTD., WINDSOR SPITFIRES INC., MCCRIMMON HOLDINGS, LTD., 32155 MANITOBA LTD., A PARTNERSHIP c.o.b. as BRANDON WHEAT KINGS, BRANDON WHEAT KINGS LIMITED PARTNERSHIP, CALGARY FLAMES LIMITED PARTNERSHIP, CALGARY SPORTS AND ENTERTAINMENT CORPORATION, EDMONTON MAJOR JUNIOR HOCKEY CORPORATION, KAMLOOPS BLAZERS HOCKEY CLUB, INC. KAMLOOPS BLAZERS HOLDINGS LTD., KELOWNA ROCKETS HOCKEY ENTERPRISES LTD., PRINCE ALBERT RAIDERS HOCKEY CLUB INC., EDGEPRO SPORTS & ENTERTAINMENT LTD., QUEEN CITY SPORTS & ENTERTAINMENT GROUP LTD., BRAKEN HOLDINGS LTD., REBELS SPORTS LTD., SASKATOON BLADES HOCKEY CLUB LTD., VANCOUVER JUNIOR HOCKEY LIMITED PARTNERSHIP and VANCOUVER JUNIOR HOCKEY PARTNERSHIP, LTD c.o.b. VANCOUVER GIANTS, WEST COAST HOCKEY LLP, WEST COAST HOCKEY ENTERPRISES LTD., o/a VICTORIA ROYALS, MEDICINE HAT TIGERS HOCKEY CLUB LTD., 1091956 ALTA LTD. o/a THE MEDICINE HAT TIGERS, SWIFT CURRENT TIER 1 FRANCHISE INC. and SWIFT CURRENT BRONCOS HOCKEY CLUB INC. o/a THE SWIFT CURRENT, ICE SPORTS & ENTERTAINMENT INC. o/a WINNIPEG ICE, MOOSE JAW TIER 1 HOCKEY INC. D.B.A. MOOSE JAW and MOOSE JAW WARRIORS TIER 1 HOCKEY, INC. WARRIORS o/a MOOSE JAW WARRIORS, LETHBRIDGE HURRICANES HOCKEY CLUB,

649643 ONTARIO INC. c.o.b. as SARNIA STING, KITCHENER RANGER JR A HOCKEY CLUB and KITCHENER RANGERS JR "A" HOCKEY CLUB, LE TITAN ACADIE BATHURST (2013) INC., CLUB DE HOCKEY JUNIOR MAJEUR DE BAIE-COMEAU INC. o/a DRAKKAR BAIE-COMEAU, CLUB DE HOCKEY DRUMMOND INC. o/a VOLTIGEURS DRUMMONDVILLE, CAPE BRETON MAJOR JUNIOR HOCKEY CLUB LIMITED o/a SCREAMING EAGLES CAPE BRETON, LES OLYMPIQUES DE GATINEAU INC., HALIFAX MOOSEHEADS HOCKEY CLUB INC., CLUB HOCKEY LES REMPARTS DE QUÉBEC INC., LE CLUB DE HOCKEY JUNIOR ARMADA INC., MONCTON WILDCATS HOCKEY CLUB LIMITED, LE CLUB DE HOCKEY L'OCÉANIC DE RIMOUSKI INC., LES HUSKIES DE ROUYN-NORANDA INC., 8515182 CANADA INC. c.o.b. as CHARLOTTETOWN ISLANDERS, LES TIGRES DE VICTORIAVILLE (1991) INC., SAINT JOHN MAJOR JUNIOR HOCKEY CLUB LIMITED, CLUB DE HOCKEY SHAWINIGAN INC. o/a CATARACTES SHAWNIGAN, CLUB DE HOCKEY JUNIOR MAJEUR VAL D'OR INC. o/a VAL D'OR FOREURS, 7759983 CANADA INC. c.o.b. as CLUB DE HOCKEY LE PHOENIX, 9264-8849 QUÉBEC INC. c.o.b. as GROUPE SAGS 7-96 AND LES SAGUENÉENS, JAW HOCKEY ENTERPRISES LP c.o.b. ERIE OTTERS, IMS HOCKEY c.o.b. FLINT FIREBIRDS, SAGINAW HOCKEY CLUB, L.L.C., EHT, INC., WINTERHAWKS JUNIOR HOCKEY LLC, PORTLAND WINTER HAWKS INC., THUNDERBIRDS HOCKEY ENTERPRISES, L.L.C., BRETT SPORTS & ENTERTAINMENT, INC., HAT TRICK, INC., TRI-CITY AMERICANS HOCKEY LLC, and TOP SHELF ENTERTAINMENT, INC.

Defendants

Proceeding under the *Class Proceedings Act, 1992*

**AFFIDAVIT OF DR. DAVID WOLFE
(SWORN JUNE 2ND, 2023)**

I, Dr. David Wolfe, of the town of London, in the Province of Ontario, MAKE OATH AND SAY

1. I have been retained by Koskie Minsky LLP to provide my unbiased expert opinion in support of the Individual Issues Protocol motion in this matter.
2. A copy of my report is attached to this Affidavit as **Exhibit "A"**.
3. My curriculum vitae is attached to this Affidavit as **Exhibit "B"**.

4. My Acknowledgement of Expert's Duty is attached to this Affidavit as **Exhibit "C"**.

SWORN BEFORE ME by video conference by Dr. David Wolfe at the town of London, in the Province of Ontario, before me in the City of Toronto, in the Province of Ontario, this 2nd day of June, 2023, in accordance with *O. Reg. 431/20, Administering Oath or Declaration Remotely*.

David A. Wolfe

DR. DAVID WOLFE



A Commissioner for taking Affidavits (*or as may be*)
CAITLIN LEACH

***THIS IS EXHIBIT "A" REFERRED TO IN THE
AFFIDAVIT OF DR. DAVID WOLFE SWORN BEFORE ME FROM THE
TOWN OF LONDON, IN THE PROVINCE OF ONTARIO, TO THE CITY OF
TORONTO, IN THE PROVINCE OF ONTARIO, ON JUNE 2ND, 2023, IN
ACCORDANCE WITH O. REG. 431/20, ADMINISTERING OATH OR
DECLARATION REMOTELY.***

A handwritten signature in black ink, appearing to read "Caitlin Leach", is centered on the page. The signature is written in a cursive, flowing style.

***A COMMISSIONER FOR TAKING AFFIDAVITS, ETC.
CAITLIN LEACH***

Peter Jaffe, Ph.D.
Registered Psychologist
1072 The Parkway
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David A. Wolfe, Ph.D.
Registered Psychologist
1-10 MacKellar Ave.
London, ON N6H5C5

June 2, 2023

Via Email

Mr. James Sayce
Koskie Minsky LLP
Barristers & Solicitors
20 Queen Street West, Suite 900, Box 52
Toronto, Ontario M5H 3R3

Dear Mr. Sayce,

Re: *Carcillo et al. v. Ontario Major Junior Hockey League et al.*

In response to your letter dated May 9, 2023, we are providing an opinion in the above noted matter concerning the hazing and abuse of young players in the Canadian Hockey League (“CHL”).

Your letter informed us that the Honourable Justice Perell provided the plaintiffs with 120 days to prepare an "Individual Issues Protocol" ("IIP") to allow former CHL Players to bring claims against their former Team, Regional League, and the CHL in relation to the hazing and abuse that they suffered while playing in the CHL.

You provided us with two recent reports into this matter: *Independent Panel Report*, dated October 31, 2022; *Report on Player Wellbeing Programs and Related Recommendations* (R. Turnpenny), dated January 14, 2022. You also provided Justice Perell’s Reasons for Decision, dated February 3, 2023 pertaining to this matter (*Carcillo v. Canadian Hockey League*, 2023 ONSC 886). You sent us a list of questions to address, based on assumptions provided in your letter.

In brief, claimants include players who participated in the CHL, and suffered abuse and hazing, at any time between 1975 and the present (ages range from 15 to 21 years old). The abuse players suffered includes “physical and sexual assault, hazing, bullying, physical and verbal harassment, sexual harassment, forced consumption of alcohol and illicit drugs, and the use of homophobic, sexualized and racist slurs perpetrated by other players, coaches or other hockey staff.”

This abuse was determined by Justice Perell to be part of pervasive “bullying, harassment, hazing and criminal conduct” among CHL teams, and occurred as part of a “systemic culture [that] exists in the CHL that results in maltreatment becoming an embedded norm.” Furthermore, players were given the impression that the abuse is part of hockey, with a “code of silence” that helps to perpetuate it. From Justice Perell’s decision, there seems to be agreement about the potential harms resulting from the abuse but more a question about the process to address individual’s level of harm and compensation (para 378 - *The Defendants do not deny that some players experienced serious misconduct and suffered compensable harm*).

Expert Qualifications

Dr. Wolfe is Adjunct Professor and Research Scholar at the Centre for Research and Education on Violence Against Women and Children at Western University. He was formerly a Senior Scientist at the Centre for Addiction and Mental Health (CAMH), Director of the CAMH Centre for Prevention Science, and Professor, University of Toronto. He has authored or co-authored numerous books and journal articles on child abuse, domestic violence, abnormal child psychology, and the impact of early childhood trauma on later development in childhood, adolescence, and adulthood. Dr. Wolfe is a Registered Psychologist in the Province of Ontario and has maintained a clinical practice since 1981 involving children and adults, many of whom were exposed to traumatic events in childhood. Dr. Wolfe has testified in over 35 civil and criminal trials regarding child abuse, adult survivors of child sexual abuse, child welfare, and effects of family violence on children. Many of these trials involved adult victims who had alleged being sexually, physically, or emotionally abused during childhood by family or non-family members. He has been accepted as an expert witness by the Superior Court of Ontario (Criminal and Civil Divisions), specifically in relation to historical child abuse. For example, Dr. Wolfe was appointed by the Ontario Superior Court to be consultant to the liquidator for the Christian Brothers of Ireland in Canada, to evaluate claimants of Mount Cashel who were abused as children living in the orphanage.

Dr. Jaffe is a Registered Psychologist in the Province of Ontario and has maintained a clinical practice since 1974. He is a Professor Emeritus in the Faculty of Education at Western University. From 2005-2021 he was the Academic Director of the Centre for Research and Education on Violence Against Women & Children at Western University. He has been working in the areas of domestic violence, child abuse, trauma, and families involved with the courts for over 40 years. Dr. Jaffe’s extensive publications include articles/books on the effects of institutional abuse on children, family violence, child protection and parenting disputes, and children exposed to domestic violence. Dr. Jaffe’s expertise in research and clinical work has resulted in appearances as an expert witness in provincial and federal courts throughout Canada. Dr. Jaffe has been actively involved in the issue of institutional abuse of children. He was a consultant to the Honourable Sydney Robins in his report for the Attorney General of Ontario on sexual misconduct of teachers.

Dr. Wolfe and Dr. Jaffe bring both general and specific expertise to the issues that are part of this proceeding. They have been involved with research, clinical practice and the development of violence prevention programs for children and youth dealing with various forms of abuse and

violence at home, school and community. They have assessed adult men and women who were victims of child abuse in community institutions and organizations, and most often in trust relationships such as relationships with doctors, faith leaders and coaches. Dr. Jaffe and Dr. Wolfe were both members of the expert panel to support Justice Normand Glaude in his review of historical abuse for Ontario's Cornwall Public Inquiry. Drs. Wolfe and Jaffe wrote a discussion paper on institutional physical and sexual abuse for the Law Reform Commission of Canada.

Dr. Wolfe and Dr. Jaffe have been involved in over 20 class action matters dealing with historical sexual, physical and/or emotional abuse of children and youth in a variety of settings including schools, residential schools, hospitals, churches, and police services. They have been jointly appointed by both plaintiff and defense to estimate the scope and harm of historical abuse in a class action matter. They have each been retained by defense counsel in individual civil suits. Many of their cases involve Indigenous adults who were abused as children. They have developed trauma-informed and culturally sensitive methods to interview a large sample of survivors of abuse.

In Dr. Wolfe's and Dr. Jaffe's involvement in large scale criminal and civil proceedings, they have had to develop streamlined procedures for assessing the incidents and impact of abuse on survivors (some examples follow). Dr. Jaffe coordinated assessments of 46 female victims of historical sexual abuse at the hands of a priest (R. v. Sylvestre) for a sentencing hearing in the Ontario Court of Justice in Chatham, Ontario in August 2011. The assessments were completed by a team of five psychologists (including Dr. Wolfe). At the time of the assessments, the victims were in their 30's through 60's and had been abused in their childhood and/or adolescence when they were 7 to 15 years of age for varying durations and severity of abuse. The report for the court included an overview of the incidents and harm to all the victims, including common themes such as betrayal by the church and unique challenges related to mental health problems and addictions. Aside from the overview report, each victim had an individual report (3-4 pages) prepared (under a pseudonym) so each of their voices could be heard by Justice Thomas before sentencing. The overview report and a sample individual case report were published in a book entitled "From Isolation to Action" (2008). In another case involving sexual abuse by a priest in the London ON diocese (Father Barry Glendinning), Dr. Jaffe also provided brief reports for 10 victims for consideration of compensation by a retired Superior Court Judge in informal hearings (i.e., judge not in robes, no elevated bench, comfortable interview room).

The process for the individual assessment in both the above noted cases involved an initial intake interview with an experienced social worker as well as the completion of two psychological tests – one dealing with overall personality adjustment and mental health concerns, and the other one dealing with trauma symptoms. After the initial interview, each victim met with a psychologist to review her history, the nature and impact of her reported abuse, and a summary of the psychological testing. A brief report was then prepared and provided to the court, as part of a package with the overview report and the other individual assessments. The assessment process lasted an average of three hours.

Dr. Wolfe was requested by the Provisional Liquidator of the Christian Brothers of Ireland in Canada and ordered by the Honourable Justice Blair on behalf of the Winding Up Act (July 1999) to conduct psychological interviews and testing with 85 adult male claimants. Claimants were seeking damages stemming from alleged and/or confirmed physical, sexual, and/or emotional abuse as a minor while residing at Mt. Cashel orphanage. His role was to assess claimants to determine if they exhibited symptoms consistent with abuse in relation to the nature, degree and frequency of abuse and the resulting psychological harm they alleged to have suffered.

The method involved an in-person interview and testing with each claimant conducted over an average 3-hour period. Each assessment began with a semi-structured clinical interview to describe their current family and living arrangements, family background, education, employment, substance use, etc. Psychological tests of mental health problems (trauma symptoms and overall mental health adjustment) were administered, followed by a diagnostic interview to determine past and present mental disorders. Diagnostic findings were discussed with each claimant for the purpose of recommending mental health or crisis services, as indicated. A brief report was prepared for each claimant, which ranked the nature and severity of abuse he experienced relative to other claimants (i.e., less extreme; similar; or more extreme relative to other claimants abused by the Christian Brothers of Ireland in Canada). An opinion on his overall psychological functioning was provided, based on testing and diagnostic findings.

We have responded to each of your questions below, under separate headings as outlined in your referral letter. Our CVs and Form 53 "Acknowledgement of Expert's Duty" are enclosed.

Expert Opinion

1. What difficulties or barriers might an individual who suffered or witnessed hazing and abuse (as described in Perell J's February 3rd Reasons) while playing in the CHL face in coming forward with a claim under an IIP?

There are many barriers for individuals who have suffered or witnessed hazing and abuse to come forward with a claim under an IIP. The undersigned have extensive experience dealing with the psychological impact of the traditional litigation process on survivors of child abuse and sexual assault. We have been involved in many cases in both criminal and civil proceedings in which victims shared their perspectives on the challenges faced by coming forward with their allegations.

In general, victims often feel shame in sharing their stories in the courtroom in front of judges and juries, as well as being examined during preliminary hearings or examinations for discovery. They are often triggered by memories of traumatic events in their lives that they were being asked to revisit. They may also fear the public nature of the court process, and the scrutiny their claims could attract from the media and their communities.

In addition to publicity, the possibility of cross-examination may also discourage survivors from bringing claims. Cross-examination can make survivors feel re-victimized.

These challenges are particularly significant for men who were abused by other boys/men during their childhood or adolescence. They are being asked to share painful and humiliating events that

they may not have disclosed to their own family or friends. These men may not have fully acknowledged what happened to themselves and actively repressed or tried to forget what happened. Thinking about what happened is too difficult, let alone talking about these events. They may feel especially vulnerable in terms of sexual abuse – including the type of abuse described in the Reasons for Decision – by male peers and/or a same-sex abuser and their perceptions about what this means for their sexual orientation.

As time passes, disclosure becomes even more challenging for survivors who feel guilt over not coming forward earlier and potentially saving many other victims over the years. Their silence over the years makes them feel as if they are part of the very system and culture they are now confronting. Some victims may have become perpetrators with younger players and may have great reluctance to face that complex and conflicted part of their history. They judge themselves and fear others will judge them in a harsh light rather than understand these dynamics. Some survivors may have been impacted by their traumatic exposure to the hazing and feel responsible for not doing something to protect other players and reporting what they witnessed.

All the issues that men feel disclosing abuse will be amplified within a hockey culture that promotes qualities of toughness and silence. Many of these survivors will have been socialized in a manner that discourages sharing feelings or acknowledging vulnerabilities. These men would be asked to break years of silence about what happened in the locker room.¹

Many of these barriers to participation are amplified during public, courtroom litigation. Regardless of the best intentions of defence counsel, survivors may be worried that they will be accused of exaggerating the abuse or its impacts. These fears are exacerbated by media portrayals of cross-examination as especially insensitive, if not cruel, and stories about sexual assault survivors in criminal trials.

If a survivor was successful in hockey or a related career, they may be worried they will be accused of becoming better players despite the abuse (or maybe because of the abuse that toughened them up for hockey) and were part of the culture. These survivors may be concerned they will be seen as only withdrawing consent years after the fact in revisiting and thinking differently about what they experienced. If a survivor never made it in the sport, they may be worried they will be told their struggles are the product of a lack of talent or determination, rather than the abuse they suffered.. Most of all, survivors may be worried cross-examination will minimize their hardship and suffering, or even accuse them of having liked or enjoyed some of the abuse that they suffered. Survivors may experience cross-examination as further damage to their self-esteem, and the fear of that experience may strongly discourage class members from making a civil claim.

Dealing with the challenge of delayed disclosure and responding to questions about why someone did not report hazing at the time, rather than years later, is very difficult for adult survivors. Survivors may be afraid of being made to feel "stupid" for not recognizing the misconduct at the time and for

¹ Burry, E., & Fiset, J. (2022). Calling the shots: organizational culture, performance, and the commoditization of ice hockey players. *Sport in Society*, 25(5), 945–962. <https://doi.org/10.1080/17430437.2020.1815708>

not reaching out to supposedly trusted individuals in the organization. They may fear being portrayed as disloyal to their team and teammates in breaking the code of silence. They may also feel as if they were to blame and deserved the abuse and any adverse consequences since they signed up for this journey with open eyes and even their parents' consent. Some of these challenges may be compounded if their own sons are playing competitive hockey and they have failed to address these issues as parents themselves.

Even in a best-case scenario, with a well-meaning cross-examiner, survivors will likely face questions that minimize their experience. That experience – and the fear of that experience – will discourage survivors from participating in a civil process, even if they want compensation and vindication for the harms they suffered. A process for claims that responds to these fears will help survivors to come forward.

2. What risks to wellbeing or mental health might players face in bringing forward claims related to the abuse and hazing they suffered or witnessed while playing in the CHL?

In addition to the challenges outlined above, players would face being re-traumatized by having to outline the details of what happened in the past and having to relive the experiences. They would experience significant anxiety and depression in facing the past, as well as trauma symptoms. They would likely feel that it is important to tell their immediate family members, due to fear the information would go public as well as having to explain their preoccupation with legal proceedings. Overall, they would feel a great deal of distress in dealing with a long-term secret they kept as well as having to examine their identity as a former hockey player and being part of a broader fraternity of former and current players involved in hazing. For some survivors, one could expect a level of distress that impairs their daily functioning, because they are now facing their past abuse, what they think and feel about their history in hockey, and how it shaped them.

Although bringing forward claims will be difficult for all former players who decide to do so, some individuals will face greater challenges because of their vulnerabilities and the impact that the hazing has had on their lives. The Independent Panel Report prepared by the defence outlines some of the potential impacts in terms of physical injuries and illnesses as well as cognitive, emotional, mental health, relationship, and economic losses.² Unless it is trauma-informed, the IIP process will likely exacerbate some of the existing symptoms and impact current functioning for those individuals already suffering from these consequences.

a. What kind of wellness/mental health supports, made available as part of an IIP, would mitigate these risks?

Former players would need access to confidential supports through mental health professionals who have expertise in treating males who have experienced abuse within a hypermasculine sport

² Independent Review Panel (October 31, 2020). "The Impact is Real...Action is Needed". Panel appointed by the Canadian Hockey League, p. 17.

and culture. The availability of support during cross-examination is especially important, as cross-examination can be a negative experience for abuse survivors. Knowing about this support in advance would also help players feel comfortable coming forward with their claims.

b. In order to mitigate these risks, at what stage during the IIP should these supports be made available?

The supports outlined above would need to be in place at the outset of involvement in any proceeding (e.g., drafting a claim or completing a questionnaire), as well as throughout any proceedings or hearings and interviews. Supports would also be needed after the process ends to assist with the aftermath of the proceedings.

3. How can an IIP assist players in overcoming those difficulties and barriers, in terms of:

The traditional litigation process is difficult for abuse survivors and discourages participation. Assisting players by changes to the traditional process, including confidentiality and supports in cross-examination, will help players come forward.

a. The mode by which notice of the IIP is given to players (i.e., whether notice is provided by email, advertisements online, or other means)

One factor discouraging participation by abuse survivors is media and community scrutiny. A notice process tailored to minimize that scrutiny would assist players with advancing claims. This may be especially important for players who continue to be involved in hockey and who may be afraid of the personal and professional consequences of being seen to participate in process adverse to “hockey.”

Media reports with links to more information, social media advertisements, email and online notices would be the best modes. Targeted mail may trigger questions from family or friends. The more that players' decision to participate and their identity is protected at earlier stages, the more likely they are to participate in an IIP.

b. The information contained in the notice, or available to players in conjunction with the notice.

The information should clearly define all forms of hazing and exposure to hazing so the misconduct is not minimized in any manner. There should be a link to a video that describes the problem and an acknowledgement that hazing was never a requirement of playing in the CHL. The video should encourage claimants to come forward and not suffer in silence – they would be told they are not alone. There should also be an acknowledgement that some claimants may have been victims of hazing in their rookie years and then encouraged to become perpetrators of hazing and this fact will not be held against them.

There is research to support the fact that former players may not have understood that hazing is/was abusive and was not a mandatory part of playing in the CHL. There should be clear

information as to who to contact by email or a 1-800 number, as well as an explicit assurance that the process is confidential. No former player would be identified directly or by implication (naming a team or year or position).

In recognition of claimants being reluctant or ambivalent in coming forward, the 1-800 number should have personnel who are trained to respond in an informed manner to phone inquiries. Such training would address the likely emotional state of the caller and responses to common questions about the process and confidentiality.

4. Other than monetary compensation, how could the IIP help players to deal with the abuses they suffered or witnessed playing in the CHL?

Players would need a clear acknowledgment of their abuse and the impact it has had as well as an apology from the hockey team and organization responsible for policies, practice, and education that should have – but did not -- protect them. Players would need assurance that some good will from the litigation will transpire for others– namely, current and future players will be protected from hazing and having to suffer similar outcomes.

Players would want to end the silence on hazing and that aspect of the hockey culture forever and see a public commitment to shine a light on the issue and ensure this conduct is not tolerated in any form by the league or any team. The Independent Review Panel Report offers a helpful roadmap to policies, practices, and prevention of hazing in the the future, which could be implemented as an outcome of the litigation.

Another idea that could be pursued as part of the IIP would be the opportunity to be involved in a “restorative engagement program” to deal with the healing process. This program has been utilized in other cases such as the Canadian Armed Forces (CAF)-Department of National Defence (DND) Sexual Misconduct Class Action Settlement to allow survivors “to share their experiences of abuse, the impact it has had on their life and career and/or provide their knowledge, ideas and insights on how to improve and contribute to culture change” in the institution.³ It might help players to have opportunities to participate in identifying lessons learned from hazing in the CHL and to contribute to broader culture change in hockey. The overarching goal would be to build an inclusive and respectful CHL culture now and into the future.

5. What protections or supports would assist players in being able to recount past events fully and accurately during cross-examination, while reducing risks to players' wellbeing and mental health?

³ See <https://www.canada.ca/en/department-national-defence/services/benefits-military/health-support/sexual-misconduct-response/restorative-engagement/about-restorative-engagement.html>

For the IIP to be effective, it must be trauma-informed to ensure that the process does not re-victimize the Claimants. By trauma-informed, the IIP would have to acknowledge the impact of trauma and design a process to avoid causing further harm.

An acknowledgment of trauma means understanding that hazing as a traumatic event(s) can have “lasting adverse effects on the individual’s functioning and mental, physical, social, emotional or spiritual well-being.”⁴ This knowledge would inform an IIP that “understands potential paths for recovery; recognizes the signs and symptoms of trauma in claimants; responds by fully integrating knowledge about trauma into procedures and practices; and seeks to actively resist re-traumatization.”⁵

Players would need to feel that they are in a safe and confidential venue. Attending the hearing virtually with a support person present at the claimant’s home or an office nearby should be an option. For in-person meetings, the venue could be a comfortable interview room that looks more like a family room or therapist’s office than a courtroom. They should be encouraged to share their experiences in an open-ended manner with some gentle probes to expand on the information. They should be allowed to have a support person with them if they so desire.

In a perfect world, cross-examination would recognize the reality of delayed disclosures of abuse, distress of survivors, and limits of historical memories around exact dates and times and some details of events that may have been forgotten. Breaks should be offered as needed.

In an ideal world, a specially tailored, trauma-informed assessment and inquiry process would be created. Trauma-informed approaches use current knowledge about how people are affected by trauma, for developing a specially tailored assessment and inquiry process. It is an approach that stresses safety, trust, collaboration, choice, and empowerment.

A trauma-informed approach would include each Claimant being interviewed by a mental health professional or trauma-informed adjudicator to have the opportunity to describe the extent and nature of the abuse and harm they have suffered while playing in the CHL. This trauma-informed interview would lead to a brief written report containing a summary of the interview, safeguards required for examinations, and recommendations for healing, as necessary.

This process would ensure claimants’ needs and concerns are recognized; trust and transparency are assured; open communication is promoted; collaboration for everyone in the process is guided by the same principles; and choice and empowerment to make sure that claimants have alternative ways of engaging with the process and different ways of responding to their unique circumstances.

The intention of the process is to facilitate Claimants’ description of what they experienced and how it may have harmed him, to reliably assess the events and the resulting impact, and to promote

⁴ US Department of Health and Human Services. (2014). SAMHSA's concept of trauma and guidance for a trauma-informed approach.

⁵ Ibid.

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healing in a manner that is most sensitive to their needs and circumstances. This process would reduce the risk of Claimants' public exposure and re-traumatization.

In summary, based on our extensive experience in the field and the literature on institutional abuse of adolescents, we predict major barriers for former CHL players to come forward to deal with the hazing they experienced in the past and the harm they may have suffered. Special measures would have to be put into place to engage survivors of hazing to come forward to share their stories, and there would have to be a trauma-informed process developed for the proposed Individual Issues Protocol.

Respectfully submitted,



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Registered Psychologist

List of Documents and Articles Relied Upon

Independent Panel Report, dated October 31, 2022.

Report on Player Wellbeing Programs and Related Recommendations (R. Turnpenny), dated January 14, 2022.

Justice Perell's Reasons for Decision, dated February 3, 2023 pertaining to this matter (Carcillo v. Canadian Hockey League, 2023 ONSC 886).

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AFFIDAVIT OF DR. DAVID WOLFE SWORN BEFORE ME FROM THE
TOWN OF LONDON, IN THE PROVINCE OF ONTARIO, TO THE CITY OF
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CURRICULUM VITAE

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Professional Licensure and Status

1981-present Registered Psychologist (C. Psych), Province of Ontario, Registration #1535
 1987-2020 Diplomate in Clinical Psychology (ABPP), American Board of Professional
 Psychology, Diploma #3941

Honors and Awards

Fellow: Royal Society of Canada (FRSC), College of Social Sciences
 Fellow: Academy of Clinical Psychology
 Fellow: American Psychological Association
 Recipient: UNESCO Chair Award for exemplary contribution to the promotion and
 expansion of the frontiers of human rights and elimination of violence against
 women, UNESCO/U. Connecticut, 2013
 Recipient: RBC Chair in Children's Mental Health, Centre for Addiction and Mental Health
 and the University of Toronto, 2002-2012
 Recipient: Blanche L. Ittleson Award for Outstanding Achievement in the Delivery of
 Childrens Services and the Promotion of Childrens Mental Health, American
 Orthopsychiatric Association, 2007
 Recipient: Donald O. Hebb Award for Distinguished Contributions to Canadian Psychology
 as a Science, Canadian Psychological Association, 2005
 Recipient: Psychologist of the Year, London Regional Psychological Association, 2004
 Honor: Chair, Sub-Committee on Child Abuse in Peacetime (1999-2000). International
 Working Group on Trauma, United Nations.
 Honor: Chair, Violence and Traumatic Stress Review Committee, National Institute of
 Mental Health, 1997-99
 President: Division 37 (Child, Youth & Families), American Psychological Association,
 1997-98
 Recipient: John Dewan Prize for Outstanding Contribution to Psychology, Ontario Mental
 Health Foundation, 2000
 Recipient: Outstanding Career Award, American Professional Society on the Abuse of
 Children, 2000
 Recipient: Contribution to Knowledge Award in Family Violence, Ontario Psychological
 Foundation, 1988

Fellowship: Senior Research Fellowship Award, Ontario Mental Health Foundation, 1992-98; 2001-2003.

Education and Training Background

1973 B.A. Psychology, University of Rochester
 1978 M.A. Clinical/Community Psychology, University of South Florida
 1980 Predoctoral residency in Clinical Psychology, University of Mississippi Medical Center
 1980 Ph.D. Clinical/Community Psychology, University of South Florida
 1985 Postdoctoral training, Child trauma research, Medical University of South Carolina

Academic Appointments and Titles

2015-present Research Scholar and Adjunct Professor, Centre for Research and Education on Violence Against Women and Children; Centre for School Mental Health, Faculty of Education, Western University (status appointment)
 2012-2016 Senior Scientist, Social and Epidemiological Research, Centre for Addiction and Mental Health (CAMH).
 2002-2016 Senior Scientist and Head, CAMH Centre for Prevention Science; Professor of Psychiatry and Psychology, University of Toronto
 2002-2012 RBC Chair in Children's Mental Health, Centre for Addiction and Mental Health
 1991-2002 Professor, Department of Psychology, University of Western Ontario (UWO)
 2001-2002 Academic Director, Centre for Research and Education on Violence Against Women and Children, UWO
 1985-1991 Associate Professor, Department of Psychology, UWO
 1980-1985 Assistant Professor, Department of Psychology, UWO
 1984-1988 Co-Director, Clinical Psychology Training Program, UWO
 1988-2002 Professor (Cross-appointment), Department of Psychiatry, UWO

Major Research Interests and Current Projects

Interests: The effects of child abuse and neglect on relationship development among children and adolescents; developmental psychopathology; violence prevention with children and youth.

Specific Issues: Educational methods to aid children and youth in developing healthy, non-violent relationships, especially those with histories of abuse and neglect; theory testing of the impact of multiple forms of maltreatment upon adolescent development; educational programming to prevent adolescent violence and related risk behaviors.

*Special Project: **The Fourth R: Skills for Youth Relationships.*** A school-based curriculum targeting multiple forms of violence, including bullying, dating violence, peer violence, and group violence. The *Fourth R* is listed on the following directories of evidence-based practice:

- a. The U.S. Office of Juvenile Justice and Delinquency Prevention's Model Programs Guide: <http://www.ojjdp.gov/mpg/>
- b. U.S. Department of Justice's Office of Justice Programs (OJP): www.crimesolutions.gov
- c. Public Health Agency of Canada Best Practices Portal: <http://cbpp-pcpe.phac-aspc.gc.ca/intervention/617/view-eng.html>

- d. Public Safety Canada Promising and Model Crime Prevention Programs: http://www.publicsafety.gc.ca/res/cp/res/2011-pcppp-eng.aspx#toc_4d.
- e. NREPP: SAMHSA's National Registry of Evidence-based Programs and Practices: <http://nrepp.samhsa.gov/ViewIntervention.aspx?id=207>.
- f. CASEL: Collaborative for Academic, Social, and Emotional Learning: <http://secondaryguide.casel.org/>

Copyright Registration

The Fourth R: Skills for Youth Relationships. A school-based program to prevent adolescent dating violence. Date June 9, 2011 (US copyright office). Copyright transferred to Western University, October 1, 2015.

Memberships in Professional Organizations and Societies

- Fellow: American Psychological Association (Divisions 12; 37)
- Member: International Society for Prevention of Child Abuse and Neglect
Canadian Psychological Association
Society for Prevention Research
Society for Research in Child Development
- Responsibilities: Councillor, Intn'l Society for Prevention of Child Abuse and Neglect (2002-08)
Panel member, International Study on Violence Against Children in the School Community (2004-05) [Contribution to the UN Secretary General's Study on Violence Against Children]
President, APA Division 37 (1997-98)
Past Member, APA Task Force on Child Abuse Training (Division 37)
Chair, APA Working Group on Child Abuse Prevention (1991-1992)
CPA Representative to the Interdisciplinary Project on Domestic Violence
Member, APA Working Group on Implications for Education and Training on Child Abuse Issues, APA (1992-93)

Research Grants, Contracts, and Fellowships Awarded (listed by most recent awards)

- Lifetime Grants Awarded:* 41
- Total Awards:* \$17,743,000
- Canadian Women's Foundation. *Fourth R Healthy Relationships national dissemination project*. D. Wolfe (PI). \$160,000 (2014-16).
- Ontario Ministry of Education. *Youth & Parents Voice Transition Support for FNMI Students*. D. Wolfe (PI). \$20,000 (2014-15).
- Ontario Ministry of Community Safety and Correctional Services. *Crime Prevention through the Promotion of Positive Mental Health among Aboriginal Youth: Implementation of the Fourth R Uniting Our Nations Mentoring Programs*. D. Wolfe (PI). \$70,000 (2014-16).
- Canadian Institutes of Health Research (CIHR). *New mothers' thoughts of harm: Prevalence and relation to OCD and child harm*. N. Fairbrother (PI), J. Abamowitz, P. Janssen, N. Lipsky, D. Wolfe, S.

- Woody (Co-PIs). \$461,031 (2012-2015).
- Health Canada: Drug Strategy Community Initiatives Fund (DSCIF). *Preventing illicit drug use by fostering healthy relationships: Implementation of the Fourth R Healthy Relationships Plus program*. C. Crooks (PI), R. Broll, & D. Wolfe (Co-PIs). \$394,442 (2014-2017).
- U.S. National Institute for Child Health and Human Development (NICHD). *A multi-level, cohort-sequential study of rural adolescent dating violence victimization and perpetration*. Grant # 1R01HD067505-01A1. McDonnell, J. (PI), Wolfe, D.A. (Co-PI); \$1,875,000 (2011-2015).
- Public Health Agency of Canada, Innovation Strategy (Phase II). *The Fourth R: Promoting youth well-being through healthy relationships*. Crooks, C. (PI), Wolfe, D. (Co-PI); 2011-2015; \$2,486,029.
- Canadian Institutes of Health Research (CIHR), Human Development, Child and Youth Health; Strategic Teams in Applied Injury Research (STAIR). *Traumatic Brain Injury and Violence: Reducing the risks, improving the outcomes*. Cusimano, M. D. et al. (12 Co-PIs), \$2,000,000 over four years.
- Canadian Institutes of Health Research (CIHR). *Emerging Team in Innovations in Child and Youth Concurrent Disorders - Mitigating risk and creating effective treatments: Improving services to children and youth with co-morbidities through discovery, collaboration, innovation, and integration*. Beitchman, J. (Nominated PI), Henderson, J., McMain, S., Rush, B., & Wolfe, D. (Co-PIs), \$1,499,465 over 5 years.
- Public Health Agency of Canada, Innovation Strategy (Phase I). *A multi-systemic approach to promoting youth well-being and reducing violence and victimization: Integrated plans for effective school and community interventions*. Wolfe, D. (PI), Crooks, C. (Co-PI); 2010, \$200,362.
- Social Sciences and Humanities Research Council (SSHRC) Strategic Knowledge Clusters, Research Network, *Canadian Prevention Science Cluster for Children and Youth*. D. Wolfe, Principal Investigator (9 co-investigators); 2008-2015, \$2,253,741.00.
- Ministry of the Attorney General (Ontario): *Building community capacity to address victimization issues among Aboriginal high school students*. 2007-2008, \$51,575.00 (with C. Crooks).
- Ontario Mental Health Foundation. *Peer contributions to teen dating violence: Implications for mental health*. 2007-2009, \$143,500 (with W. Ellis).
- Canadian Women's Foundation. *The Fourth R Project*. 2007-2009, \$140,000 (PI: D. Wolfe, C. Crooks, P. Jaffe).
- Canadian Institutes of Health Research (CIHR). *Controlled longitudinal evaluation of a school-based program to prevent adolescent dating violence and related risk behaviours*. 2004-2009, \$2,156,000 (PI: D. Wolfe; Co-PI: Peter Jaffe, Claire Crooks).
- Child Health Research Institute. *Understanding child neglect: An investigation of neglectful caregivers' attachment representations*. 2002-2003, \$7500 (Co-PIs: D. Wolfe, K. Hildyard).
- National Institute of Alcohol Addiction and Abuse (NIAAA) and the NIH Youth Violence Consortium. *Preventing abuse in adolescent dating relationships*. 2001-2004, U.S.\$600,000 (Principal investigators: D. Wolfe, E. Jouriles).
- Law Commission of Canada. *Institutional Child Abuse: Improving Public and Professional Understanding*. 2000-2001, \$30,000 (Principal investigators: D. Wolfe, P. Jaffe).
- National Crime Prevention Center, Community Mobilization Program (Canadian Department of Justice). *Building healthy, non-violent relationships among at-risk youth*. 2001-2004, \$145,000 (Principal investigators: D. Wolfe, P. Jaffe).

- National Health Research and Development Program. *Promoting healthy, non-violent relationships: A prevention program with at-risk youth*. 1995-2000, \$760,000 (Principal Investigators: D. Wolfe, C. Wekerle).
- Child Maltreatment Division, Health Canada. *Development of a Conceptual Framework for a Child Maltreatment Surveillance Capacity*. 1999-2000, \$45,000 (Principal Investigator: D. Wolfe).
- Ontario Mental Health Foundation. *Pathways to violence in teen dating relationships*. 1997-1999, \$93,062 (Principal Investigators: D. Wolfe, C. Wekerle).
- Ontario Mental Health Foundation. *Senior Research Fellowship Award*. 1992-1998, \$275,000; 2001-2003, \$110,000 (Recipient: D. Wolfe).
- Social Sciences and Humanities Research Council and Health and Welfare Canada (Joint Initiative). *Centre for Research on Violence Against Women and Children*. 1992-1997, \$500,000.
- Academic Development Fund, University of Western Ontario. *Centre for Research on Violence Against Women and Children*. 1993, \$25,000 (D. Wolfe: Project Director).
- Lawson Foundation of Canada. *Promoting healthy, non-violent relationships*. 1993-94, \$20,000 (Principal Investigator: D. Wolfe).
- Ontario Mental Health Foundation. *Promoting healthy, non-violent relationships among youth*. 1994-1996, \$120,000 (Principal Investigators: D. Wolfe, C. Wekerle).
- Health and Welfare Canada, Family Violence Prevention Division. *Promoting healthy, non-violent relationships: A prevention program with at-risk youth (pilot)*. 1992-1993, \$129,000 (Principal Investigators: D. Wolfe, C. Wekerle).
- The Institute for the Prevention of Child Abuse. *Preventing violence in relationships: A focus on adolescents*. 1990-1993, \$215,000 (D. Wolfe, Principal Investigator).
- U.S. Department of Health and Human Services, U.S. Advisory Board on Child Abuse and Neglect. *Treatment related to child abuse and neglect (contract)*. 1991, \$5,700.
- Medical Research Council of Canada. *The impact of child maltreatment*. 1989-1992, \$265,000 (Principal Investigator: D. Wolfe).
- Social Sciences and Humanities Research Council of Canada. *The impact of sexual abuse: A comparative and longitudinal investigation*. 1986-1990, \$162,000 (Principal Investigator: D. Wolfe).
- Medical Research Council of Canada. *Promoting competence in parents at risk of abuse*. 1984-1986, \$102,000 (Principal Investigator: D. Wolfe).
- Medical Research Council of Canada. *Assessment and intervention with children from distressed families*. 1982-1984, \$30,000 (Principal Investigators: D. Wolfe).
- Employment and Immigration Canada. *Needs analysis and program development for children involved in family court proceedings*. 1983, \$13,680 (Principal Investigator: D. Wolfe).
- Ministry of Community and Social Services (Province of Ontario). *Understanding the impact of wife assault on child witnesses*. 1987-1989, \$165,293 (Principal Investigators: D. Wolfe, P. Jaffe).
- Ministry of Community and Social Services (Province of Ontario). *An early intervention program for children from violent families*. 1985-1987, \$165,000 (Principal Investigators: D. Wolfe, P. Jaffe).
- Ontario Provincial Secretariat for Justice. *An Evaluation of Police and Community responses to domestic violence*. 1984, \$40,000 (Principal Investigators: D. Wolfe, P. Jaffe).

Ontario Mental Health Foundation. *Children's response to violence between their parents: An examination of stress buffers for children*. 1984-1985, \$13,899 (Principal Investigators: D. Wolfe, P. Jaffe).

Ontario Mental Health Foundation. *The impact of exposure to marital violence on children's adjustment*. 1983-1985, \$73,500 (Principal Investigators: D. Wolfe, P. Jaffe).

Title XX Training Grant, Florida DHRS. *Training HRS child welfare staff in effective family intervention*. 1978-1979, \$56,845 (Principal Investigators: D. Wolfe, J. Sandler).

Grant Consultant and Postdoctoral Supervision Awards (2010-present)

Canadian Institutes of Health Research (CIHR). *Evaluation of a program to prevent adolescent health risk behaviours and promote positive mental health: The role of neurocognition*. (Supervisor of CIHR Postdoctoral Fellowship Award (D. Exner-Cortens). \$90,000 (2014-2016).

Fund for the City of New York (2011-2014). *The Fourth R: A randomized trial of a violence-reduction program in Bronx, New York*. U.S. Department of Justice, Office of Justice Programs.

Centre for Court Innovation (2010-2013). *Defending Childhood: Evaluation of the Attorney General's Children Exposed to Violence Demonstration Program: Phase I*. U.S. Department of Justice, Office of Justice Programs.

Center for Violence Prevention, University of Texas Medical Branch, Galveston, TX. (2016-present). NIH funded longitudinal study on a cluster randomized controlled study of the Fourth R school-based violence prevention program.

Private Donation Research Funding

Purpose: National Roll-Out of the Fourth R Prevention Initiative (\$5,830,000)

2013-2018	CAMH Foundation (M. Feldman, donor). \$1 million for mental health and well-being in the classroom (Fourth R Grade 7)
2007-2011	Carthy Foundation. \$300,000 for business model and website development
2006-2012	Crooks Family Foundation. \$1 million for Fourth R Western expansion
2004-2010	Royal LePage Shelter Foundation. \$1 million for national program development
2004-2006	Legate and Associates. \$30,000 for local program development
2002-2012	Royal Bank of Canada (RBC) \$2.5 million for Chair in Children's Mental Health

Consultation to Sponsored Research and Evaluation (2008-present)

2010-2012	National Advisory Committee, Evergreen Child and Youth Mental Health Framework for Canada (Mental Health Commission of Canada).
2009-2012	Youth Internet Safety Education Program (Lisa Jones, recipient). Funder: National Institute of Justice (NIJ).
2008-2012	The Start Strong initiative on dating violence prevention (Family Violence Prevention Fund). Funder: Robert Wood Johnson Foundation.
2008-2011	Latino child abuse prevention project. Center on Child Abuse and Neglect, University of Oklahoma Health Sciences Center. Funder: NIMH.

Advisory to Government and International Organizations

2014	Faculty, The Haruv Institute International PhD workshop on child maltreatment. Jerusalem, Israel (October, 2014)
2014-present	Member, National Advisory Group, Assessment of Social and Emotional Learning and development of Children, University of British Columbia
2013	Member, Expert Panel, Adaptations of evidence-based interventions in violence prevention, Centers for Disease Control and Prevention (June, 2013)
2012-present	Member, Advisory Council, London (UK) Education Research Symposium (annual conferences).
2011	Participant, Roundtable of Experts on Teen Dating Violence, Sexual Assault and Related Youth Violence. White House initiative on Violence Against Women (Jan. 2011)
2011	Presenter to National Advisory Committee, Office on Violence Against Women, U.S. Dept. of Justice (June 2011)
2010	Consultation to Centers for Disease Control and Prevention, Injury Prevention and Control (Violence Prevention Division) on dating violence prevention in schools and communities.
2009-2011	Member, National Framework Review Committee (a sub-committee of the Child and Youth Advisory Committee of the Mental Health Commission of Canada)
2009	Reviewer, <i>When to suspect child maltreatment</i> . National Collaborating Centre for Women's and Children's Health (London, UK)
2008-2011	Task Force Member, Canadian Standards for Preventing Substance Abuse through Schools
2005-2008	Member, Advisory Board of "Strong Communities," Clemson University, Greenville, SC
2004	Contributor, World Bank Children & Youth Policy
2004	Consultant, Ministry of Education (Ontario) Safe Schools Action Team
2002-2003	Blue Ribbon Task Force, Milton Hershey School, Harrisburg, Pennsylvania
2001	Panel on Elder Abuse, U.S. National Academies of Science
2000-2003	NIH Youth Violence Consortium, National Institutes of Health
2000-2002	Sub-Committee on Violence Prevention, 6th World Congress (2002) on Injury Prevention and Control, World Health Organization.
2000	Youth Violence Prevention Initiative, Board on Children, Youth, and Families, U.S. National Academies of Science
1999-2000	Chair, Sub-Committee on Child Abuse in Peacetime (1999-2000). International Working Group on Trauma, United Nations.
1999-2000	Advisory Committee, Guidelines for the Mental Health Treatment of Intrafamilial Child Physical and Sexual Abuse. Office of Victims of Crime, U.S. Department of Justice.
1999-2000	Asilomar Panel on Children and Domestic Violence, Packard Foundation.
1999	Child Welfare Law Review, Child Welfare Committee, Ontario Ministry of Community and Social Services
1997-2002	Advisory Board, Canadian Incidence Study of Child Maltreatment, Child Maltreatment Division, Health Canada
1994	Consultant (child abuse intervention and prevention), U.S. Dept. of Health and Human Services.

Expert Legal Testimony

- Ontario Superior Court and Ontario Provincial Court: Testified for plaintiff and defense in criminal, civil, and administrative proceedings regarding child sexual abuse; adult survivors of child sexual abuse; child welfare; effects of family violence on children; parental capacity.

- Determined by the courts to be an expert in child abuse and neglect (38 occasions).
- Appointed by Ontario Superior Court to be consultant to the Liquidator for the Christian Brothers of Ireland in Canada, to evaluate claimants for veracity of complaint and assessment of damages.
- Expert testimony concerning child sexual abuse, presented to the Public Hearing of the Cornwall Public Inquiry (The Honourable Justice G. N. Glaude, Commissioner)
- Consultant to lawyers in civil and criminal proceedings
- Class action involving Upper Canada College (Toronto); Selwyn House school (Montreal).

Recent legal citations:

- *Re: Doe v. Doe*, Date: 2004-03-25 Docket: 30537F_2000.
<http://www.canlii.org/on/cas/onsc/2004/2004onsc10732.html>.
- *Re: The Christian Brothers of Ireland in Canada*, applicant [2004] O.J. No. 359 O.C.J., Blair J.

Recent Media Interviews and Publications

Regarding violence prevention, bullying, adolescent risk behaviors, school-based prevention, and child abuse:

- Associated Press (L. Italie). *Trio of child-sex documentaries spotlights victims' parents* (March 21, 2019). Available: <https://apnews.com/54b596dee786468f925f48d508ba4b39>
- Toronto Star (D. A. Wolfe). *Why the new sex-ed curriculum actually protects children* (March 1, 2015). Available: <http://www.thestar.com/opinion/commentary/2015/02/28/why-the-new-sex-ed-curriculum-actually-protects-children.html>
- Toronto Star (J. Timson). *'Resilience' is a word we should not take lightly* (February 26, 2015). Available: <http://www.thestar.com/life/2015/02/27/resilience-is-a-word-we-should-not-take-lightly-timson.html>
- CBC news. *Violence against women needs to come out of the shadows, researchers say* (Nov. 20, 2014). Available: <http://www.cbc.ca/news/health/violence-against-women-needs-to-come-out-of-the-shadows-researchers-say-1.2843986>
- Huffington Post/Canada.com (David Kates). *Back to school: How to calm students' stress and anxiety* (Sept 10, 2014).
- Canadian Press (Lauren La Rose); *Building resiliency: Use tough times as teachable moments, say parents, experts; Tips in tough times: Teaching kids resiliency* (November 13, 2013).
- CBC.CA News (Janet Davidson); *Mental health disorders spike in post-high school transitions* (Oct 25, 2013). Available: <http://www.cbc.ca/news/health/mental-health-disorders-spike-in-post-high-school-transitions-1.2251790>.
- The Irish Times (Carl O'Brien); *Researchers find key differences in brains of abused and neglected young people* (September 17, 2013). Available: <http://www.irishtimes.com/news/social-affairs/researchers-find-key-differences-in-brains-of-abused-and-neglected-young-people-1.1529960>
- New York Times (Erica Goode); *Emotional recovery seen possible for victims of prolonged abuse* (May 9, 2013; page 3). Available: http://www.nytimes.com/2013/05/10/us/emotional-recovery-seen-possible-in-cleveland-case.html?hp&_r=1&
- TVO The Agenda (Steve Paiken). *Mental health matters: Raising resilience* (May 7, 2013). Available: <http://ww3.tvo.org/video/191019/resilience-children>
- National Public Radio (Warren Olney); *Three captives found after ten years.* (May 7, 2013). Available: <http://www.kcrw.com/news/programs/tp>

- CBC radio national syndication (8 local stations). *Psychological aspects of recovery following captivity* (May 7, 2013).
- City Life Magazine. *How to stop a bully: Why education is key* (Apr/May 2013; page 38).
- Café Scientifique (Pauline Chan, CTV news); *Time to talk about teen mental health: From causes to cures* (March 5, 2013)
- Globe and Mail (Carly Weeks); *No easy explanation for violent acts; The public wants to understand how someone could kill so many people, but a psychiatric disorder is not the full answer* (Dec 18, 2012)
- CBC radio (Mary Ito); *Signs of stress in children* (Dec. 9, 2012). Available: <http://www.cbc.ca/freshair/episodes/2012/12/08/sun-dec-9/>
- Globe and Mail; *Bullying is a viral relationship problem* (Oct 18, 2012). Available: <http://www.theglobeandmail.com/commentary/bullying-is-a-viral-relationship-problem/article4619493/>
- Peace Talks Radio (Paul Ingles); *Early intervention to stop relationship violence* (June 24, 2011). Available: <http://www.goodradioshows.org/peaceTalksL97.htm>
- Globe and Mail (Adriana Barton); *Coming clean about addiction – your child’s* (May 10, 2010; p. L1)
- Toronto Star (Susan Pigg); *Parents must face sober facts on binge drinking* (Oct. 31, 2009; p. L1).
- National Public Radio (Brenda Wilson); *New dating seminars target teen violence* (September 28, 2009). Available: <http://www.npr.org/templates/story/story.php?storyId=113211662&sc=emaf>.
- CNN (Heidi Collins); *new study shows prevention of teen dating violence* (August 3rd, 2009).
- New York Times (Ben Carey); *For longtime captives, a complex road home* (September 1, 2009; page 1). Available: http://www.nytimes.com/2009/09/01/health/01psych.html?_r=1&scp=1&sq=David%20wolfe&st=cse.
- Fox News (O’Reilly Factor); *recovery of child abuse victims* (Sept. 2, 2009).

Editor-in-Chief*Child Abuse & Neglect: The International Journal* (2007-2012)**Associate Editor***Child Maltreatment* (2005-2006);*Advances in psychotherapy: Evidence-based practice* (D. Wedding, Series Ed.). Cambridge, MA: Hogrefe & Huber.**Editorial Boards:***Child Abuse & Neglect* (1983-89; 1995-2007)*Child Abuse Review* (2005-present)*Child Maltreatment* (1996-2006)*Journal of Family Violence* (1985-2006)*Journal of Family Psychology* (2004-present)*Journal of Clinical Child and Adolescent Psychology* (2001-present)*Journal of Consulting and Clinical Psychology* (1986-88; 1996-present)*Journal of Interpersonal Violence* (1989-2006)*Journal of Child Sexual Abuse* (1990-2006)*Journal of Traumatic Stress* (1998-2004)*Psychological Assessment* (2003-2006)*Psychosocial Intervention* (2010-present)

Grant Appraiser: Health & Welfare Canada
 Canadian Institutes of Health Research
 U. S. National Institute of Mental Health
 Ontario Mental Health Foundation
 Social Sciences & Humanities Research Council of Canada

Other Clinical and Professional Activities (Selected examples)

1981-current Independent practice involving psychological assessments of children and adult sexual abuse victims.
 1980-1995 Chief Psychologist, Children's Aid Society, London
 1987-1991 Director of Research, Institute for the Prevention of Child Abuse, Toronto.
 1991-1996 Member, Fellowships Review Committee, Ontario Mental Health Foundation, Toronto
 1995-1999 Chair, Violence & Traumatic Stress Initial Review Group, U.S. National Institute of Mental Health.
 2002-2007 Member, Research Committee, Ontario Mental Health Foundation, Toronto
 2008 Consultant, Report of the APA Task Force on Physical Punishment of Children. American Psychological Association
 2008 Speaker, National Arts Centre Foundation Roundtable on Media, Communications, and Technology: Healthy Mental Development for Children and Youth. Ottawa, Ontario.
 2008-2010 Member, Prevention of Violence Canada

Publications (arranged chronologically, by type)

Lifetime Summary:

Books: 16
 Edited Books: 5
 Chapters in Books: 53
 Peer-Reviewed Journals: 114
 Government and NGO Reports: 13
 Training Manuals & Curricula: 1

Books:

- 1) Mash, E. J., & Wolfe, D A. (1999; 2002; 2005; 2009; 2013; 2016; 2018). *Abnormal child psychology* (Editions 1-7). Belmont, CA: Cengage.
- 2) Wekerle, C., Wolfe, D.A., Cohen, J.A., Bromberg, D.S., & Murray, L. (2018). *Childhood maltreatment (2nd edition)*. In D. Wedding (Series Ed.), *Advances in psychotherapy: Evidence-based practice*. Cambridge, MA: Hogrefe & Huber. *Maltrato Infantil* (Spanish translation, 2019). Mexico City: Manual Moderno.
- 3) Townsley, D., Hughes, R., Crooks, C., Wolfe, D.A., Burns, S., & Kirkham, A. (2015). *The Fourth R Healthy Relationships Plus Program*. London, ON: Western University.
- 4) Jaffe, P., Wolfe, D. A., & Campbell, M. (2011). *Growing up with domestic violence: Assessment, intervention & prevention strategies for children & adolescents*. Cambridge, MA: Hogrefe & Huber.

- 5) Wolfe, D. A., Ballon, B., Chaim, G., Chiodo, D., & Henderson, J. (2011). *What parents need to know about teens risk taking: Strategies for reducing problems related to alcohol, other drugs, gambling and internet use*. Toronto: Centre for Addiction and Mental Health.
- 6) Wolfe, D. A. (2007). *What parents need to know about teens: Facts, myths, and strategies*. Toronto: Centre for Addiction and Mental Health.
- 7) Wekerle, C., Miller, A., Wolfe, D. A., & Spindel, C. B. (2006). *Childhood maltreatment*. In D. Wedding (Series Ed.), *Advances in psychotherapy: Evidence-based practice*. Cambridge, MA: Hogrefe & Huber.
- 8) Wolfe, D. A., Jaffe, P., & Crooks, C. (2006). *Adolescent Risk Behaviors: Why Teens Experiment and Strategies to Keep Them Safe*. New Haven: Yale University Press.
- 9) Wolfe, D. A. (1999). *Child abuse: Implications for child development and psychopathology (2nd Edition)*. Thousand Oaks, CA: Sage.
- 10) Wolfe, D. A., Wekerle, C., & Scott, K. (1997). *Alternatives to violence: Empowering youth to develop healthy relationships*. Thousand Oaks, CA: Sage.
- 11) Jaffe, P., Lemon, N., Sandler, J., & Wolfe, D. (1996). *Working together to end domestic violence*. Tampa, FL: Mancorp.
- 12) Wolfe, D. A., Wekerle, C., Gough, B., Reitzel-Jaffe, D., Grasley, C., Pittman, A., Lefebvre, L., & Stumpf, J. (1996). *The Youth Relationships Manual: A group approach with adolescents for the prevention of woman abuse and the promotion of healthy relationships*. Thousand Oaks, CA: Sage.
- 13) Wolfe, D. A. (1991). *Preventing physical and emotional abuse of children*. New York: Guilford Press.
- 14) Jaffe, P., Wolfe, D. A., & Wilson, S. (1990). *Children of battered women*. Thousand Oaks, CA: Sage.
- 15) Wolfe, D. A. (1987). *Child abuse: Implications for child development and psychopathology*. Thousand Oaks, CA: Sage.
- 16) Wolfe, D. A., Kaufman, K., Aragona, J., & Sandler, J. (1981). *A child management program for abusive parents: Procedures for developing a child abuse intervention program*. Winter Park, FL: Anna Publishing Company. *Programa de conduccion de ninos maltrados* (Spanish translation, 1991). Mexico City: Editorial Trillas.

Edited Books

- 1) Wolfe, D. A. & Temple, J. R. (2018). *Dating Violence: Theory, Research, and Prevention*. Cambridge, MA: Academic Press/Elsevier.
- 2) Wolfe, D. A. (Ed.) (2007). *Acting Out: Aggressive behaviour in children and youth*. Toronto: Centre for Addiction and Mental Health.
- 3) Wolfe, D. A., & Mash, E. J. (Eds.) (2006). *Behavioral and emotional disorders in adolescents: Nature, assessment, and treatment*. New York: Guilford.
- 4) Wolfe, D. A., McMahon, R., & Peters, R. Dev., Eds. (1997). *Child abuse: New directions in prevention and treatment across the lifespan*. Thousand Oaks, CA: Sage.
- 5) Starr, R., & Wolfe, D. A., Eds. (1991). *The effects of child abuse and neglect: Issues and research*. New York: Guilford Press.

Book Chapters:

- 1) Friedman, R., Sandler, J., Hernandez, M., & Wolfe, D. A. (1981). Child abuse. In E. J. Mash & L. J. Terdal (Eds.), *Behavioral assessment of childhood disorders* (pp. 221-225). New York: Guilford Press.
- 2) Wolfe, D. A. (1985). Prevention of child abuse through the development of parent and child competencies. In R. J. McMahon & R. Peters (Eds.), *Childhood disorders: Behavioral-developmental approaches* (pp. 195-217). New York: Brunner/Mazel.
- 3) Wolfe, D. A. (1987). Child abuse prevention with at-risk parents and children. In J. Burchard & S. Burchard (Eds.), *The prevention of delinquent behavior* (pp. 160-189). Thousand Oaks, CA: Sage.
- 4) Wolfe, D. A. (1987). Child abuse: Clinical assessment and intervention. In M. Hersen & V. B. Van Hasselt (Eds.), *Behavior therapy with children and adolescents: A clinical approach* (pp. 385-415). New York: John Wiley & Sons.
- 5) LaRose, L., & Wolfe, D. A. (1987). Psychological characteristics of parents who abuse or neglect their children. In B. B. Lahey & A. E. Kazdin (Eds.), *Advances in clinical child psychology* (Vol. 10, pp. 55-97). New York: Plenum.
- 6) Wolfe, D. A. (1988). Child abuse and neglect. In E. J. Mash & L. G. Terdal (Eds.), *Behavioral assessment of childhood disorders* (2nd Ed., pp. 627-669). New York: Guilford Press.
- 7) Wolfe, D. A., Wolfe, V. V., & Best, C. (1988). Child victims of sexual abuse. In V. B. Van Hasselt, A. S. Bellack, R. L. Morrison, & M. Hersen (Eds.), *Handbook of family violence* (pp. 157-185). New York: Plenum.
- 8) Wolfe, V. V., & Wolfe, D. A. (1988). Sexual abuse of children. In E. J. Mash & L. G. Terdal (Eds.), *Behavioral assessment of childhood disorders* (2nd Ed., pp. 670-714). New York: Guilford Press.
- 9) Wolfe, D. A., Jaffe, P., Wilson, S., & Zak, L. (1988). A multivariate investigation of children's adjustment to family violence. In G. T. Hotaling, D. Finkelhor, J. T. Kirkpatrick, & M. A. Straus (Eds.), *Family abuse and its consequences: New directions in research* (p. 228-241). Thousand Oaks, CA: Sage.
- 10) Azar, S., & Wolfe, D. A. (1989). Treatment of abusive parents and their children. In E. J. Mash & L. G. Terdal (Eds.), *Behavioral treatment of childhood disorders* (pp. 451-489). New York: Guilford.
- 11) Wolfe, D. A., & St. Pierre, J. (1989). Child abuse and neglect. In T. H. Ollendick & M. Hersen (Eds.), *Handbook of child psychopathology* (2nd Ed., pp. 377-398). New York: Plenum.
- 12) Factor, D., & Wolfe, D. A. (1990). Parental psychopathology and high-risk children. In R. T. Ammerman & M. Hersen (Eds.), *Children at risk: An evaluation of factors contributing to child abuse and neglect* (pp. 171-198). New York: Plenum.

- 13) Wolfe, D. A., & Jaffe, P. (1990). The psychosocial needs of children in care. In L. C. Johnson & D. Barnhorst (Eds.), *Children, families, and public policy in the 1990's* (pp. 231-246). Toronto: Thompson Educational Publishing.
- 14) Wolfe, D. A., & McGee, R. (1991). Assessment of emotional status among maltreated children. In R. Starr & D. Wolfe (Eds.), *The effects of child abuse and neglect: Issues and research* (pp. 257-277). New York: Guilford Press.
- 15) Wolfe, D. A., Wekerle, C., & McGee, R. (1992). Developmental disparities of abused children: Directions for prevention. In R. DeV. Peters, R. J. McMahon, & V. L. Quinsey (Eds.), *Aggression and violence throughout the lifespan* (pp. 31-51). Thousand Oaks, CA: Sage.
- 16) Wolfe, D. A. (1993). Intervention research with child abusive families: Policy implications. In D. Cicchetti & S. Toth (Eds.), *Child abuse, child development, and social policy* (pp. 369-397). New York: Ablex.
- 17) Wolfe, D. A. (1994). The role of intervention and treatment services in the prevention of child abuse and neglect. In G. B. Melton & F. Barry (Eds.), *Protecting children from abuse and neglect: Foundations for a new national strategy* (pp. 224-303). New York: Guilford.
- 18) Wolfe, D. A., Wekerle, C., Reitzel, D., & Gough, R. (1995). Strategies to address violence in the lives of high-risk youth. In E. Peled, P. Jaffe, & J. Edleson (Eds.), *Ending the cycle of violence: Community responses to children of battered women* (pp. 255-274). Thousand Oaks, CA: Sage.
- 19) Wekerle, C., & Wolfe, D. A. (1996). Child maltreatment. In E. J. Mash & R. Barkley (Eds.), *Child psychopathology*. (pp. 492-537). New York: Guilford Press.
- 20) Wolfe, D. A., & MacEachran, A. (1997). Child abuse and neglect. In E. J. Mash & L. Terdal (Eds.), *Behavioral assessment of childhood disorders (Third Edition, pp. 523-568)*. New York: Guilford.
- 21) Wolfe, D. A., & Wekerle, C. (1997). Pathways to violence in teen dating relationships. In D. Cicchetti & S. L. Toth (Eds.), *Rochester Symposium on Developmental Psychopathology, Volume VIII: Developmental perspectives on trauma: Theory, research, and intervention* (pp. 315-341). Rochester, NY: University of Rochester Press.
- 22) Wolfe, D. A., Wekerle, C., Reitzel-Jaffe, D., Grasley, C., Pittman, A., & MacEachran, A. (1997). Interrupting the cycle of violence: Empowering youth to promote healthy relationships. In D. Wolfe, R. McMahon, & R. Dev. Peters (Eds.), *Child abuse: New directions in prevention and treatment across the lifespan* (pp. 102-129). Thousand Oaks: Sage.
- 23) Azar, S., & Wolfe, D. (1998). Child physical abuse and neglect. In E. J. Mash & R. A. Barkley (Eds.), *Treatment of childhood disorders* (Second edition, pp. 501-544). New York: Guilford.
- 24) Pittman, A. L., Wolfe, D. A. & Wekerle, C. (1998). Prevention during Adolescence: The Youth Relationships Project. In J. Lutzker (Ed.), *Handbook on research and treatment in child abuse and neglect* (pp. 341-356). New York: Guilford.
- 25) Wekerle, C., & Wolfe, D. A. (1998). Windows for preventing child and partner abuse: Early childhood and adolescence. In P. K. Trickett & C. Schellenbach (Eds.). *Violence against children in the family and the community* (pp. 339-369). Washington, DC: APA Books.
- 26) Wolfe, D. A. (1998). Prevention of child abuse and neglect. In National Forum on Health (Canada) (Ed.), *Canada Health Action: Building on the Legacy, Vol 1: Children and Youth* (pp. 103-131). Sainte-Foy, QC: Editions Multimondes.
- 27) Wolfe, D. A. (1999). Prevencion y Tratamiento. In J. Sanmartin (Ed.), *Violencia contra niños* (pp. 59-78) Barcelona: Ariel.

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- 28) Pittman, A., Wolfe, D. A., & Wekerle, C. (2000). Strategies for evaluating dating violence prevention programs. In S. Ward & D. Finkelhor (Eds.), *Program evaluation and family violence research* (pp. 217-238). New York: Haworth.
- 29) Scott, K. L., & Wolfe, D. A. (2000). What works in the treatment of batterers. In M. P. Kluger, G. Alexander, & P. A. Curtis (Eds.), *What works in Child Welfare* (pp. 105-111). New York: Child Welfare League of America.
- 30) Wolfe, D. A., & Jaffe, P. (2001). Prevention of domestic violence: Emerging initiatives. In: S. A. Graham-Bermann & J. L. Edleson (Eds.), *Domestic violence in the lives of children: The future of research, intervention and social policy* (pp. 283-298). Washington DC: American Psychological Association.
- 31) Pittman, A., & Wolfe, D. A. (2002). Bridging the gap: Prevention of adolescent risk behaviors and development of healthy, non-violent dating relationships. In C. Wekerle & A-M. Wall (Eds.), *The violence and addiction equation: Theoretical and clinical issues in substance abuse and relationship violence* (pp. 304-323). New York: Brunner-Routledge.
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- 105) Chiodo, D., & Wolfe, D. A. (2013). Can the blending of mindfulness, humanistic psychology, and years of clinical experience transform our approach to working with high-risk adolescents? A review of *A mindfulness-based approach to working with high-risk adolescents* by S. Himmelstein. *PsycCRITIQUES*, *58* (50), pp. 4-6.
- 106) Crooks, C. C., Scott, K. S., Broll, R., Zwarych, S., Hughes, R., & Wolfe, D. A. (2015). Does an evidence-based healthy relationships program for high school students show similar effects for 7th and 8th graders? Results from 57 schools randomized to intervention. *Health Education Research*, *30* (3), 513-519.
- 107) Ellis, W. E., & Wolfe, D. A. (2015). Bullying predicts reported dating violence and observed qualities in adolescent dating relationships. *Journal of Interpersonal Violence*, *30*(17), 3043-3064.
- 108) Temple, J. R., Choi, H. J., Reuter, T., Wolfe, D., Taylor, C. A., Madigan, S., & Scott, L. E. (2018). Childhood corporal punishment and future perpetration of physical dating violence. *The Journal of Pediatrics*, *194*, 233-237.
- 109) Wolfe, D. A. (2018). Why poly-victimization matters. *Journal of Interpersonal Violence*, *33* (5), pp. 832-837.
- 110) Henderson, J., Brownlie, E. B., McMain, S., Chaim, G., Wolfe, D. A., Rush, B., Boritz, T., & Beitchman, J. (2017). Enhancing prevention and intervention for youth concurrent mental health and substance use disorders: The Research and Action for Teens study. *Early Intervention in Psychiatry*. doi: 10.1111/eip.12458. [Epub ahead of print]
- 111) Tinner, L., Caldwell, D., Hickman, M., MacArthur, G., Gottfredson, D., Lana, A., Moberg, D. P., Wolfe, D. A., & Campbell, R. (2018). Examining subgroup effects by socioeconomic status of public health interventions targeting multiple risk behaviour in adolescence. *BMC Public Health*, *18*:1180.
- 112) Brownlie, E.B., Beitchman, J., Chaim, G., Wolfe, D. A., Rush, B., & Henderson, J. (2019). Early adolescent substance use and mental health problems and service utilisation in a school-based sample. *The Canadian Journal of Psychiatry*, *62*(2), pp. 116-125.
- 113) Exner-Cortens, D., Wolfe, D. A., Crooks, C. V., & Chiodo, D. (2020). A preliminary randomized controlled evaluation of a universal healthy relationships program for youth. *Canadian Journal*

of *School Psychology*, 35(1), 3-22.

- 114) Cusimano, M. D., Huang, G., Zhang, S., & Wolfe, D. A., & Carpino, M. (2020). Associations between traumatic brain injury, drug abuse, alcohol use, adverse childhood events, and aggression levels in individuals with foster care history. *Neurotrauma Reports*, 1(1):241-252. doi: 10.1089/neur.2020.0032.
- 115) Cusimano, M.D., Lamont, R., Zhang, S., Mishra, A., Carpino, M., & Wolfe, D.A. (2021). A life course study on traumatic brain injury and physical and emotional trauma in foster children. *Neurotrauma Reports*, 2(1):123-135. doi: 10.1089/neur.2020.0054.
- 116) Cusimano, M. D., Zhang, S., Mei, X., Kennedy, D., Saha, A., Carpino, M., & Wolfe, D. A., & (2021). Traumatic brain injury, abuse, and poor sustained attention in youth and young adults who previously experienced foster care. *Neurotrauma Reports*, 2(1):94-102. doi: 10.1089/neur.2020.0030.
- 117) Fairbrother, N., Collardeau, F., Woody, S., Wolfe, D., & Fawcett, J. M. (2022). Postpartum thoughts of infant-related harm and obsessive-compulsive disorder: Relation to maternal physical aggression towards the infant. *The Journal of Clinical Psychiatry*, 83(2), <https://doi.org/10.4088/JCP.21m14006>.

Invited Papers and Commentaries (2000-present)

- Wolfe, D. A., & Legate, B. L. (2003). Expert opinion on child sexual abuse: Separating myths from reality. *Clinical Psychology: Science and Practice*, 10, 339-343.
- Kelly, T., & Wolfe, D. A. (2004). Advancing change with maltreating fathers. *Clinical Psychology: Science and Practice*, 11, 116-119.
- Wolfe, D. A., & Jaffe, P. (2005). Prevention of domestic violence during adolescence. *The Prevention Researcher*, 12, 8-10.
- Wolfe, D. A. (2007). Understanding anger: Key concepts from the field of domestic violence and child abuse. In T. A. Cavell & K. T. Malcolm (Eds.), *Anger, aggression, and interventions for interpersonal violence* (pp. 393-401). Mahwah, NJ: Lawrence Erlbaum Assoc.
- Wolfe, D. A. (2009). Introducing practical strategies. *Child Abuse & Neglect*, 33, 69-70.
- Wolfe, D. A. (2011). Introduction to the special issue on emotional maltreatment. *Child Abuse & Neglect*, 35, 757.

Government and Non-Government Reports:

- Wolfe, D. A. (1994). *The role of intervention in the treatment and prevention of child abuse and neglect*. Washington DC: U.S. Department of Health and Human Services.
- Wolfe, D. A. (1997). *Advances in child abuse and neglect prevention: A synthesis of selected projects funded under the federal Family Violence Initiative (1991-1996)*. Ottawa: Health Canada.
- Wolfe, D. A. (1997). *Prevention of child abuse and neglect*. Position paper for the determinants of health working group, National Forum on Health, Ottawa.
- Wolfe, D. A. (2001). *A conceptual framework for a child maltreatment surveillance capacity*. Ottawa: Health Canada, Child Maltreatment Division.
- Trocme, N., & Wolfe, D. A. (2001). *Child maltreatment in Canada: Selected results from the Canadian Incidence Study of Reported Child Abuse and Neglect*. Ottawa: Minister of Public Works and Government Services Canada.

- Wolfe, D. A., Jaffe, P., Jette, J., & Poisson, S. (2001). *Child Abuse in Institutions and Organizations: Improving Public and Professional Understanding*. Law Commission of Canada.
- Wolfe, D. A., Randall, M., & Straatman, A. (2003). Promising practices for the prevention of violence against women and girls: Key findings from the literature. Toronto: Ontario Women's Directorate, Ministry of Citizenship and Culture.
- Adlaf, E. M., Paglia-Boak, A., Beitchman, J. H., & Wolfe, D. A. (2003). *The mental health and well-being of Ontario students 1991-2003* (CAMH Research Doc. No. 14). Toronto, Ontario: Centre for Addiction and Mental Health.
- Adlaf, E. M., Paglia-Boak, A., Beitchman, J. H., & Wolfe, D. (2006). *The Mental Health and Well-Being of Ontario Students, 1991-2005: Detailed OSDUS Findings* (CAMH Research Document No. 18). Toronto: Centre for Addiction and Mental Health.
- Paglia-Boak, A., Adlaf, E.M., Hamilton, H.A., Beitchman, J.H., Wolfe, D., Mann, R.E. (2011). *The mental health and well-being of Ontario students 1991-2011: Detailed OSDUHS findings* (CAMH Research Document Series No. 34). Toronto: Centre for Addiction and Mental Health.
- Wolfe, D. A., & McIsaac, C. (2010). *Distinguishing between poor/dysfunctional parenting and child emotional maltreatment*. Ottawa: Family Violence Prevention Unit of the Public Health Agency of Canada. Available: <http://www.phac-aspc.gc.ca/ncfv-cnivf/publications/nfnts-dysfnct-parent-eng.php>.
- Wolfe, D. A. (2011). The Fourth R: A school-based strategy to prevent adolescent dating violence. In Institute of Medicine *Preventing violence against women and children: Workshop summary* (pp. 157-163). Washington, DC: The National Academies Press.
- Wolfe, D. A. (2014). Expert commentary on *Growing Up in B.C. II: Data for the Domain of Child Safety*. British Columbia Representative for Children and Youth

Intervention and Research Manuals and Materials

- Townsley, D., Hughes, R., Crooks, C., Wolfe, D., Burns, S., Kirkham, A., Messinger, A. (2015). A Healthy Relationship Program for LGBTQ Youth. Available: www.youthrelationships.org

Representative Keynote and Invited Presentations (International)

- Child abuse prevention: Past, present, and future*. Invited paper presented at the 8th Congress of the International Society for the Prevention of Child Abuse and Neglect, Rio de Janeiro, September, 1988.
- Child abuse prevention and juvenile offenses*. Invited address to the conference "The treatment of the juvenile offender: The bonding between theory and practice". Valencia, Spain, May 1989.
- Developmental consequences of physical and sexual abuse*. Keynote address to the Keystone Conference on Child Abuse and Neglect, Keystone, Colorado, May 1990.
- Preventing violence towards children: Recent developments*. Keynote address to First National Congress on the Prevention of Child Abuse and Neglect, British Association for the Study and Prevention of Child Abuse and Neglect, Leicester, England, September 1991.
- Posttraumatic stress symptoms among sexually abused children appearing before the court*. Invited presentation to the Pan American Psychological Association, San Juan, Costa Rica, July, 1993.

- Enhancing Parental Sensitivity as a Means of Child Abuse Prevention.* Keynote address to the 10th Congress of the International Society for the Prevention of Child Abuse and Neglect, Kuala Lumpur, Malaysia, September, 1994.
- Intervention with abusive families.* Address presented at the International Symposium on Families and Development, Jaen, Spain, June, 1994.
- Preventing child abuse and neglect.* Keynote address presented at the annual conference of the Queen Sofia Centre for the Study of Violence, Valencia, Spain, November, 1998.
- Empowering youth to develop healthy relationships.* Invited address presented at the conference "Domestic violence and children: Key perspectives and strategies," sponsored by the Royal Society of Medicine, London, England, March, 2002.
- Prevention of Child Abuse and Neglect: The Role of Schools and Communities.* Master Class presentation to the International Society for Prevention of Child Abuse and Neglect, York, England, September 2006.
- Teaching strategies for healthy relationships to prevent adolescent dating violence and reduce risk behaviors.* Keynote address to the Second Congress of the International Society for Interpersonal Acceptance and Rejection, Rethymno, Crete, July, 2008.
- Reducing violence in relationships for the next generation: A strategy and a plan.* Guest lecture to the Association for Child and Adolescent Mental Health National Day Conference, London, England, June 2010.
- Child abuse prevention: Past, present, and future.* Keynote address to 13th ISPCAN European Regional Conference on Child Abuse and Neglect, Dublin, September 15-18, 2013.

Representative Keynote and Invited Presentations (U.S. and Canada)

- The development of abused children.* Keynote address to the Banff XXXII Conference on the Behavioral Sciences, Banff, Alberta, March 1990.
- Perpetrators of Violence Against Women and Children: Common Themes.* Keynote address to the International Society for Traumatic Stress Studies, San Antonio, Texas, October, 1993.
- Factors associated with violence in relationships: Testing a model with maltreated adolescents.* Presented at the Rochester Symposium on Developmental Psychopathology, Rochester, NY, October, 1994.
- Preventing Violence Against Women and Children: Theory and Findings.* Keynote Address presented at the XXVII Banff Conference on the Behavioral Sciences, Banff, Alta, March, 1995.
- A group approach to preventing gender-based violence among at-risk youth.* Workshop presented at the XXVII Banff Conference on the Behavioral Sciences, Banff, Alta, March, 1995.
- Child abuse prevention: Current theories and findings.* Invited paper presented at "Violence against children in the family and community: A conference on causes, developmental consequences, interventions and prevention," sponsored by the American Psychological Association, University of Southern California, January, 1995.
- Critical issues in the development of violence prevention strategies.* Plenary address to the 2nd International Conference on Children Exposed to Family Violence, London, Ontario, June 1997.
- Prevention of domestic violence: Emerging initiatives* (with P. Jaffe). Presented at the Asilomar Conference on Children and Intimate Violence, Pacific Groves, CA, February, 1999.

- Child maltreatment as a risk factor in adolescent violence.* Presented to the Division of Youth Violence, Centers for Disease Control, Atlanta, GA., April, 2000.
- Abuse and trauma in adolescents.* Presented to the National Consortium on Child and Adolescent Trauma, New York, NY., December, 2003.
- Healthy adolescent relationships.* Presented to Dept. of Psychiatry Grand Rounds, Hospital for Sick Children, Feb., 2004.
- Research on Adolescent Health Promotion.* Presented to the Columbia Center for Youth Violence Research and Prevention, Columbia University, May, 2004.
- Origins of violence: Strategies for prevention.* Invited address to the Violence and Society meeting of the Ontario District Branch of the American Psychiatric Association, February 19, 2005.
- A Universal School-Based Approach to Preventing Violence in Relationships.* Keynote address to the UC Davis Child Maltreatment Conference, October, 2008.
- Childhood bullying and its relationship to adolescent dating violence and spousal abuse.* San Diego International Conference on Child and Family Maltreatment, January, 2009
- Reducing Violence in Relationships for the Next Generation: A Rationale & A Plan.* Presented at the National Summit on Interpersonal Violence and Abuse Across the Lifespan: Forging A Shared Agenda, Dallas, TX, February, 2010.
- Why early adolescence is an important time for promoting healthy relationships and preventing dating violence.* Presented at *Start Strong* Teen Dating Violence Prevention: Why Middle School Matters, Washington, DC., July 2010.
- Child abuse prevention: Past, present, and future.* Keynote address to Sickkid's Hospital conference, Current issues in sexual assault, domestic violence, and child maltreatment. November, 2010
- Reducing violence in relationships in the next generation.* Keynote address to the 14th Annual International Human Rights Conference, University of Connecticut, October, 2013.
- Costs and Consequences of Child Abuse and Neglect.* Keynote address to the Inaugural Haruv-USA Summit on Child Maltreatment, Tulsa, OK, April, 2017.

Presentations to Scientific Meetings (2005-2017)

- Wolfe, D. & Satterfield, L. (Superior Court of District of Columbia). *Violence in families: Psychological and legal remedies.* Invited plenary at the 11th National Conference on Children and the Law, sponsored by APA and the American Bar Association, June, 2005. Reprinted in *APA Monitor on Psychology*, 35, p. 78.
- Wolfe, D. A. (2005, February). *Origins of violence: Strategies for prevention.* Invited address to the Violence and Society meeting of the Ontario District Branch of the American Psychiatric Association, February 19, 2005.
- Hennig, K. H., Wolfe, D. A., & Foti, G. (2005, April). *The emergence and divergence of developmental pathways leading to antisocial behavior and dating violence among adolescent youth.* Paper presented at the meeting of the Society for Research in Child Development, Atlanta, GA.
- Hildyard, K., & Wolfe, D. (2005, April). *Understanding Child Neglect: Cognitive Processes Underlying Neglectful Parenting.* Paper presented at a symposium entitled "Child Maltreatment: Recent Developments in Theory and Research (K. Dodge, Chair) at the meeting of the Society for Research in Child Development, Atlanta, GA.

- Wolfe, D. A. (2005, June). *Preventing Violence in Relationships: Psychological Science Addressing Complex Social Issues*. Donald O. Hebb award presentation to the annual convention of the Canadian Psychological Association, Montreal.
- Jaffe, D., Wolfe, D., & Hughes, R. (2005, Oct). *The Fourth R*. World Conference on the Prevention of Family Violence 2005. Banff, Alberta
- Wolfe, D. A. (2006, Sept). *Impact of child abuse and exposure to domestic violence: A life-course perspective*. Paper presented at a symposium entitled “Domestic Violence” (C. Humphreys, Chair) at the International Society for Prevention of Child Abuse and Neglect IV conference, York, England.
- Crooks, C., Wolfe, D., & Hughes, R. *Developing healthy relationship programs with Aboriginal partners in Canada*. Workshop presented at the International Society for Prevention of Child Abuse & Neglect 18th biannual conference, September, 2010, Honolulu, HI.
- Wolfe, D. A. (2011, January). *The Fourth R*. Presented at the Institute of Medicine’s Workshop on Preventing Violence Against Women and Children. Washington, DC.
- Wolfe, D. A. (2011, January). Understanding children’s exposure to violence: Research-based strategies for intervention and prevention. Presented at the Defending Childhood Initiative grantee meeting, U. S. Dept. of Justice. Washington, DC.
- Temple, J.R., Frissell, K.C., Stuart, G.L., Tortolero, S., & Wolfe, D. (2011, June). *Psychological health and alcohol use as predictors of teen dating violence perpetration and victimization*. Poster presented at the annual meeting of the Society for Prevention Research, Washington D.C., June, 2011.
- Crooks, C., Scott, K., Ellis, W., & Wolfe, D.A. (2012; April). *Impact of a universal school-based prevention program on violent delinquency: Distinctive benefits for youth with maltreatment histories*. Presented at the British Association for the Study and Prevention of Child Abuse and Neglect (BAPSCAN) biannual congress. Belfast, UK.
- Wolfe, D. A. (2013; October). *Dating violence*. Paper presented as part of a symposium entitled Commonalities between bullying and maltreatment (J. Srabstein, Chair) at the American Academy of Child and Adolescent Psychiatry annual convention, Orlando, FL.
- Brownlie, E.B., Henderson, J., Beitchman, J.H., Wolfe, D., Bao, L., & Zhang, V. (2014, June). Mental health and substance use concerns in early to mid adolescence: symptoms, service utilization and unmet need. Paper presentation. The Canadian Psychological Association's 75th Annual Convention, Vancouver, British Columbia, Canada, June 2014.
- Temple J.R., Choi, H.J., Wolfe, D.A., & Chiodo, D. (2015, March). Parallel developmental trajectories of teen dating violence and recent alcohol use. Paper presented at the annual meeting of the National Conference on Health and Domestic Violence (NCHDV). Washington DC.

Research colloquia (2005-2018)

Columbia University School of Public Health
 Dalhousie University
 Francis Xavier University
 University of Calgary
 University of Michigan
 McMaster University
 Centers for Disease Control and Prevention

SUNY at Buffalo
 University of Victoria
 San Diego State University
 University of Toronto
 Ryerson University
 Southern Methodist University
 Case Western Reserve

Interdisciplinary Presentations

- The right expert: Qualifications, training, and preparation.* Paper presented at the conference, "Sexual abuse of children: Criminal and family law proceedings", Canadian Bar Association, Toronto, October, 1991.
- Current research findings on the impact of violence on victims: Women and children.* Paper presented at the conference *Civil Litigation Remedies for Victims of Violence*, Law Society of Upper Canada, London, May, 1994.
- Male survivors of institutional child abuse.* Invited oral session at the 16th annual meeting of the International Society for Traumatic Stress Studies, San Antonio, TX, November, 2000.
- A clinical perspective: The effects of domestic violence on children.* Training session conducted for the Office of the Children's Lawyer, Ontario Department of Justice, London, ON, December, 2000.
- Emotional abuse.* Invited talk to the Ontario Society of Children's Aid Lawyers, Midland, ON., October 2003.
- Violence in families: Psychological and legal remedies* (with Judge Lee Satterfield, Superior Court of District of Columbia). Invited plenary at the 11th National Conference on Children and the Law, sponsored by APA and the American Bar Association. Reprinted in *APA Monitor on Psychology*, 35, p. 78.
- Resiliency and schools: Building student success and better outcomes.* Ontario Children and Youth Summit, Toronto, October 2005.
- The Fourth R: A school-based program to prevent adolescent dating violence and related risk behaviours.* Paper presented in a symposium entitled "School-based Prevention Initiatives" at the Ontario Provincial Conference on Domestic Violence, Toronto, November, 2005.
- The Fourth R: A school-based program to prevent violence, bullying, and related risk behaviours in adolescence.* Joan Pederson Annual Distinguished Lecture, University of Western Ontario Faculty of Education, April, 2006.
- Violence, abuse, and trauma: Relationship Violence.* Workshop presented to the Children's Hospital of Michigan annual conference entitled: *Promoting the well-being of children and families in urban America*. Detroit, MI, September, 2006.
- The Fourth R: A school-based strategy to prevent adolescent dating violence.* Forum on Global Violence Prevention, Institute of Medicine of the National Academies. Washington, DC, January, 2011.
- What Can Research Teach Us About the Impact of Children's Exposure to Violence?* U.S. Department of Justice, Office of Juvenile Justice and Delinquency Prevention National conference. National Harbor, MD, October, 2011.
- Classroom and small group strategies to reduce dating violence and end abuse.* Workshop presented at the 6th Biennial National Conference on Health and Domestic Violence. San Francisco, CA. March, 2012.
- Innovative education models - How will they affect children's health and well-being?* Presented at The Aspen Institute's Children's Forum: Investing in Children's Health and Well-being. Aspen, CO: July, 2012.

Teaching Experience

Graduate

Child psychopathology
Assessment of childhood disorders
Theory and practice of community psychology
Professional foundations of clinical psychology
Child abuse and family violence

Undergraduate

Exceptional children
Child psychopathology
Child abuse and family violence

Ph.D. Candidates (Canada): 11**Ph.D. Candidates (Portugal):** 1**Postdoctoral Fellows:** 5

Claire Crooks, Ph.D. 2001-2002
Wendy Ellis, Ph.D. 2006-2008
Jennine Rawana, Ph.D. 2005-2007
Caroline McIsaac, Ph.D., 2009-2010
Deinera Exner-Cortens, Ph.D., 2013-present

New Investigators

Brennan Young, Ph.D. (K12), University of Denver (2008-2010)
Jeff Temple, Ph.D. (K-23), University of Texas at Galveston (2010-2015)
Edward Garrido, Ph.D. (K-01), Kempe Center for the Prevention and Treatment of Child Abuse and Neglect (2010-2015)

Revised: April 2023

***THIS IS EXHIBIT "C" REFERRED TO IN THE
AFFIDAVIT OF DR. DAVID WOLFE SWORN BEFORE ME FROM THE
TOWN OF LONDON, IN THE PROVINCE OF ONTARIO, TO THE CITY OF
TORONTO, IN THE PROVINCE OF ONTARIO, ON JUNE 2ND, 2023, IN
ACCORDANCE WITH O. REG. 431/20, ADMINISTERING OATH OR
DECLARATION REMOTELY.***



***A COMMISSIONER FOR TAKING AFFIDAVITS, ETC.
CAITLIN LEACH***

Court File No.: CV-20-00642705-00CP

**ONTARIO
SUPERIOR COURT OF JUSTICE**

B E T W E E N :

DANIEL CARCILLO, GARRETT TAYLOR and STEPHEN QUIRK

Plaintiffs

- and -

ONTARIO MAJOR JUNIOR HOCKEY LEAGUE, CANADIAN HOCKEY LEAGUE, WESTERN HOCKEY LEAGUE, QUEBEC MAJOR JUNIOR HOCKEY LEAGUE, BARRIE COLTS JUNIOR HOCKEY LTD., GUELPH STORM LTD., HAMILTON BULLDOGS FOUNDATION INC., KINGSTON FRONTENACS HOCKEY LTD., KITCHENER RANGERS JR. A. HOCKEY CLUB, LONDON KNIGHTS HOCKEY INC., MISSISSAUGA STEELHEADS HOCKEY CLUB INC., 2325224 ONTARIO INC. o/a MISSISSAUGA STEELHEADS, NIAGARA ICEDOGS HOCKEY CLUB INC., NORTHBAY BATTALION HOCKEY CLUB LTD., OSHAWA GENERALS HOCKEY ACADEMY LTD., OTTAWA 67'S LIMITED PARTNERSHIP c.o.b. OTTAWA 67's HOCKEY CLUB, THE OWEN SOUND ATTACK INC., PETERBOROUGH PETES LIMITED, 649643 ONTARIO INC. o/a 211 SSHC CANADA ULC o/a SARNIA STING HOCKEY CLUB, SOO GREYHOUNDS INC., SUDBURY WOLVES HOCKEY CLUB LTD., WINDSOR SPITFIRES INC., MCCRIMMON HOLDINGS, LTD., 32155 MANITOBA LTD., A PARTNERSHIP c.o.b. as BRANDON WHEAT KINGS, BRANDON WHEAT KINGS LIMITED PARTNERSHIP, CALGARY FLAMES LIMITED PARTNERSHIP, CALGARY SPORTS AND ENTERTAINMENT CORPORATION, EDMONTON MAJOR JUNIOR HOCKEY CORPORATION, KAMLOOPS BLAZERS HOCKEY CLUB, INC. KAMLOOPS BLAZERS HOLDINGS LTD., KELOWNA ROCKETS HOCKEY ENTERPRISES LTD., PRINCE ALBERT RAIDERS HOCKEY CLUB INC., EDGEPRO SPORTS & ENTERTAINMENT LTD., QUEEN CITY SPORTS & ENTERTAINMENT GROUP LTD., BRAKEN HOLDINGS LTD., REBELS SPORTS LTD., SASKATOON BLADES HOCKEY CLUB LTD., VANCOUVER JUNIOR HOCKEY LIMITED PARTNERSHIP and VANCOUVER JUNIOR HOCKEY PARTNERSHIP, LTD c.o.b. VANCOUVER GIANTS, WEST COAST HOCKEY LLP, WEST COAST HOCKEY ENTERPRISES LTD., o/a VICTORIA ROYALS, MEDICINE HAT TIGERS HOCKEY CLUB LTD., 1091956 ALTA LTD. o/a THE MEDICINE HAT TIGERS, SWIFT CURRENT TIER 1 FRANCHISE INC. and SWIFT CURRENT BRONCOS HOCKEY CLUB INC. o/a THE SWIFT CURRENT, ICE SPORTS & ENTERTAINMENT INC. o/a WINNIPEG ICE, MOOSE JAW TIER 1 HOCKEY INC. D.B.A. MOOSE JAW and MOOSE JAW WARRIORS TIER 1 HOCKEY, INC. WARRIORS o/a MOOSE JAW WARRIORS, LETHBRIDGE HURRICANES HOCKEY CLUB,

649643 ONTARIO INC. c.o.b. as SARNIA STING, KITCHENER RANGER JR A HOCKEY CLUB and KITCHENER RANGERS JR "A" HOCKEY CLUB, LE TITAN ACADIE BATHURST (2013) INC., CLUB DE HOCKEY JUNIOR MAJEUR DE BAIE-COMEAU INC. o/a DRAKKAR BAIE-COMEAU, CLUB DE HOCKEY DRUMMOND INC. o/a VOLTIGEURS DRUMMONDVILLE, CAPE BRETON MAJOR JUNIOR HOCKEY CLUB LIMITED o/a SCREAMING EAGLES CAPE BRETON, LES OLYMPIQUES DE GATINEAU INC., HALIFAX MOOSEHEADS HOCKEY CLUB INC., CLUB HOCKEY LES REMPARTS DE QUÉBEC INC., LE CLUB DE HOCKEY JUNIOR ARMADA INC., MONCTON WILDCATS HOCKEY CLUB LIMITED, LE CLUB DE HOCKEY L'OCÉANIC DE RIMOUSKI INC., LES HUSKIES DE ROUYN-NORANDA INC., 8515182 CANADA INC. c.o.b. as CHARLOTTETOWN ISLANDERS, LES TIGRES DE VICTORIAVILLE (1991) INC., SAINT JOHN MAJOR JUNIOR HOCKEY CLUB LIMITED, CLUB DE HOCKEY SHAWINIGAN INC. o/a CATARACTES SHAWNIGAN, CLUB DE HOCKEY JUNIOR MAJEUR VAL D'OR INC. o/a VAL D'OR FOREURS, 7759983 CANADA INC. c.o.b. as CLUB DE HOCKEY LE PHOENIX, 9264-8849 QUÉBEC INC. c.o.b. as GROUPE SAGS 7-96 AND LES SAGUENÉENS, JAW HOCKEY ENTERPRISES LP c.o.b. ERIE OTTERS, IMS HOCKEY c.o.b. FLINT FIREBIRDS, SAGINAW HOCKEY CLUB, L.L.C., EHT, INC., WINTERHAWKS JUNIOR HOCKEY LLC, PORTLAND WINTER HAWKS INC., THUNDERBIRDS HOCKEY ENTERPRISES, L.L.C., BRETT SPORTS & ENTERTAINMENT, INC., HAT TRICK, INC., TRI-CITY AMERICANS HOCKEY LLC, and TOP SHELF ENTERTAINMENT, INC.

Defendants

Proceeding under the *Class Proceedings Act, 1992*

ACKNOWLEDGMENT OF EXPERT'S DUTY

1. My name is Dr. David Wolfe. I live at the Town of London of the Province of Ontario.
2. I have been engaged by or on behalf of the Lawyers for the Plaintiffs to provide evidence in relation to the above-noted court proceeding.
3. I acknowledge that it is my duty to provide evidence in relation to this proceeding as follows:
 - (a) to provide opinion evidence that is fair, objective and non-partisan;

- (b) to provide opinion evidence that is related only to matters that are within my area of expertise; and
- (c) to provide such additional assistance as the court may reasonably require, to determine a matter in issue.

4. I acknowledge that the duty referred to above prevails over any obligation which I may owe to any party by whom or on whose behalf I am engaged.

June 2, 2023

David A. Wolfe

Dr. David Wolfe

Carcillo et al.
Plaintiffs and **Canadian Hockey League et al.**
Defendants

Court File No.: CV-20-642705-00CP

ONTARIO
SUPERIOR COURT OF JUSTICE
Proceeding commenced at TORONTO

ACKNOWLEDGMENT OF EXPERT'S DUTY

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Lawyers for the Plaintiffs

Carcillo et al.
Plaintiffs and **Canadian Hockey League et al.**
Defendants

Court File No.: CV-20-642705-00CP

ONTARIO
SUPERIOR COURT OF JUSTICE

Proceeding commenced at TORONTO

AFFIDAVIT OF DR. DAVID WOLFE
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Lawyers for the Plaintiffs

Court File No.: CV-20-642705-00CP

**ONTARIO
SUPERIOR COURT OF JUSTICE**

B E T W E E N :

DANIEL CARCILLO, GARRETT TAYLOR and STEPHEN QUIRK

Plaintiffs

- and -

ONTARIO MAJOR JUNIOR HOCKEY LEAGUE, CANADIAN HOCKEY LEAGUE, WESTERN HOCKEY LEAGUE, QUEBEC MAJOR JUNIOR HOCKEY LEAGUE, BARRIE COLTS JUNIOR HOCKEY LTD., GUELPH STORM LTD., HAMILTON BULLDOGS FOUNDATION INC., KINGSTON FRONTENACS HOCKEY LTD., KITCHENER RANGERS JR. A. HOCKEY CLUB, LONDON KNIGHTS HOCKEY INC., MISSISSAUGA STEELHEADS HOCKEY CLUB INC., 2325224 ONTARIO INC. o/a MISSISSAUGA STEELHEADS, NIAGARA ICEDOGS HOCKEY CLUB INC., NORTHBAY BATTALION HOCKEY CLUB LTD., OSHAWA GENERALS HOCKEY ACADEMY LTD., OTTAWA 67'S LIMITED PARTNERSHIP c.o.b. OTTAWA 67's HOCKEY CLUB, THE OWEN SOUND ATTACK INC., PETERBOROUGH PETES LIMITED, 649643 ONTARIO INC. o/a 211 SSHC CANADA ULC o/a SARNIA STING HOCKEY CLUB, SOO GREYHOUNDS INC., SUDBURY WOLVES HOCKEY CLUB LTD., WINDSOR SPITFIRES INC., MCCRIMMON HOLDINGS, LTD., 32155 MANITOBA LTD., A PARTNERSHIP c.o.b. as BRANDON WHEAT KINGS, BRANDON WHEAT KINGS LIMITED PARTNERSHIP, CALGARY FLAMES LIMITED PARTNERSHIP, CALGARY SPORTS AND ENTERTAINMENT CORPORATION, EDMONTON MAJOR JUNIOR HOCKEY CORPORATION, KAMLOOPS BLAZERS HOCKEY CLUB, INC. KAMLOOPS BLAZERS HOLDINGS LTD., KELOWNA ROCKETS HOCKEY ENTERPRISES LTD., PRINCE ALBERT RAIDERS HOCKEY CLUB INC., EDGEPRO SPORTS & ENTERTAINMENT LTD., QUEEN CITY SPORTS & ENTERTAINMENT GROUP LTD., BRAKEN HOLDINGS LTD., REBELS SPORTS LTD., SASKATOON BLADES HOCKEY CLUB LTD., VANCOUVER JUNIOR HOCKEY LIMITED PARTNERSHIP and VANCOUVER JUNIOR HOCKEY PARTNERSHIP, LTD c.o.b. VANCOUVER GIANTS, WEST COAST HOCKEY LLP, WEST COAST HOCKEY ENTERPRISES LTD., o/a VICTORIA ROYALS, MEDICINE HAT TIGERS HOCKEY CLUB LTD., 1091956 ALTA LTD. o/a THE MEDICINE HAT TIGERS, SWIFT CURRENT TIER 1 FRANCHISE INC. and SWIFT CURRENT BRONCOS HOCKEY CLUB INC. o/a THE SWIFT CURRENT, ICE SPORTS & ENTERTAINMENT INC. o/a WINNIPEG ICE, MOOSE JAW TIER 1 HOCKEY INC. D.B.A. MOOSE JAW and MOOSE JAW WARRIORS TIER 1 HOCKEY, INC. WARRIORS o/a MOOSE JAW WARRIORS, LETHBRIDGE HURRICANES HOCKEY CLUB,

649643 ONTARIO INC. c.o.b. as SARNIA STING, KITCHENER RANGER JR A HOCKEY CLUB and KITCHENER RANGERS JR "A" HOCKEY CLUB, LE TITAN ACADIE BATHURST (2013) INC., CLUB DE HOCKEY JUNIOR MAJEUR DE BAIE-COMEAU INC. o/a DRAKKAR BAIE-COMEAU, CLUB DE HOCKEY DRUMMOND INC. o/a VOLTIGEURS DRUMMONDVILLE, CAPE BRETON MAJOR JUNIOR HOCKEY CLUB LIMITED o/a SCREAMING EAGLES CAPE BRETON, LES OLYMPIQUES DE GATINEAU INC., HALIFAX MOOSEHEADS HOCKEY CLUB INC., CLUB HOCKEY LES REMPARTS DE QUÉBEC INC., LE CLUB DE HOCKEY JUNIOR ARMADA INC., MONCTON WILDCATS HOCKEY CLUB LIMITED, LE CLUB DE HOCKEY L'OCÉANIC DE RIMOUSKI INC., LES HUSKIES DE ROUYN-NORANDA INC., 8515182 CANADA INC. c.o.b. as CHARLOTTETOWN ISLANDERS, LES TIGRES DE VICTORIAVILLE (1991) INC., SAINT JOHN MAJOR JUNIOR HOCKEY CLUB LIMITED, CLUB DE HOCKEY SHAWINIGAN INC. o/a CATARACTES SHAWNIGAN, CLUB DE HOCKEY JUNIOR MAJEUR VAL D'OR INC. o/a VAL D'OR FOREURS, 7759983 CANADA INC. c.o.b. as CLUB DE HOCKEY LE PHOENIX, 9264-8849 QUÉBEC INC. c.o.b. as GROUPE SAGS 7-96 AND LES SAGUENÉENS, JAW HOCKEY ENTERPRISES LP c.o.b. ERIE OTTERS, IMS HOCKEY c.o.b. FLINT FIREBIRDS, SAGINAW HOCKEY CLUB, L.L.C., EHT, INC., WINTERHAWKS JUNIOR HOCKEY LLC, PORTLAND WINTER HAWKS INC., THUNDERBIRDS HOCKEY ENTERPRISES, L.L.C., BRETT SPORTS & ENTERTAINMENT, INC., HAT TRICK, INC., TRI-CITY AMERICANS HOCKEY LLC, and TOP SHELF ENTERTAINMENT, INC.

Defendants

Proceeding under the *Class Proceedings Act, 1992*

**AFFIDAVIT OF DR. PETER JAFFE
(SWORN JUNE 2ND, 2023)**

I, Dr. Peter Jaffe, of the town of London, in the Province of Ontario, MAKE OATH AND SAY

1. I have been retained by Koskie Minsky LLP to provide my unbiased expert opinion in support of the Individual Issues Protocol motion in this matter.
2. A copy of my report is attached to this Affidavit as **Exhibit "A"**.
3. My curriculum vitae is attached to this Affidavit as **Exhibit "B"**.

4. My Acknowledgement of Expert's Duty is attached to this Affidavit as **Exhibit "C"**.

SWORN BEFORE ME by video conference by Dr. Peter Jaffe at the town of London, in the Province of Ontario, before me in the City of Toronto, in the Province of Ontario, this 2nd day of June, 2023, in accordance with *O. Reg. 431/20, Administering Oath or Declaration Remotely*.



A Commissioner for taking Affidavits (*or as may be*)
CAITLIN LEACH

Peter Jaffe

DR. PETER JAFFE

Type text

***THIS IS EXHIBIT "A" REFERRED TO IN THE
AFFIDAVIT OF DR. PETER JAFFE SWORN BEFORE ME FROM THE
TOWN OF LONDON, IN THE PROVINCE OF ONTARIO, TO THE CITY OF
TORONTO, IN THE PROVINCE OF ONTARIO, ON JUNE 2ND, 2023, IN
ACCORDANCE WITH O. REG. 431/20, ADMINISTERING OATH OR
DECLARATION REMOTELY.***



***A COMMISSIONER FOR TAKING AFFIDAVITS, ETC.
CAITLIN LEACH***

Peter Jaffe, Ph.D.
Registered Psychologist
1072 The Parkway
London, ON N6A2W9

David A. Wolfe, Ph.D.
Registered Psychologist
1-10 MacKellar Ave.
London, ON N6H5C5

June 2, 2023

Via Email

Mr. James Sayce
Koskie Minsky LLP
Barristers & Solicitors
20 Queen Street West, Suite 900, Box 52
Toronto, Ontario M5H 3R3

Dear Mr. Sayce,

Re: *Carcillo et al. v. Ontario Major Junior Hockey League et al.*

In response to your letter dated May 9, 2023, we are providing an opinion in the above noted matter concerning the hazing and abuse of young players in the Canadian Hockey League (“CHL”).

Your letter informed us that the Honourable Justice Perell provided the plaintiffs with 120 days to prepare an "Individual Issues Protocol" ("IIP") to allow former CHL Players to bring claims against their former Team, Regional League, and the CHL in relation to the hazing and abuse that they suffered while playing in the CHL.

You provided us with two recent reports into this matter: *Independent Panel Report*, dated October 31, 2022; *Report on Player Wellbeing Programs and Related Recommendations* (R. Turnpenny), dated January 14, 2022. You also provided Justice Perell’s Reasons for Decision, dated February 3, 2023 pertaining to this matter (*Carcillo v. Canadian Hockey League*, 2023 ONSC 886). You sent us a list of questions to address, based on assumptions provided in your letter.

In brief, claimants include players who participated in the CHL, and suffered abuse and hazing, at any time between 1975 and the present (ages range from 15 to 21 years old). The abuse players suffered includes “physical and sexual assault, hazing, bullying, physical and verbal harassment, sexual harassment, forced consumption of alcohol and illicit drugs, and the use of homophobic, sexualized and racist slurs perpetrated by other players, coaches or other hockey staff.”

This abuse was determined by Justice Perell to be part of pervasive “bullying, harassment, hazing and criminal conduct” among CHL teams, and occurred as part of a “systemic culture [that] exists in the CHL that results in maltreatment becoming an embedded norm.” Furthermore, players were given the impression that the abuse is part of hockey, with a “code of silence” that helps to perpetuate it. From Justice Perell’s decision, there seems to be agreement about the potential harms resulting from the abuse but more a question about the process to address individual’s level of harm and compensation (para 378 - *The Defendants do not deny that some players experienced serious misconduct and suffered compensable harm*).

Expert Qualifications

Dr. Wolfe is Adjunct Professor and Research Scholar at the Centre for Research and Education on Violence Against Women and Children at Western University. He was formerly a Senior Scientist at the Centre for Addiction and Mental Health (CAMH), Director of the CAMH Centre for Prevention Science, and Professor, University of Toronto. He has authored or co-authored numerous books and journal articles on child abuse, domestic violence, abnormal child psychology, and the impact of early childhood trauma on later development in childhood, adolescence, and adulthood. Dr. Wolfe is a Registered Psychologist in the Province of Ontario and has maintained a clinical practice since 1981 involving children and adults, many of whom were exposed to traumatic events in childhood. Dr. Wolfe has testified in over 35 civil and criminal trials regarding child abuse, adult survivors of child sexual abuse, child welfare, and effects of family violence on children. Many of these trials involved adult victims who had alleged being sexually, physically, or emotionally abused during childhood by family or non-family members. He has been accepted as an expert witness by the Superior Court of Ontario (Criminal and Civil Divisions), specifically in relation to historical child abuse. For example, Dr. Wolfe was appointed by the Ontario Superior Court to be consultant to the liquidator for the Christian Brothers of Ireland in Canada, to evaluate claimants of Mount Cashel who were abused as children living in the orphanage.

Dr. Jaffe is a Registered Psychologist in the Province of Ontario and has maintained a clinical practice since 1974. He is a Professor Emeritus in the Faculty of Education at Western University. From 2005-2021 he was the Academic Director of the Centre for Research and Education on Violence Against Women & Children at Western University. He has been working in the areas of domestic violence, child abuse, trauma, and families involved with the courts for over 40 years. Dr. Jaffe’s extensive publications include articles/books on the effects of institutional abuse on children, family violence, child protection and parenting disputes, and children exposed to domestic violence. Dr. Jaffe’s expertise in research and clinical work has resulted in appearances as an expert witness in provincial and federal courts throughout Canada. Dr. Jaffe has been actively involved in the issue of institutional abuse of children. He was a consultant to the Honourable Sydney Robins in his report for the Attorney General of Ontario on sexual misconduct of teachers.

Dr. Wolfe and Dr. Jaffe bring both general and specific expertise to the issues that are part of this proceeding. They have been involved with research, clinical practice and the development of violence prevention programs for children and youth dealing with various forms of abuse and

violence at home, school and community. They have assessed adult men and women who were victims of child abuse in community institutions and organizations, and most often in trust relationships such as relationships with doctors, faith leaders and coaches. Dr. Jaffe and Dr. Wolfe were both members of the expert panel to support Justice Normand Glaude in his review of historical abuse for Ontario's Cornwall Public Inquiry. Drs. Wolfe and Jaffe wrote a discussion paper on institutional physical and sexual abuse for the Law Reform Commission of Canada.

Dr. Wolfe and Dr. Jaffe have been involved in over 20 class action matters dealing with historical sexual, physical and/or emotional abuse of children and youth in a variety of settings including schools, residential schools, hospitals, churches, and police services. They have been jointly appointed by both plaintiff and defense to estimate the scope and harm of historical abuse in a class action matter. They have each been retained by defense counsel in individual civil suits. Many of their cases involve Indigenous adults who were abused as children. They have developed trauma-informed and culturally sensitive methods to interview a large sample of survivors of abuse.

In Dr. Wolfe's and Dr. Jaffe's involvement in large scale criminal and civil proceedings, they have had to develop streamlined procedures for assessing the incidents and impact of abuse on survivors (some examples follow). Dr. Jaffe coordinated assessments of 46 female victims of historical sexual abuse at the hands of a priest (R. v. Sylvestre) for a sentencing hearing in the Ontario Court of Justice in Chatham, Ontario in August 2011. The assessments were completed by a team of five psychologists (including Dr. Wolfe). At the time of the assessments, the victims were in their 30's through 60's and had been abused in their childhood and/or adolescence when they were 7 to 15 years of age for varying durations and severity of abuse. The report for the court included an overview of the incidents and harm to all the victims, including common themes such as betrayal by the church and unique challenges related to mental health problems and addictions. Aside from the overview report, each victim had an individual report (3-4 pages) prepared (under a pseudonym) so each of their voices could be heard by Justice Thomas before sentencing. The overview report and a sample individual case report were published in a book entitled "From Isolation to Action" (2008). In another case involving sexual abuse by a priest in the London ON diocese (Father Barry Glendinning), Dr. Jaffe also provided brief reports for 10 victims for consideration of compensation by a retired Superior Court Judge in informal hearings (i.e., judge not in robes, no elevated bench, comfortable interview room).

The process for the individual assessment in both the above noted cases involved an initial intake interview with an experienced social worker as well as the completion of two psychological tests – one dealing with overall personality adjustment and mental health concerns, and the other one dealing with trauma symptoms. After the initial interview, each victim met with a psychologist to review her history, the nature and impact of her reported abuse, and a summary of the psychological testing. A brief report was then prepared and provided to the court, as part of a package with the overview report and the other individual assessments. The assessment process lasted an average of three hours.

Dr. Wolfe was requested by the Provisional Liquidator of the Christian Brothers of Ireland in Canada and ordered by the Honourable Justice Blair on behalf of the Winding Up Act (July 1999) to conduct psychological interviews and testing with 85 adult male claimants. Claimants were seeking damages stemming from alleged and/or confirmed physical, sexual, and/or emotional abuse as a minor while residing at Mt. Cashel orphanage. His role was to assess claimants to determine if they exhibited symptoms consistent with abuse in relation to the nature, degree and frequency of abuse and the resulting psychological harm they alleged to have suffered.

The method involved an in-person interview and testing with each claimant conducted over an average 3-hour period. Each assessment began with a semi-structured clinical interview to describe their current family and living arrangements, family background, education, employment, substance use, etc. Psychological tests of mental health problems (trauma symptoms and overall mental health adjustment) were administered, followed by a diagnostic interview to determine past and present mental disorders. Diagnostic findings were discussed with each claimant for the purpose of recommending mental health or crisis services, as indicated. A brief report was prepared for each claimant, which ranked the nature and severity of abuse he experienced relative to other claimants (i.e., less extreme; similar; or more extreme relative to other claimants abused by the Christian Brothers of Ireland in Canada). An opinion on his overall psychological functioning was provided, based on testing and diagnostic findings.

We have responded to each of your questions below, under separate headings as outlined in your referral letter. Our CVs and Form 53 "Acknowledgement of Expert's Duty" are enclosed.

Expert Opinion

1. What difficulties or barriers might an individual who suffered or witnessed hazing and abuse (as described in Perell J's February 3rd Reasons) while playing in the CHL face in coming forward with a claim under an IIP?

There are many barriers for individuals who have suffered or witnessed hazing and abuse to come forward with a claim under an IIP. The undersigned have extensive experience dealing with the psychological impact of the traditional litigation process on survivors of child abuse and sexual assault. We have been involved in many cases in both criminal and civil proceedings in which victims shared their perspectives on the challenges faced by coming forward with their allegations.

In general, victims often feel shame in sharing their stories in the courtroom in front of judges and juries, as well as being examined during preliminary hearings or examinations for discovery. They are often triggered by memories of traumatic events in their lives that they were being asked to revisit. They may also fear the public nature of the court process, and the scrutiny their claims could attract from the media and their communities.

In addition to publicity, the possibility of cross-examination may also discourage survivors from bringing claims. Cross-examination can make survivors feel re-victimized.

These challenges are particularly significant for men who were abused by other boys/men during their childhood or adolescence. They are being asked to share painful and humiliating events that

they may not have disclosed to their own family or friends. These men may not have fully acknowledged what happened to themselves and actively repressed or tried to forget what happened. Thinking about what happened is too difficult, let alone talking about these events. They may feel especially vulnerable in terms of sexual abuse – including the type of abuse described in the Reasons for Decision – by male peers and/or a same-sex abuser and their perceptions about what this means for their sexual orientation.

As time passes, disclosure becomes even more challenging for survivors who feel guilt over not coming forward earlier and potentially saving many other victims over the years. Their silence over the years makes them feel as if they are part of the very system and culture they are now confronting. Some victims may have become perpetrators with younger players and may have great reluctance to face that complex and conflicted part of their history. They judge themselves and fear others will judge them in a harsh light rather than understand these dynamics. Some survivors may have been impacted by their traumatic exposure to the hazing and feel responsible for not doing something to protect other players and reporting what they witnessed.

All the issues that men feel disclosing abuse will be amplified within a hockey culture that promotes qualities of toughness and silence. Many of these survivors will have been socialized in a manner that discourages sharing feelings or acknowledging vulnerabilities. These men would be asked to break years of silence about what happened in the locker room.¹

Many of these barriers to participation are amplified during public, courtroom litigation. Regardless of the best intentions of defence counsel, survivors may be worried that they will be accused of exaggerating the abuse or its impacts. These fears are exacerbated by media portrayals of cross-examination as especially insensitive, if not cruel, and stories about sexual assault survivors in criminal trials.

If a survivor was successful in hockey or a related career, they may be worried they will be accused of becoming better players despite the abuse (or maybe because of the abuse that toughened them up for hockey) and were part of the culture. These survivors may be concerned they will be seen as only withdrawing consent years after the fact in revisiting and thinking differently about what they experienced. If a survivor never made it in the sport, they may be worried they will be told their struggles are the product of a lack of talent or determination, rather than the abuse they suffered.. Most of all, survivors may be worried cross-examination will minimize their hardship and suffering, or even accuse them of having liked or enjoyed some of the abuse that they suffered. Survivors may experience cross-examination as further damage to their self-esteem, and the fear of that experience may strongly discourage class members from making a civil claim.

Dealing with the challenge of delayed disclosure and responding to questions about why someone did not report hazing at the time, rather than years later, is very difficult for adult survivors. Survivors may be afraid of being made to feel "stupid" for not recognizing the misconduct at the time and for

¹ Burry, E., & Fiset, J. (2022). Calling the shots: organizational culture, performance, and the commoditization of ice hockey players. *Sport in Society*, 25(5), 945–962. <https://doi.org/10.1080/17430437.2020.1815708>

not reaching out to supposedly trusted individuals in the organization. They may fear being portrayed as disloyal to their team and teammates in breaking the code of silence. They may also feel as if they were to blame and deserved the abuse and any adverse consequences since they signed up for this journey with open eyes and even their parents' consent. Some of these challenges may be compounded if their own sons are playing competitive hockey and they have failed to address these issues as parents themselves.

Even in a best-case scenario, with a well-meaning cross-examiner, survivors will likely face questions that minimize their experience. That experience – and the fear of that experience – will discourage survivors from participating in a civil process, even if they want compensation and vindication for the harms they suffered. A process for claims that responds to these fears will help survivors to come forward.

2. What risks to wellbeing or mental health might players face in bringing forward claims related to the abuse and hazing they suffered or witnessed while playing in the CHL?

In addition to the challenges outlined above, players would face being re-traumatized by having to outline the details of what happened in the past and having to relive the experiences. They would experience significant anxiety and depression in facing the past, as well as trauma symptoms. They would likely feel that it is important to tell their immediate family members, due to fear the information would go public as well as having to explain their preoccupation with legal proceedings. Overall, they would feel a great deal of distress in dealing with a long-term secret they kept as well as having to examine their identity as a former hockey player and being part of a broader fraternity of former and current players involved in hazing. For some survivors, one could expect a level of distress that impairs their daily functioning, because they are now facing their past abuse, what they think and feel about their history in hockey, and how it shaped them.

Although bringing forward claims will be difficult for all former players who decide to do so, some individuals will face greater challenges because of their vulnerabilities and the impact that the hazing has had on their lives. The Independent Panel Report prepared by the defence outlines some of the potential impacts in terms of physical injuries and illnesses as well as cognitive, emotional, mental health, relationship, and economic losses.² Unless it is trauma-informed, the IIP process will likely exacerbate some of the existing symptoms and impact current functioning for those individuals already suffering from these consequences.

a. What kind of wellness/mental health supports, made available as part of an IIP, would mitigate these risks?

Former players would need access to confidential supports through mental health professionals who have expertise in treating males who have experienced abuse within a hypermasculine sport

² Independent Review Panel (October 31, 2020). "The Impact is Real...Action is Needed". Panel appointed by the Canadian Hockey League, p. 17.

and culture. The availability of support during cross-examination is especially important, as cross-examination can be a negative experience for abuse survivors. Knowing about this support in advance would also help players feel comfortable coming forward with their claims.

b. In order to mitigate these risks, at what stage during the IIP should these supports be made available?

The supports outlined above would need to be in place at the outset of involvement in any proceeding (e.g., drafting a claim or completing a questionnaire), as well as throughout any proceedings or hearings and interviews. Supports would also be needed after the process ends to assist with the aftermath of the proceedings.

3. How can an IIP assist players in overcoming those difficulties and barriers, in terms of:

The traditional litigation process is difficult for abuse survivors and discourages participation. Assisting players by changes to the traditional process, including confidentiality and supports in cross-examination, will help players come forward.

a. The mode by which notice of the IIP is given to players (i.e., whether notice is provided by email, advertisements online, or other means)

One factor discouraging participation by abuse survivors is media and community scrutiny. A notice process tailored to minimize that scrutiny would assist players with advancing claims. This may be especially important for players who continue to be involved in hockey and who may be afraid of the personal and professional consequences of being seen to participate in process adverse to “hockey.”

Media reports with links to more information, social media advertisements, email and online notices would be the best modes. Targeted mail may trigger questions from family or friends. The more that players' decision to participate and their identity is protected at earlier stages, the more likely they are to participate in an IIP.

b. The information contained in the notice, or available to players in conjunction with the notice.

The information should clearly define all forms of hazing and exposure to hazing so the misconduct is not minimized in any manner. There should be a link to a video that describes the problem and an acknowledgement that hazing was never a requirement of playing in the CHL. The video should encourage claimants to come forward and not suffer in silence – they would be told they are not alone. There should also be an acknowledgement that some claimants may have been victims of hazing in their rookie years and then encouraged to become perpetrators of hazing and this fact will not be held against them.

There is research to support the fact that former players may not have understood that hazing is/was abusive and was not a mandatory part of playing in the CHL. There should be clear

information as to who to contact by email or a 1-800 number, as well as an explicit assurance that the process is confidential. No former player would be identified directly or by implication (naming a team or year or position).

In recognition of claimants being reluctant or ambivalent in coming forward, the 1-800 number should have personnel who are trained to respond in an informed manner to phone inquiries. Such training would address the likely emotional state of the caller and responses to common questions about the process and confidentiality.

4. Other than monetary compensation, how could the IIP help players to deal with the abuses they suffered or witnessed playing in the CHL?

Players would need a clear acknowledgment of their abuse and the impact it has had as well as an apology from the hockey team and organization responsible for policies, practice, and education that should have – but did not -- protect them. Players would need assurance that some good will from the litigation will transpire for others– namely, current and future players will be protected from hazing and having to suffer similar outcomes.

Players would want to end the silence on hazing and that aspect of the hockey culture forever and see a public commitment to shine a light on the issue and ensure this conduct is not tolerated in any form by the league or any team. The Independent Review Panel Report offers a helpful roadmap to policies, practices, and prevention of hazing in the the future, which could be implemented as an outcome of the litigation.

Another idea that could be pursued as part of the IIP would be the opportunity to be involved in a “restorative engagement program” to deal with the healing process. This program has been utilized in other cases such as the Canadian Armed Forces (CAF)-Department of National Defence (DND) Sexual Misconduct Class Action Settlement to allow survivors “to share their experiences of abuse, the impact it has had on their life and career and/or provide their knowledge, ideas and insights on how to improve and contribute to culture change” in the institution.³ It might help players to have opportunities to participate in identifying lessons learned from hazing in the CHL and to contribute to broader culture change in hockey. The overarching goal would be to build an inclusive and respectful CHL culture now and into the future.

5. What protections or supports would assist players in being able to recount past events fully and accurately during cross-examination, while reducing risks to players' wellbeing and mental health?

³ See <https://www.canada.ca/en/department-national-defence/services/benefits-military/health-support/sexual-misconduct-response/restorative-engagement/about-restorative-engagement.html>

For the IIP to be effective, it must be trauma-informed to ensure that the process does not re-victimize the Claimants. By trauma-informed, the IIP would have to acknowledge the impact of trauma and design a process to avoid causing further harm.

An acknowledgment of trauma means understanding that hazing as a traumatic event(s) can have “lasting adverse effects on the individual’s functioning and mental, physical, social, emotional or spiritual well-being.”⁴ This knowledge would inform an IIP that “understands potential paths for recovery; recognizes the signs and symptoms of trauma in claimants; responds by fully integrating knowledge about trauma into procedures and practices; and seeks to actively resist re-traumatization.”⁵

Players would need to feel that they are in a safe and confidential venue. Attending the hearing virtually with a support person present at the claimant’s home or an office nearby should be an option. For in-person meetings, the venue could be a comfortable interview room that looks more like a family room or therapist’s office than a courtroom. They should be encouraged to share their experiences in an open-ended manner with some gentle probes to expand on the information. They should be allowed to have a support person with them if they so desire.

In a perfect world, cross-examination would recognize the reality of delayed disclosures of abuse, distress of survivors, and limits of historical memories around exact dates and times and some details of events that may have been forgotten. Breaks should be offered as needed.

In an ideal world, a specially tailored, trauma-informed assessment and inquiry process would be created. Trauma-informed approaches use current knowledge about how people are affected by trauma, for developing a specially tailored assessment and inquiry process. It is an approach that stresses safety, trust, collaboration, choice, and empowerment.

A trauma-informed approach would include each Claimant being interviewed by a mental health professional or trauma-informed adjudicator to have the opportunity to describe the extent and nature of the abuse and harm they have suffered while playing in the CHL. This trauma-informed interview would lead to a brief written report containing a summary of the interview, safeguards required for examinations, and recommendations for healing, as necessary.

This process would ensure claimants’ needs and concerns are recognized; trust and transparency are assured; open communication is promoted; collaboration for everyone in the process is guided by the same principles; and choice and empowerment to make sure that claimants have alternative ways of engaging with the process and different ways of responding to their unique circumstances.

The intention of the process is to facilitate Claimants’ description of what they experienced and how it may have harmed him, to reliably assess the events and the resulting impact, and to promote

⁴ US Department of Health and Human Services. (2014). SAMHSA's concept of trauma and guidance for a trauma-informed approach.

⁵ Ibid.

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healing in a manner that is most sensitive to their needs and circumstances. This process would reduce the risk of Claimants' public exposure and re-traumatization.

In summary, based on our extensive experience in the field and the literature on institutional abuse of adolescents, we predict major barriers for former CHL players to come forward to deal with the hazing they experienced in the past and the harm they may have suffered. Special measures would have to be put into place to engage survivors of hazing to come forward to share their stories, and there would have to be a trauma-informed process developed for the proposed Individual Issues Protocol.

Respectfully submitted,



Peter Jaffe, Ph.D., C. Psych
Registered Psychologist



David A. Wolfe, Ph.D., ABPP, C. Psych
Registered Psychologist

List of Documents and Articles Relied Upon

Independent Panel Report, dated October 31, 2022.

Report on Player Wellbeing Programs and Related Recommendations (R. Turnpenny), dated January 14, 2022.

Justice Perell's Reasons for Decision, dated February 3, 2023 pertaining to this matter (Carcillo v. Canadian Hockey League, 2023 ONSC 886).

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***THIS IS EXHIBIT “B” REFERRED TO IN THE
AFFIDAVIT OF DR. PETER JAFFE SWORN BEFORE ME FROM THE
TOWN OF LONDON, IN THE PROVINCE OF ONTARIO, TO THE CITY OF
TORONTO, IN THE PROVINCE OF ONTARIO, ON JUNE 2ND, 2023, IN
ACCORDANCE WITH O. REG. 431/20, ADMINISTERING OATH OR
DECLARATION REMOTELY.***



***A COMMISSIONER FOR TAKING AFFIDAVITS, ETC.
CAITLIN LEACH***

CURRICULUM VITAE

PETER G. JAFFE, O.C., PH.D., C. PSYCH.

Current Position: Professor Emeritus, Faculty of Education
Academic Director Emeritus,
Centre for Research and Education on Violence Against Women and Children
Western University
Room 1118, Faculty of Education Building, 1137 Western Road
London, ON Canada N6G 1G7

Director Emeritus & Senior Consultant
London Family Court Clinic
254 Pall Mall St., London ON N6A 5P6

Contact Information: pjaffe@uwo.ca; 519-661-2018

Education:

Degree	Institution	Department	Year
Ph.D.	University of Western Ontario	Clinical Psychology	1974
M.A.	University of Western Ontario	Clinical Psychology	1971
B.Sc.	McGill University	Psychology	1970
Clinical Internship	Family Consultant Service (Victim & Crisis Intervention Service) London Police Services		1973-74
Clinical Internship	St. Thomas Psychiatric Hospital Out-patient/In-Patient Psychology and Psychiatry		1971-73

Professional Status:

Registered Psychologist
College of Psychologists, Province of Ontario
Certificate No. 973
1974-present

Employment History:

<u>Date</u>	<u>Position</u>	<u>Department</u>	<u>Institution</u>
2021-present	Professor Emeritus	Education	University of Western Ontario
2005-2021	Professor	Education	University of Western Ontario
2001-present	Director Emeritus		London Family Court Clinic
1999-present	Consultant & Faculty Member Enhancing Judicial Skills in Domestic Violence Cases		National Council of Juvenile & Family Court Judges, Futures without Violence
1999-2014	Professor (Part-time)	Psychiatry	University of Western Ontario
1976-2014	Professor (Adjunct/Cross-Apt)	Psychology	University of Western Ontario
1975-2001	Executive Director		London Family Court Clinic
1980-1999	Associate Professor (Part-time)	Psychiatry	University of Western Ontario
1974-1975	Assistant Professor	Psychology	University of Western Ontario
1973-1975	Director	Family Consultant Service	London Police Service

Academic Honours and Awards:

<u>Date</u>	<u>Organization</u>	<u>Honour/Award</u>
2020	Royal Society of Canada	Member
2019	Western University	<i>Hellmuth Award for Achievement in Research</i>
2012	Ontario Teachers Federation	<i>Greer Memorial Award</i>
2012	Governor General of Canada	<i>Diamond Jubilee Medal</i>
2009	Governor General of Canada	<i>Officer, Order of Canada</i>
2002	BC Institute on Violence Prevention	<i>Violence Against Women Symposium 2002 Award</i> To honour seven individuals and their work, activism and advocacy at the local, provincial and national levels. Their dedication in ending violence against women and children

		significantly contributed to the safety of women and children experiencing violence.
2002	Ontario Secondary School Teachers Federation	<i>Lamp of Learning Award</i> For initiatives with anti-violence programs for high schools.
1998	Ontario Public School Teachers Federation (London District)	<i>Meritous Award</i> For outstanding service to education.
1998	Canadian Psychological Association	<i>Canadian Psychological Association (CPA) Professional Award</i> The most prestigious Professional Award the discipline confers in Canada.
1994	New Brunswick Centre On Violence	<i>Muriel McQueen Fergusson Award</i> For tremendous contributions in the area of reducing family violence.
1994	OPSBA	<i>The Colonel Watson Award</i> For significant contributions to education in Ontario.
1993	Children's Mental Health Organization	<i>Dr. B. Wickett Fund Award</i> For research advocacy and organizational efforts on behalf of victims of family violence and youth in conflict with the law.
1993	Government of Canada	<i>Commemorative Medal for the 125th Anniversary of the Confederation Of Canada</i> For dedication an contributions to the community and to all fellow Canadians.
1992	Canadian Psychological Association	<i>Fellow of the Canadian Psychological Association</i> For exceptional service and contribution to the provincial association.
1991	Council for Exceptional Children	<i>President's Award</i>
1989	LCCEWA	<i>John. H. Robinson Award</i> For significant contribution in the area of domestic violence for the London community.
1989	Byron Optomists	<i>Citizen of the Year</i> For community contribution.
1988	Ontario Psychological Association	<i>Community Service Award</i>

Government Inquiries, Consultation and Testimony:

1. Ontario Inquest into Triple Domestic Homicide, Renfrew County, June 2022.
2. Nova Scotia Fatality Inquiry into Domestic Homicide (November 2021).
3. National Council of Juvenile and Family Court Judges Committee on Developing a Model Code for States on Domestic Violence and Parenting Arrangements (2020-22).
4. Centre for Court Innovation (2010-2015). Defending Childhood: Evaluation of the Attorney General's Children Exposed to Violence Demonstration Program. U.S. Department of Justice, Office of Justice Programs.
5. PEI Inquest into Child Homicide-Parental Suicide (2015).
6. Cornwall Public Inquiry into historical sexual abuse (2007-2009).
7. Domestic Homicide Inquests for the Office of the Chief Coroner: May/Illes Inquest (1998), Hadley Inquest (2002) & Dupont Inquest (2007).
8. Alberta Inquest into Domestic Homicide-Suicide (2014).
9. Justice S. Robin's Review to examine teacher sexual misconducts. (Provincial Government Committee). (2000-2).
10. Upper Canada College review of policies and procedures related to sexual abuse by teachers, students, and administrative staff. (2000-2001).
11. Health, Welfare and Social Affairs: Sub Committee on the Status of Women Standing Committee, House of Commons, Ottawa, On. (1991).
12. Canadian Panel on Violence Against Women (Federal Government Committee). (1991-1993).
13. Publicity of Young Persons under the Young Offenders Act. Southam News v. The Federal Ministry of Justice. (1984).
14. Family Violence Study: Standing Committee on Social Development (Provincial Government Committee). (1982).
15. Wife Battering: Standing Committee on Health, Welfare & Social Affairs (Federal Government Committee). (1982).

Provincial Committees:

2002-present	Founding Member, Domestic Violence Death Review Committee <i>Chief Coroner's Office of Ontario</i>
2011-2016	Accepting Schools Expert Panel Ministry of Education
2011-2015	Male Survivors of Sexual Abuse Provincial Advisory Committee Ministry of the Attorney General
2006-2012	Founding Member, Ontario Coalition on Media Violence

Expert Witness:

Expert Witness in the following areas:

- Impact of Sexual Abuse
 - Adult survivors of sexual abuse
 - Abuse within community institutions
 - Long-term sequelae of sexual abuse
 - Economic costs of sexual abuse
- Assessment and treatment of young offenders
- Custody and access disputes
- “Alienation” and misuse of “Alienation”
- Battered wife syndrome
- Domestic violence against women
- Exposure to domestic violence
- Sentencing
- Prediction of dangerousness and lethal violence
- Treatment of violent offenders
- Impact of violence on victims and child witnesses
- Patterns of abuse by batterers
- Delayed disclosure
- Effects of trauma on memory
- Recantation
- Dynamics of Abusive Relationships
- Child Abuse

Expert Witness in the following courts:

- Provincial court (Ontario – now known as Ontario Court of Justice)
- District Court (Federal Court) Ontario, Saskatchewan, Alberta (now ON Superior Court of Justice)
- Probate and Family Court, Commonwealth of Massachusetts, Colorado, Oregon, New York, Florida, Michigan, California

Research Funding:Over \$1,000,000

2007-2011	Ontario Women’s Directorate (1.3 million) Neighbours, Friends & Family 1 (with Barb MacQuarrie)
2011-2014	Ontario Women’s Directorate (1.2 million) Learning Network 1 (with Linda Baker)
2014-2017	Ontario Women’s Directorate (1.05 million) Learning Network 2 (renewal) (with Linda Baker)
2015-2020	Social Sciences and Humanities Research Council (2.2 million) Domestic Homicide Prevention with Vulnerable Populations (with Myrna Dawson)
2015-2020	Public Health Agency of Canada (1.6 million) Knowledge Hub (with Linda Baker)
2017-2020	Ontario Women’s Directorate (1.05 million) Learning Network 3 (renewal) (with Linda Baker)

Over \$500, 000

- 1993-1998 *Health and Welfare Canada/Social Science and Humanities Research Council*
The London Coordinating committee to End Woman Abuse, Fanshawe College and the University of Western Ontario co-operatively developed a proposal to Health and Welfare Canada and the Social Sciences and Humanities Research Council for a Family Violence and Violence Against Women Research Centre in London. This is in response to a federal government initiative to develop five “Centres of Excellence” in Canada.
- 2000-2002 *David and Lucile Packard Foundation*
Ongoing project development and dissemination of four ‘user-friendly’ handbooks on children exposure to domestic violence for educators, youth justice workers, probation officers, police and early childhood workers. (with Dr. L. Baker)
- 2003-2008 *Canadian Institute of Health Research*
“Controlled longitudinal evaluation of a school-based program to prevent adolescent dating violence and related risk behaviors.” (with D. Wolfe and C. Crooks)
- 2004-2008 *Ontario Trillium Foundation*
“A resource for implementing a paradigmatic approach to violence prevention.” (with C. Crooks)
- 2008-2015 *Social Sciences and Humanities Research Council*
“Strategic Knowledge Clusters, Research Network: Canadian Prevention Science Cluster for Children and Youth.” (with D. Wolfe, C. Crooks, D. Chiodo)
- 2011-2015 Ontario Women’s Directorate (707,000)
Neighbours, Friends & Family 2 (with Barb MacQuarrie)
- 2016-2019 Ontario Women’s Directorate (575, 000)
Neighbours, Friends & Family 4 (with Barb MacQuarrie)

Over \$250, 000

- 1994-1995 *Health Canada*
“A.S.A.P.: A School-based Anti-violence Program.” A primary prevention program for adolescents in London secondary schools dealing with violence in relationships to develop dissemination strategies, regional seminars, a video and a training manual. (with Dr. M. Suderman)
- 2000-2003 *Department of Justice (National Crime Prevention Centre)*
Evaluation and monitoring the Family Service Centre of Ottawa-Carleton and the John Howard Society of Ottawa-Carleton Children Who Witness Violence Project, and to develop a program model for use in Canada. The project is in collaboration with the Centre for Research on Violence Against Women and Children, and the Children’s Aid Society of London/Middlesex. (with Dr. L. Baker and A. Cunningham)

- 2011-2013 *Ontario Women's Directorate*
Threat Assessment/Risk Management Training
- 2014-2016 Ontario Women's Directorate (375, 000)
Neighbours, Friends & Family 3 (with Barb MacQuarrie)
- 2020-2023 Public Health Agency of Canada
Supporting the Health of Survivors of Family Violence in Family Law Proceedings
- 2021-2022 Ontario Ministry of Children's Services
Research on the Implementation of the Recommendations of the Domestic Violence
Death Review Committee

Over \$100, 000

- 1974-1980 *Solicitor General of Canada*
"Police Family Crisis Intervention."
- 1979-1981 *Solicitor General of Canada*
"The Response of the Criminal Justice System to Wife Abuse."
- 1984-1985 *Ontario Justice Secretariat*
"The impact of police laying charges in cases of wife assault."
- 1989-1990 *Ministry of Justice, Solicitor General of Canada, Solicitor General of Ontario*
"Impact and effectiveness of the policy directive that police lay charges in all wife abuse incidents where reasonable and probable grounds exist."
- 1998-2001 *Atkinson Charitable Foundation*
"'Access Denied', Poverty and Woman Abuse: The Double Disadvantage"
Exploring the double disadvantage experienced by women and children when poverty and woman abuse are features of relationships and their aftermath.
- 2011-2012 *Department of Justice Canada*
Knowledge exchange on Safety Planning, Risk Assessment & Risk Management.
- 2013-2015 *Ontario Women's Directorate*
Domestic Violence Training for Professionals.

Grants \$50, 000 - \$100, 000

- 1983-1985 *Ontario Mental Health Foundation*
"The impact of exposure to marital violence on children."
- 1986-1987 "Impact of the *Young Offenders Act* on young offenders with special needs." (with Dr. A Leschied)
- 1999-2000 *David and Lucile Packard Foundation*

Project to develop a “user friendly” handbook on childhood exposure to domestic violence for educators, youth justice workers, probation officers, police, and early childhood workers.

- 2000-2001 *Community Mobilization Fund, National Crime Prevention Centre.*
- 2001-2002 “Building Healthy Non-Violent Relationships Among At Risk Youth.”
Develop new grade nine curriculum on violence prevention based on feedback from secondary school students and community agencies.
- 2007-2018 *Ontario Women’s Directorate*
Prevention of Domestic Violence “Neighbours, Friends and Families.”
- 2008 *Department of Justice Ottawa, Ministry of the Attorney General and Ontario Women’s Directorate*
“A National Think-Tank on Domestic Violence Homicide Review.”

\$25,000 - \$50,000

- 1989-1990 *Ontario Women’s Directorate*
“Wife assault versus stranger assault: a comparison of sentencing in criminal court.”
- 1990-1991 *Ontario Ministry of Community & Social Services*
“Preventing violence in intimate relationships: A school-based program for adolescents in four secondary schools.” To educate adolescents in grade 9-13 on the topic of violence in relationships focusing on wife assault.
- 1992-1994 *The Donner Canadian Foundation*
Expansion of the Violence Prevention Program with the Board of Education for the City of London, Middlesex County Board of Education and the London & Middlesex County Roman Catholic Separate School Board.
- 1997-1998 *Health Canada*
Project to develop a Handbook for health, social services and child care professionals on the issue of the effects on children exposed to woman abuse, for distribution by the National Clearinghouse on Family Violence.
- 2000-2001 *Law Commission of Canada*
“Child Abuse in Community Institutions and Organizations: Improving Public and Professional Understanding.” A grant to review the impact of institutional abuse on children and adolescents. The final report highlights the unique impact when abuse jeopardizes the safety of youths in educational, recreational and religious settings.
- 2012-2013 *Canadian Women’s Foundation*
“Canadian Domestic Homicide Prevention Initiative”
A grant to develop a website to be a depository of information on domestic homicide prevention.

2021-2022	<i>Canadian Department of Justice</i> Updated Literature review on family violence and parenting arrangements after family violence.
<u>\$25,000</u>	
1979-1980	<i>Ontario Ministry of Community & Social Services</i> “Matching juvenile offenders to differential levels of security of detention homes.”
1989-1990	<i>Institute for the Prevention of Child Abuse</i> “Direct and indirect exposure to family violence: Impact on children’s social problem-solving skills.”
1994-1995	<i>Samuel & Saidye Bronfman Family Foundation</i> Family Violence Prevention Newsletter #4.
1995-1996	<i>Ontario Hydro Citizenship Program and the London Free Press C.A.R.E. Program</i> “A.S.A.P.: A School-based Anti-violence Program (Edition II)” Including three new resource chapters related to Bullying, Dating Violence and Sexual Harassment, and Media Violence.
1995-1996	<i>Centre for Research on Violence Against Women and Children</i> “Evaluation of groups for children who have witnessed violence.” A pilot study on CAS/Community based groups for children.
1996-1997	<i>National Institute of Mental Health</i> Project to study the “Severity and Course of Abuse Sequelae: An Expansion of the PTSD Formulation.”
1998-1999	<i>City of London</i> “Youth in the Downtown Project” Consultative project for the Community and Protective Services Committee of the City of London, in collaboration with the Whitehead Research Consultant Ltd.
2000-2001	<i>Law Commission of Canada (in collaboration with the University of Western Ontario and the Centre for Research on Violence Against Women and Children).</i> A project to provide Canadians with a meaning full dollar estimate of some of the major economic costs directly associated with child abuse.
2005	<i>Canadian Department of Justice</i> Literature review on family violence and parenting arrangements after violence.
2008	<i>Ontario Ministry of Education</i> Engaging Parents in Media Violence Education – Parent Involvement Grant.
2010	<i>Ontario Ministry of Education (in partnership with Ontario Public School Boards Association)</i> Developing Media Violence Tools and Curriculum for Educators and Parents.

- 2012 *Social Sciences Humanities Research Council*
Domestic violence risk assessment and management in the workplace.
- 2013 *Department of Justice Canada*
Risk factors for children in situations of family violence in the context of separation and divorce.
- Consultations/Evaluations:
- 1978-1980 *Ontario Ministry of Community and Social Services*
Feasibility study on secure treatment programs for adolescents. **(\$36,000)**
- 1981-1983 *Thistleton Regional Children's Centre*
Identifying the needs of adolescents requiring secure treatment programs. **(\$6500)**
- Ontario Ministry of Community & Social Services*
Children and families in transition at the London Family Court Clinic over a twelve year period: Historical, theoretical and empirical considerations. **(\$50,000)**
- 1992-1994 *Health & Welfare Canada*
Preventing violence in intimate relationships. A primary prevention program for adolescents in London Secondary Schools. Dissemination strategies, regional seminars, and a training manual. **(\$10,000)**
- 1992-1994 *The Donner Canadian Foundation*
Expansion of the violence prevention program with the Board of Education for the City of London, Middlesex County Board of Education, and the London & Middlesex County Roman Catholic Separate School Board. **(\$20,000)**
- 1995-1996 *Health Canada*
Update fact sheet on Wife Abuse – The Impact on Children. **(\$20,000)**
- 1995-1996 *National Forum on Health*
Position paper regarding *Ways to reduce general violence and to decrease the incidence of violence against women.* **(\$10,000)**
- 1995-1996 *London Coordinating Committee to End Woman Abuse*
Accountability Protocol. **(\$10,000)**
- 1996-1997 *Ministry of Education & Training*
Development of an evaluation framework for the School-based Services Grant program. **(\$5,000)**
- 1997 *The Trillium Foundation*
Co-host of the II International Conference on Children Exposed to Family Violence. **(\$25,000)**

- 1997-1998 *Family Violence Prevention Fund (San Francisco, CA) in cooperation with the Musser Fund (Minnesota)*
Project to develop and test A.S.A.P.: A School-based Anti-violence Program for American Schools. **(\$15,000)**
- 1997-1998 *Correctional Services Canada*
Review the theoretical research related to family violence models and determine if the feminist and social learning model continues to be supported by research. **(\$25,000)**
- 1997-1998 “No to Bullying: Early Intervention for Youth Crime”, in co-operation with Madame Vanier Children’s Services. **(\$25,000)**
- 1998-1999 *Correctional Services Canada*
Review the theoretical research related to family violence models and determine if the feminist and social learning model continues to be supported by research related to minority groups, developmentally challenged, and aboriginal groups. **(\$10,000)**
- 2000-2002 *Law Commission of Canada*
A comprehensive literature review on the long-term impact of institutional abuse and to ensure that key information is communicated both to the general public and to professional groups who work with survivors. **(\$30,000)**
- 2005 *Canadian Department of Justice*
Literature review on family violence and parenting arrangements after violence (Co-Principal Investigator). **(\$23,500)**
- 2005-2006 *Ministry of the Attorney General*
Evaluation of the Ontario Unified Family Courts (Co-Principal Investigator). **(\$190,000)**

Program Resources & Technical Reports

- 1985-1987 *Ontario Ministry of Community and Social Services*
Development of counseling programs for children exposed to marital violence. **(\$50,000)**
- 1987-1989 *Ontario Ministry of Community & Social Services*
Understanding the impact of wife assault on child witnesses: An integrated approach to training and program development in children’s services. **(\$15,000)**
- 1989-1990 *Ontario Ministry of Community & Social Services*
Preventing violence in intimate relationships: A school-based program for adolescents. A modified pilot study in five secondary schools in London. **(\$75,000)**
- 1989-1991 *Ontario Ministry of Education*
Child witness protocol development. **(\$50,000)**
- 1991-1992 *Ministry of the Solicitor General*

Multicultural issues facing assaulted women: A conference for service providers.
(\$10,000)

- 1998-1999 *The Richard & Jean Ivey Fund*
Mediation pilot program to facilitate parental planning for child care following marital breakdown. **(\$75,000)**
- 2001-2002 *National Clearinghouse on Family Violence*
Canadian Family Violence Statistics 2002 – Fact Sheet. **(\$5,000)**
- 2001-2002 *National Clearinghouse on Family Violence*
Canadian Family Violence Statistical Inventory – 1996-2002. **(\$5,000)**
- 2016-2017 *Status of Women Canada (\$24,000)*
Invited policy paper. “Primary prevention of gender-based violence: Current knowledge about program effectiveness and priorities for future research.”
- Ministry of Education, Ontario (\$20,000)*
Invited research report on “Student Well-Being Survey: Promoting Healthy Relationships for Youth.
- 2018-2019 *Status of Women Canada (\$24,000)*
Invited policy paper, follow up to: “Primary prevention of gender-based violence: Current knowledge about program effectiveness and priorities for future research.” (2016-2017)

Selected Invited Addresses and Presentations (2000-2022):

- 2000-2001 “Custody & Access Disputes Involving Domestic Violence” California Judicial Council Conference.
- “Children Exposed to Domestic Violence: Critical Issues for Mental Health, Social Services, Teachers and Early Childhood Educators” 2 day-long workshops, Spokane Domestic Violence Consortium, “You Can Make a Difference” Conference, Spokane, WA.
- “Custody & Access Related Issues” Family Law Seminar, National Judicial Institute, Halifax, NS.
- “Child Custody Disputes in the Context of Domestic Violence: Current Clinical and Legal Issues” Fall Conference Program, North Carolina Association of District Court Judges, Chapel Hill, NC.
- “Family Violence: A Community Response in the 3rd Millennium”
Keynote address, Saint John, NB.
- “Enhancing Judicial Skills in Domestic Violence” Santa Fe, NM.
- “Domestic Violence and the Impact on Children”

Keynote address, First Lady of Costa Rica National Forum on Violence Prevention, Costa Rica.

“Enhancing Judicial Skills in Domestic Violence” National Judicial Institute on Domestic Violence, Reno, NV.

“Sexual Abuse of Students by School Board Employees: Current Program, Policy & Legal Issues” Workshop, 2001 Public Education Symposium, Ontario Public School Boards Association, Toronto, ON.

“Preventing Violence Tomorrow by Working with Children in Violent Homes Today.”
“Research Agenda for Children Exposed to Family Violence.” “Prevention the Next Generation of Violence Through the Early Identification of Children Exposed to Family Violence” workshops, Violence in the family: Plan of action for the 21st century, Nicosia, Cyprus.

“Children Exposed to Domestic Violence” Keynote address, Annual Domestic Violence Conference, City of New York, NY.

“The Impact of the Crime of Domestic Violence” Keynote address, Ninth Judicial District Symposium, White Plains, NY.

2001-2002 “Growing Up in a Violent World: Implications for Children who Witness Violence” 2002 Family Court Services Statewide Educational Institute, Long Beach, CA.

“Children Exposed to Domestic Violence” National RCMP Spousal/Partner Assault Workshop, Montréal, PQ.

“Ask the Experts: Issues in the Family Division” 2002 Domestic Violence Summit, Michigan Judicial Institute, Lansing, MI.

“Children Exposed to Domestic Violence” Maricopa County Family Court’s Domestic Violence Committee, Phoenix, AZ.

“Enhancing Judicial Skills in Domestic Violence Cases” National Council of Juvenile & Family Court Judges, Santa Fe, NM.

“Children Exposed to Domestic Violence” North Carolina Council for Women & Domestic Violence Commission, Raleigh, NC.

“Effects on Children who Witness Violence in the Home” Aboriginal Nurses Association of Canada, Ottawa, ON.

“Children Exposed to Domestic Violence: Critical Issues for Mental Health, Social Services, Teachers and Early Childhood Educators” Stratford, ON.

“Enhancing Judicial Skills in Domestic Violence Cases” San Francisco, CA.

“Custody & Access Disputes Involving Domestic Violence: Current Issues in Research, Intervention, Prevention and Policy Development” workshops, Charlottetown, P.E.I.

“Enhancing Judicial Skills in Domestic Violence Cases” Family Violence Prevention Fund, Judicial Training, Boston, MA.

“Custody & Access Disputes Involving Domestic Violence” California Judicial Council Conference.

2002-2003

“Children Exposed to Domestic violence” “Vicarious Trauma” Presentations, Vera Institute, City of New York, NY.

“Fairness, Fact-Finding; Decision-Making Skills” Texas Center for the Judiciary, Galveston, TX.

“Judicial Curriculum for advanced workshop on domestic violence for the National Judicial Institute on Domestic Violence” 3-day workshop, Washington, DC.

“Custody Evaluation/Visitation with Judiciary” First Judicial Circuit, State of Hawaii.

“Enhancing Judicial Skills in Domestic Violence Cases” 2.5-day workshop, Seattle, WA.

“What Judges Should Know About Children and Domestic Violence”; “Risk Assessment and Perpetrator Behaviour: Implications for Sentencing, Release and Visitation Decisions”; “Recognizing Stress and Vicarious Trauma associated with Handling Domestic Violence Cases” Workshops, Alaska District Court Judges, Anchorage, AK.

“Children at Risk: Witnesses to and Victims of Spousal Abuse” workshop, Auberge Shalom Pour Femmes, Montréal, PQ.

“Trauma Associated with Children Witnessing Domestic Violence” workshop, Summit on Children and the Courts: Improving Court Responses to Child Victims of Familial Violence and Sexual Abuse, Waltham, MA.

“Faculty Curriculum Development and Judicial Institute” National Council of Juvenile & Family Court Judges, San Diego, CA.

“Victim & Perpetrator Behaviours” Judicial Education for the State of Colorado, Vail, CO.

“Domestic Violence & Children: The need for a collaborative community response to end domestic violence” Keynote address and workshop, Frontenac Children’s Aid Society, Kingston, ON.

“Effects of Domestic Violence on Children” “Working with Domestic Violence Victims and Witnesses” workshops, The Florida Network of Victim Witness Services, 25th Annual Conference, St. Petersburg, FL.

“Children Exposed to Domestic Violence” Research agenda workshop, National Institute of Child Health & Human Development, Washington, DC.

National Council of Juvenile and Family Court Judges, Charleston, SC.

“Growing Up in a Violence World: The Impact of Society, Media and Families on Children” “Developing Effective Violence Prevention Programs in Schools” Safe Schools-Safe Communities Conference, Clarendville, NF.

“Intervention of Law Enforcement and Courts” Children & Trauma Conference, Casey Journalism Center on Children & Families, Baltimore, MD.

“Co-ordinated Community Response to Domestic Violence”
Keynote address, Chesterfield Colonial Heights Child Abuse Team 4th Annual Child Abuse and Neglect Forum, Richmond, VA.

2003-2004 “Impact of DV on Children & Adolescents” workshop and community presentation, Prescott-Russell Conference, Hawkesbury, ON.

“Children Exposed to Domestic Violence” workshop, Family Violence Prevention Unit, Health Canada, Ottawa, ON.

“Domestic Violence Institute” and “Vicarious Trauma” National Council of Juvenile & Family Court Judges, King County Domestic Violence Program, Seattle, WA.

“Vicarious Trauma” and “The Impact of Domestic Violence on Children who Witness.” Tacoma Washington State Coalition, Tacoma, WA.

“Enhancing Judicial Skills” National Council of Juvenile & Family Court Judges, San Francisco, CA.

“Enhancing Judicial Skills in Domestic Violence Cases” National Council of Family & Juvenile Court Judges, Minnesota, MN.

National Council of Family & Juvenile Court Judges, Santa Fe, NM.

“Children Exposed to Domestic Violence: Critical Issues for Counsellors, Advocates, Mental Health Professionals, Teachers, and Early Childhood Educators” workshop, Family Resources Incorporated, Moline, IL.

“The Judicial Response to Domestic Violence: Role of the Judge” Keynote address, Utah Judges Association Annual Conference, Salt Lake City, UT.

“Vicarious Trauma and Stress in Domestic Cases” workshop, Utah Judges Association Annual Conference, Salt Lake City, UT.

“Vicarious Trauma” workshop, Canadian Association of Provincial Court Judges, St. John’s, NF.

“Custody Evaluations/Guardians Ad Litem in Divorce and Paternity Cases” & “Does it have to hurt so much to be a Family Court Judge? Coping with Secondary Trauma” and “Compassion Fatigue in a Unified Family Court” Family Court Symposium, Family Court of First Circuit, Honolulu, HI.

“Custody, Visitation and Safety” and “Vicarious Trauma” The Oklahoma Judicial Conference on Domestic Violence, Lone Wolf, OK “Biannual Judges Seminar.”

National Council for Juvenile & Family Court Judges, Winnemucca, NV
“Children who Witness Violence.”

Children Exposed to Domestic Violence. Training seminar for shelter staff, child welfare workers, and family violence professionals, Alberta Council of Women’s Shelters, Edmonton, AB.

“Advanced Judicial Education: Expanding knowledge and practice in Domestic Violence Cases” Family Violence Prevention Fund, San Francisco, CA.

2004-2005 “Effects of Domestic Violence on Children” FV and the Courts: 10th Anniversary Conference, Judicial Council of California, San Francisco, CA.

“Impact of Domestic Violence on Children” Healthy Babies Program, City of Ottawa, Ottawa, ON.

“Recent Developments in Domestic Violence from the Perspective of Court and Community Interventions” Family Violence Response Team, Iowa Attorney General, Des Moines, Iowa.

“Child Custody” & “Spousal Violence and Misguided Fears and Bias” Workshop, Fredericton, NB.

2005-2006 “Learning from tragedies: the Experience of the Ontario Domestic Violence Death Review Committee” 38th Banff International Conference on Behavioural Science, Banff, AB.

“Continuing Judicial Skills in Domestic Violence” National Judicial Institute on Domestic Violence, San Francisco, CA.

National Judicial Institute on Domestic Violence, Los Angeles, CA.

National Judicial Institute on Domestic Violence, Austin, TX.

“Children Growing up with Violence” “Sustainable Changes in Violence Prevention Programs” Safe Schools Conference, Saskatoon, SK.

“Expert Testimony into Impact of Historical Abuse by Persons in Positions of Authority” Cornwall Public Inquiry into Sexual Abuse.

- 2006-2007
- “Impact of Domestic Violence on Children” Colorado Judges, Denver, CO.
 - “Enhancing Judicial Skills in Domestic Violence Cases” National Council of Juvenile & Family Court Judges, Santa Fe, NM.
 - National Council of Juvenile & Family Court Judges, City of New York, NY.
 - “Impact of Domestic Violence on Children” A Community Forum, Grand Prairie, AB.
 - “Impact of Domestic Violence on Children” Gaylord, MI.
 - “Child Custody and Domestic Violence” workshop, American Bar Association, Tampa, FL.
 - “Domestic Violence for Praxis” National Video Conference on Domestic Violence, Duluth, MN.
 - “Stress, Burnout and Impact of Vicarious Trauma” “Impact of DV in Child Custody Cases” Annual Meeting of Michigan Judges, Lansing, MI.
 - “Multi-Disciplinary Custody Evaluation Institute” Portland, ME.
 - “DV and Custody” Halton County Family Violence Prevention Council, Burlington, ON.
 - “Lessons Learned from Domestic Homicides” BC Yukon Society of Transition Houses, Vancouver, BC.
- 2007-2008
- “Impact of DV on Children and the Potential Role of the Courts” Florida Court of Appeal Judges Annual Conference, Naples, FL.
 - “Judicial Stress & Vicarious Trauma” Idaho Judges Annual Conference, Sun Valley, ID.
 - “Impact of Domestic Violence on Children” BC Yukon Society of Transition Houses.
 - Association of American Faculties of Law, Vancouver, BC.
 - “Understanding Domestic Violence” American Judges Association, Vancouver, BC.
 - “Prevention of Child Sexual Abuse” Cornwall Town Hall Meeting on Prevention of Child Sexual Abuse, Cornwall, ON.
 - “Continuing Education for Family Court Judges on Domestic Violence” National Council of Juvenile and Family Court Judges, City of New York, NY.
 - “Child Custody Disputes & Domestic Violence for Connecticut Judges” Hartford, CT.
 - “Enhancing Judicial Skills in Domestic Violence Cases” National Council of Juvenile and Family Court Judges, Santa Fe, NM.

“Working with Children Exposed to Domestic Violence” Bridging Families and Communities Steering Committee, Miami, FL.

“Enhancing Judicial Skills in Domestic Violence Cases” Judicial Council of California, Anaheim, CA.

2008-2009

“Addressing Violence Against Women in the Justice System” Corrections Canada Provincial Conference, Toronto ON.

“Safety and Accountability in Child Custody Cases with Domestic Violence Allegations” Jewish Family Services, Toronto, ON.

“Vicarious Trauma and Burnout for Judges” LA County Criminal Court Judges, Los Angeles, CA.

“Invited Plenary Address on Child Custody & Domestic Violence” Association of Family and Conciliation Courts, Vancouver, BC.

“Risk Assessment and Intervention for Crown Prosecutors Managing Domestic Violence Cases” Seminar for Crown Attorney Leadership Group, Vancouver, BC.

“Managing the Domestic Violence Trial” Judicial Education Program National Judicial Institute, Toronto, ON.

“Domestic Violence Allegations in the Context of Child Custody Disputes” California Association of Family & Conciliation Courts, San Francisco, CA.

“Collaboration of Family & Criminal Courts in Dealing with Domestic Violence.” Department of Justice, Ottawa, ON.

“Prevention and Early Intervention of Domestic Violence” “Woman Abuse in the Workplace” Training for Hotel Dieu Grace Hospital, Windsor ON.

2009-2010

“Supervised Visitation in Domestic Violence Cases” National Council of Juvenile & Family Court Judges, San Diego CA.

“The Impact of Domestic Violence in the Lives of Children” Governor’s Task Force on Domestic Violence, Montgomery AL.

“Vicarious Trauma and Burnout for Judges” LA County Criminal Court Judges, Los Angeles CA.

“Continuing Judicial Skills in Domestic Violence Cases” National Council of Juvenile and Family Court Judges, Chicago IL.

“Assessment & Intervention Strategies for Youth Justice” BC Crown Attorney Association, Victoria, BC.

“Stress & Burnout in Judicial Officers” Wisconsin Judges Association, Appleton WI.

“Children Exposed to Violence” Community Services Collaborative, Cleveland, OH.

2010-2011 “Understanding the impact of domestic violence on children in the justice system.” Department of Justice, Regina SK.

“Understanding power imbalances in family court litigation.” Ontario Family Lawyers Association.

“Judicial Leadership in Domestic Violence Cases” San Francisco, California, California Judges Association & Family Violence Prevention Fund.

“Defending Childhood: Involving Community Partners in Violence Prevention.” Memphis Tennessee, US Department of Justice.

2011-2012 “Understanding Children Exposed to Domestic Violence: Implications for Community Agencies and the Courts.” Guelph/Wellington Action Committee on Sexual Assault and Domestic Violence, Guelph, ON.

“Domestic Violence and the Law Conference: Identifying Risk, Creating Safety.” The Continuing Legal Education Society of British Columbia. Vancouver, British Columbia.

“Lesson Learned from Tragedies: The Ontario Domestic Violence Death Review Committee.” Annual Meeting of the Chief Coroners of Canada, Winnipeg, Manitoba.

“Dynamics of domestic violence and costs to workplaces.” Domestic Violence Risk Assessment & Management in the Workplace Conference, Toronto, ON.

“Lessons Learned from Tragedies: Barriers and Opportunities for Collaboration.” Children Exposed to Domestic Violence: Reducing Harm and Preventing Tragedies, London, Ontario.

“The Impact of Exposure to Violence on Students and its Effects on School Climate.” 24th Annual Ontario Association of Social Workers Symposium, Oakville, Ontario.

“Considering the Screening Report during the Arbitration Hearing.” Domestic Violence Screening Conference. Toronto, Ontario, Peter Jaffe and Linda Baker.

“Recognizing Domestic Violence as a Work Issue: Lessons Learned from Tragedies.” Ontario Association of Chiefs of Police Corporate Security Liaison Committee Seminar, Stratford, Ontario.

“Practical Strategies in Dealing with Domestic Violence in the Workplace: Challenges and Opportunities.” Association of Chiefs of Police Corporate Security Liaison Committee Seminar, Stratford, Ontario.

2012-2013 Workplace and Domestic Violence Conference, Mosaic Counselling and Family Services, Kitchener, May 2, 2012.

Workplace and Domestic Violence Conference, Guelph, May 16, 2012.

“Lessons learned from domestic violence tragedies,” Domestic Violence & the Workplace: Risk Assessment and Risk Management Strategies Conference, Centre for Research & Education on Violence against Women & Children, Western University, London, Ontario, October 16, 2012.

Women’s Breakfast, Violence Against Women Services Elgin County, November 1, 2012.

Ontario College of Psychologists, Domestic Homicide Risk Assessment. Toronto, March 21, 2013.

“Lessons learned from the Domestic Violence Death Review Committee and critical role of police and community collaboration”, Ontario Police College, March 25, 2013.

“DV Risk Assessment & Management”, Schulich School of Medicine & Dentistry, Western University, April 27, 2013.

“Child Custody Disputes & Domestic Violence,” Western University, Faculty of Law, March 26, 2013.

Enhancing Judicial Skills in Domestic Violence Cases, May 5-8, 2012, San Francisco CA Center for Families, Children & the Courts, Judicial Council of California -- Administrative Office of the Courts.

2013-2014 Keynote address at Addressing Filicide: Inaugural International Conference for Cross National Dialogue, Monash University, Prato, Italy, May 30, 2013.

“Paternal filicide in the context of domestic violence: Challenges in risk assessment & risk management for community and justice professionals”, Ontario Association of Children’s Aid Societies webinar, November 29, 2013.

“Differentiation of high conflict families: An analysis of social science research” at High Conflict Families: Developing a collaborative community response forum, May 1, 2014, King’s University College, London, ON.

Keynote address: “Charting a course for successful parenting arrangements in domestic violence-related child custody cases,” Navigating the water of shared parenting: Guidance from the Harbour, Association of Family and Conciliation Courts, Toronto, May 30, 2014.

- 2014-2015 *“Charting a course for successful parenting arrangements in domestic violence-related child custody cases.”* 51st annual conference of the Association of Family and Conciliation Courts. May 30, 2014, Toronto, ON.
- Enhancing Judicial Skills in Domestic Violence Cases, May 8-12, 2014, San Francisco CA, Center for Families, Children & the Courts, Judicial Council of California -- Administrative Office of the Courts.
- “Enhancing judicial skills in domestic violence cases”* with National Council of Juvenile and Family Court Judges & Futures without Violence, Santa Fe, NM, December 6-10, 2014.
- 2015-2016 *“Make It Our Business, Staff & Leadership Development Training.”* Toronto Blue Jays Administration. Toronto, ON. May 11-12, 2015. Workshops (7).
- “Paternal filicide in the context of domestic violence.”* Addressing Filicide: Moving to Prevention, Second International Conference. Monash Prato Centre. Monash University. Tuscany, Italy June 3-4, 2015. Workshop.
- “Domestic Violence and the Workplace.”* Domestic Assault Review Team (DART), Region of Waterloo Public Health & Emergency Services. Waterloo, ON. December 3, 2015. Workshop.
- “Enhancing Judicial Skills in Domestic Violence.”* National Council of Juvenile & Family Court Judges. Louisville, KY. February 22-24, 2016. Workshop.
- “The Impact of Domestic Violence on Parenting Plans after Separation: Working with Clients in the Mediation and Custody Study Process Who Have Experienced or Allege Domestic Violence.”* 40th annual Wisconsin Inter-Professional Committee on Divorce Conference. Madison, WI. April 14, 2016. Keynote.
- “Challenges in Police Response to Police Domestic Violence.”* Ontario Domestic Violence Coordinators’ Network Annual Domestic Violence Conference. Ontario Police College. Aylmer, ON. March 31, 2016. Workshop.
- “Children as the “Forgotten Victims” of Domestic Homicide: Implications for Justice and Human Services Collaboration.”* The Arizona Child and Adolescent Survivor Initiative (ACASI), University of Northern Arizona. Phoenix, AZ. April 25, 2016. Plenary.
- “Domestic Violence and Parenting Plans after Separation”* Invited Workshop. Miramichi, NB May 19, 2016.
- 2017-2018 *“Preventing Filicide.”* Building Bridges of Knowledge to Intervention Models for Combatting Filicide. Monash Prato Centre. Monash University. Tuscany, Italy. June 14, 2017.

“Domestic Violence & Child Custody Decision-Making.” Family Court Enhancement Project (FCEP) in Minneapolis, Minnesota. Minneapolis, MN. April 14, 2017.

“Domestic Homicide with Older Women: Understanding risk factors and intervention”. Alberta Elder Abuse Awareness Council. Edmonton, AB. May 1, 2018.

“Providing Possibly Contentious Psychological Opinions”. Invited Presentation for The Ontario College of Psychologist. London, ON. June 14, 2018.

“Safe Children & Safe Families: Judicial Response to Violence In The Home”. 2018 Wisconsin Judicial District Trainings. Burlington, Wisconsin. October 11, 2018.

“Domestic homicide prevention: The importance of collaboration with coroners and medical examiners”. Presentation at annual meeting of association of Canadian Chief Coroners and Medical Examiners. Halifax, NS. October 2, 2018 (by video conference).

“Enhancing Judicial Skills in Domestic Violence Cases”. National Council of Juvenile and Family Court Judges. Santa Fe, New Mexico. December 2-5, 2018.

2019-2020 Lessons Learned from Domestic Violence Tragedies, Workshop for YWCA Peterborough-Haliburton, Fenelon Falls, May 9, 2019.

Children at Risk from Domestic Homicide: Implications for Parenting Assessments and Planning. Panel Presentation at Annual Meeting of Association of Family and Conciliation Courts. Toronto ON, May 29, 2019.

Understanding the Dynamics of Domestic Violence Victims, Perpetrators and Children: Workshop for Ontario Crown Attorneys. London ON July 9, 2019.

“Enhancing Judicial Skills in Domestic Violence Cases”. National Council of Juvenile and Family Court Judges. Santa Fe, New Mexico. April 14-17, 2019.

Police role in presenting domestic homicide - Lessons from research on risk assessment. Workshop for Ontario Police Service. Ontario Police College, Aylmer ON, September 10, 2019.

The Role of Death Review Investigations in Preventing Domestic Homicides: Multidisciplinary Death Review Investigations Rounds. Webinar together with Deidre Bainbridge for the Office of the Chief Coroner, Toronto ON, October 29, 2019.

2020-2022 National Council of Juvenile and Family Court Judges. Resilience in Children Exposed to Violence. Recorded Webinar. September 2020.

Association of Family & Conciliation Courts. Webinar Child Homicide in the Context of Domestic Violence December 12, 2021.

Association of Family & Conciliation Courts. Webinar on Claims and Counterclaims in Parental Alienation Research: What is a Family Court Professional to Do? January 26, 2021.

Premier's Action Committee on Family Violence Prevention, Prince Edward Island, The Impact of Domestic Violence on Children: The Role of Family, Friends and Front-Line Professionals in Helping Children Webinar February 16-18, 2021.

Recognizing the Impact of Domestic Violence on Children. Webinar for Kentucky Judges Webinar January 2021.

Enhancing Safety in Child Custody Cases Involving Domestic Violence. Webinar for Florida Judges, January 2021.

Understanding Family Violence with Amendments to the Divorce Act. Webinar for the Ontario Bar Association, July 2021.

Preventing Domestic Homicides: Implications for Judges. Webinar for Commonwealth Magistrates' and Judges' Association, September 2021.

Law Society of Ontario. Access to Justice: Recognizing the Rights of Children under the UN Convention. November 2, 2021.

Law Society of Ontario. A Primer on Managing the Family Violence File. Part 1 - What Does Family Violence Have to do with Family Law? And Part 2 - Social Science Evidence: Areas for Improvement in its Use and Application. November 18, 2021.

National Council of Juvenile and Family Court Judges. Webinar on Recognizing Domestic Violence and Its Effects in Child-Related Matters for Judges and Court-Related Professionals in San Antonio (Bexar County) Texas, December 2, 2021.

Children Killed in the Context of Domestic Violence: Lessons Learned from Tragedies. For Colorado Webinar on Domestic Violence and Child Maltreatment Allegations in Family Court (for Parenting Assessors), December 9, 2021.

Understanding Family Violence: Myths v. Facts. Trial Lawyers Association of British Columbia. Webinar, March 10, 2022.

Alienation and Family Violence. Webinar for Family Violence Research Centre at the University of Manitoba, March 15, 2022.

Critical Questions on Family Violence for Family Court. Webinar for the County of Carlton Law Association, Ottawa ON, April 8, 2022.

Domestic Violence Death Review Committee (DVDRC): Implications of Findings for Police. Ontario Police College. May 9, 2022.

Child Rights and Children's Healthy Development. Panel presentation to the National Judicial Institute, Quebec City, May 18, 2022.

Children at Risk from Domestic Violence. Workshop for Ontario Crown Attorneys, Ministry of the Attorney General, June 14, 2022.

Parent-Child Contact Problems: How to Make Sense of Children Refusing or Resisting Parenting Time. Center for Families, Children & the Courts, April 29, 2022.

Enhancing Judicial Skills in Domestic Violence Cases, May 23-26, 2022, Sacramento CA, Center for Families, Children & the Courts, Judicial Council of California, Center for Judicial Education and Research.

Children and Risk of Lethality in the Context of Domestic Violence, Workshop for Virtual Child and Family Focused Education, Center for Families, Children & the Courts, May 5, 2022.

Publications:

Lifetime Summary:

Books: **11**

Chapters in Books: **40**

Book Reviews and Encyclopedia Entries: **4**

Articles in Peer-Reviewed Journals: **99**

Articles in Non-Peer Reviewed Journal: **3**

Reports: **7**

Government and Technical Reports: **26**

Books

1. **Jaffe, P.G.**, Wolfe, D., & Wilson, S. (1990). *Children of battered women*. Newbury Park, CA: Sage Publications.
2. Leschied, A.W., Jaffe, P.G., & Willis W., (1991). *The Young Offenders Act: A Revolution in Canadian Juvenile Justice*. University of Toronto Press: Toronto, Ontario.
3. Peled, E., **Jaffe, P.G.**, & Edleson, J.L. (1995). *Ending the cycle of violence: Community responses to children of battered women*. Thousand Oaks, CA: Sage.
4. **Jaffe, P.G.**, Lemon, N.K., Sandler, J., & Wolfe, DA (1996). *Working together to end domestic violence*. Tampa, FL: Mancorp Publishing.
5. Geffner, R., **Jaffe, P.G.**, & Sudermann, M. (2000). *Children exposed to family violence: Current issues in research, intervention & prevention, & policy development*. Binghamton, NY: Haworth Press.
6. Jaffe, P.G., Baker, L.L., & Cunningham, A. (Eds.) (2004). *Protecting children from domestic violence: Strategies for community intervention*. New York, NY: Guilford Press.
7. **Jaffe, P.G.** & Lemon, N., & Poisson, S. (2003) *Child custody & Domestic Violence: A call for safety and accountability*. Thousand Oaks, CA: Sage Publications.

8. Wolfe, D.A., **Jaffe, P.G.**, & Crooks, C.V. (2006). *Adolescent Risk Behaviours: Why Teens Experiment and Strategies to Keep them Safe*. New Haven, CT: Yale University Press.
9. **Jaffe, P.G.**, Crooks, C.V., & Watson, L (2009). *Creating Safe School Environments: From Small Steps to Sustainable Change*. London, ON: Althouse Press.
10. **Jaffe, P.G.**, Wolfe, D.A., & Campbell, M. (2011). *Growing Up with Domestic Violence: Assessment, intervention & prevention strategies for children & adolescents*. Cambridge, MA: Hogrefe & Huber.
11. Jaffe, P., Scott, K., & Straatman, A. L. (Eds) (2020). *Preventing Domestic Homicides: Lessons Learned from Tragedies*. Cambridge MA: Academic Press.

Chapters in Books

1. **Jaffe, P.G.** & Thompson, J. (1979). The Family Consultant Service with the London Police Force. In *Family Violence: An international and interdisciplinary study*, Eekelaar, J.D., Katz, S.N. (Eds.), Toronto ON: Butterworths.
2. **Jaffe, P.G.** & Leschied, A.W. (1987). Preparation and execution of reports and their recommendations in a format suitable to the needs of the Youth Court. In Richard Freeman. (Eds.). *Psychological Services for the Young Offenders Act: A training manual*. Ottawa ON: Solicitor General of Canada Publication.
3. Leschied, A.W., & **Jaffe, P.G.** (1988). Reluctance, delay and controversy: The legacy of the Young Offender's Act in Ontario. In J. Hudson, J.P. Hornick and B.A. Burrows (Eds). *Justice and the Young Offender in Canada*. Calgary AB: Canadian Research Institute for Law and the Family.
4. Leschied, A.W., & **Jaffe, P.G.** (1986). Implications of the Young Offenders Act in modifying the juvenile justice system: Some early trends. In N. Bala and H. Lillies (Eds.) *Young Offenders Act Update*. Toronto: Butterworths.
5. Leschied, A.W., & **Jaffe, P.G.** (1987). Ethical considerations in the practice of psychology with young offenders. In Richard Freeman (Eds.) *Psychological services for the Young Offenders Act: A Training Manual*. Ottawa ON: Solicitor General of Canada Publication.
6. **Jaffe, P.** & Reitzel, D., (1990). Adolescents' views on how to reduce family violence in *Family Violence: Perspectives on Treatment, Research and Policy*, Ronald Roesch, Donald G. Dutton, and Vincent F. Sacco (Eds.), Burnaby: B.C. Institute on Family Violence.
7. **Jaffe, P.G.** & Leschied, A.W., & Willis W. (1991). *Regaining equilibrium in the Canadian juvenile-justice system*. In Leschied, A.W., Jaffe, P.G. & Willis, W (Eds.). *The Young Offenders Act: A Revolution in Canadian Juvenile Justice*, 14, 291-300.
8. Leschied, A.W. & **Jaffe, P.G.** (1991). *Dispositions as indicators of conflicting social purposes under the JDA and YOA*. In Leschied, A.W., Jaffe P.G. & Willis, W (Eds.). *The Young Offenders Act: A Revolution in Canadian Juvenile Justice*, 8, 158-169.
9. **Jaffe, P.G.**, Reitzel, D., Wilson, S.K., & Hastings, E., (1992). Wife assault versus stranger assault: A comparison of sentencing in the criminal court system (Eds.) *In Aggression and Violence Throughout the Lifespan*, Newbury Park CA: Sage Publication.
10. **Jaffe, P.G.**, Sudermann, M. & Reitzel, D. (1992). Working with children and adolescents to end the cycle of violence: A social learning approach to intervention and prevention and prevention

- programs. In R. DeV. Peters, Robert J. McMahon, Vernon L. Quinsey (Eds.) *Aggression and Violence Throughout the Lifespan*, (4), 83-99. Newbury Park CA: Sage Publication.
11. Leschied, A.W., **Jaffe, P.G.**, Andrews, D., Gendreau, P., (1992). Treatment issues and young offenders: An empirically derived vision of juvenile justice policy. In R. Corrado, N. Bala, R. Linden, M. LeBlanc (Eds.) *Juvenile Justice in Canada: A Theoretical and Analytical Assessment*, Toronto: Butterworths.
 12. **Jaffe, P.G.**, Leschied, Alan W., & Farthing, Jane L., (1992). Youth's knowledge and attitudes about the Young Offenders Act: Does anyone care what they think? In *Youth Injustice: Canadian Perspectives*, (Eds.) Thomas O'Reilly-Fleming & Barry Clark. (5) 75-84.
 13. **Jaffe, P.G.** Sudermann, M. & Reitzel, D., (1992). Child witnesses of marital violence. In R. Ammerman & M. Hersen (Eds.) *Assessment of Family Violence: A Clinical and Legal Source book*. New York, NY: John Wiley & Sons.
 14. Leschied, A.W. & **Jaffe, P.G.** (1993). Impact of the Young Offenders Act on court dispositions: A comparative analysis. In T. O'Reilly-Fleming & B. Clark (Eds.), *Youth injustice: Canadian perspectives* (8), (pp. 121-131). Toronto: Canadian Scholars' Press.
 15. **Jaffe, P.G.**, Hastings, E., Reitzel, D. & Austin, G.W. (1993). The impact of police laying charges. In *Legal responses to wife assault: Current trends and evaluation* (Eds.) N. Zoe Hilton, Newbury Park, CA: Sage Publications, Inc.
 16. **Jaffe, P.G.**, (1994). Child witnesses of woman abuse: How can mental health professionals respond? *The Child, Youth and Family Services Quarterly*. Baltimore, Maryland: Division 37 of the American Psychological Association, Vol. 17, #1.
 17. **Jaffe, P.G.** (1995). Children of domestic violence: Special challenges in custody and visitation dispute resolution. In J. Carter, B. Hart & C. Hostler (Eds.), *Domestic Violence & Children: Resolving Custody and Visitation Disputes*, A National Judicial Curriculum, San Francisco, CA: The Family Violence Prevention Fund, (2), pp 19-30.
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Updated research briefs and reports available at

Family Violence – Family Law Project <https://www.fvfl-vfdf.ca/home.html>

Canadian Domestic Homicide Prevention Project <https://www.cdhpi.ca/knowledge-products>

Selected Media

Frequent guest on radio and television regarding violence prevention, bullying, adolescent risk behaviors, child abuse, trauma, and domestic violence. Interviews have appeared in local, provincial, and national news outlets.

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5. CBC News (P.G. Jaffe) *Study: Domestic homicide in Canada averages 70 deaths per year* (September 25, 2019). Available: <https://www.cbc.ca/news/canada/london/western-and-guelph-university-domestic-homicide-1.5296879>
6. London Free Press (P. G. Jaffe) *London researchers launch study into domestic violence victims, survivors* (September 25, 2019). Available: <https://lfpres.com/news/local-news/london-researchers-launch-study-into-domestic-violence-victims-survivors>

7. CTV News (P.G. Jaffe) *Domestic violence study seeks input from victims, families to enhance prevention* (September 25, 2019) Available: <https://globalnews.ca/news/5952098/domestic-violence-study-call-survivors/>

Local Community Committees & Boards

1980-2018	School Board Trustee (Chairperson 1987 & 2000) Thames Valley District School Board (formerly London Board of Education)
1980-2001	London Co-ordinating Committee to End Woman Abuse
1995-1996	London Police School Program Committee
1995-1996	Citizen's Advisory Committee for the Chief of Police <i>London Police Services</i>
1976-1996	<i>Management Committee</i> <i>Family Consultant Services, London Police Services</i>
1976-1993	London Coordinating Council for Children and Youth
1989-1990	President <i>Ontario Association of Court-related Clinical Services Association</i>
1987-1989	Attorney General's Advisory Committee on Mediation in Family Law
1983-1985	Founding Board Member <i>Battered Women's Advocacy Centre</i>
1981-1985	Child Abuse Council for London & Middlesex County
1976-1983	Juvenile Justice Committee <i>Ministry of Community & Social Services</i>

***THIS IS EXHIBIT "C" REFERRED TO IN THE
AFFIDAVIT OF DR. PETER JAFFE SWORN BEFORE ME FROM THE
TOWN OF LONDON, IN THE PROVINCE OF ONTARIO, TO THE CITY OF
TORONTO, IN THE PROVINCE OF ONTARIO, ON JUNE 2ND, 2023, IN
ACCORDANCE WITH O. REG. 431/20, ADMINISTERING OATH OR
DECLARATION REMOTELY.***



***A COMMISSIONER FOR TAKING AFFIDAVITS, ETC.
CAITLIN LEACH***

Court File No.: CV-20-00642705-00CP

**ONTARIO
SUPERIOR COURT OF JUSTICE**

B E T W E E N :

DANIEL CARCILLO, GARRETT TAYLOR and STEPHEN QUIRK

Plaintiffs

- and -

ONTARIO MAJOR JUNIOR HOCKEY LEAGUE, CANADIAN HOCKEY LEAGUE, WESTERN HOCKEY LEAGUE, QUEBEC MAJOR JUNIOR HOCKEY LEAGUE, BARRIE COLTS JUNIOR HOCKEY LTD., GUELPH STORM LTD., HAMILTON BULLDOGS FOUNDATION INC., KINGSTON FRONTENACS HOCKEY LTD., KITCHENER RANGERS JR. A. HOCKEY CLUB, LONDON KNIGHTS HOCKEY INC., MISSISSAUGA STEELHEADS HOCKEY CLUB INC., 2325224 ONTARIO INC. o/a MISSISSAUGA STEELHEADS, NIAGARA ICEDOGS HOCKEY CLUB INC., NORTHBAY BATTALION HOCKEY CLUB LTD., OSHAWA GENERALS HOCKEY ACADEMY LTD., OTTAWA 67'S LIMITED PARTNERSHIP c.o.b. OTTAWA 67's HOCKEY CLUB, THE OWEN SOUND ATTACK INC., PETERBOROUGH PETES LIMITED, 649643 ONTARIO INC. o/a 211 SSHC CANADA ULC o/a SARNIA STING HOCKEY CLUB, SOO GREYHOUNDS INC., SUDBURY WOLVES HOCKEY CLUB LTD., WINDSOR SPITFIRES INC., MCCRIMMON HOLDINGS, LTD., 32155 MANITOBA LTD., A PARTNERSHIP c.o.b. as BRANDON WHEAT KINGS, BRANDON WHEAT KINGS LIMITED PARTNERSHIP, CALGARY FLAMES LIMITED PARTNERSHIP, CALGARY SPORTS AND ENTERTAINMENT CORPORATION, EDMONTON MAJOR JUNIOR HOCKEY CORPORATION, KAMLOOPS BLAZERS HOCKEY CLUB, INC. KAMLOOPS BLAZERS HOLDINGS LTD., KELOWNA ROCKETS HOCKEY ENTERPRISES LTD., PRINCE ALBERT RAIDERS HOCKEY CLUB INC., EDGEPRO SPORTS & ENTERTAINMENT LTD., QUEEN CITY SPORTS & ENTERTAINMENT GROUP LTD., BRAKEN HOLDINGS LTD., REBELS SPORTS LTD., SASKATOON BLADES HOCKEY CLUB LTD., VANCOUVER JUNIOR HOCKEY LIMITED PARTNERSHIP and VANCOUVER JUNIOR HOCKEY PARTNERSHIP, LTD c.o.b. VANCOUVER GIANTS, WEST COAST HOCKEY LLP, WEST COAST HOCKEY ENTERPRISES LTD., o/a VICTORIA ROYALS, MEDICINE HAT TIGERS HOCKEY CLUB LTD., 1091956 ALTA LTD. o/a THE MEDICINE HAT TIGERS, SWIFT CURRENT TIER 1 FRANCHISE INC. and SWIFT CURRENT BRONCOS HOCKEY CLUB INC. o/a THE SWIFT CURRENT, ICE SPORTS & ENTERTAINMENT INC. o/a WINNIPEG ICE, MOOSE JAW TIER 1 HOCKEY INC. D.B.A. MOOSE JAW and MOOSE JAW WARRIORS TIER 1 HOCKEY, INC. WARRIORS o/a MOOSE JAW WARRIORS, LETHBRIDGE HURRICANES HOCKEY CLUB,

649643 ONTARIO INC. c.o.b. as SARNIA STING, KITCHENER RANGER JR A HOCKEY CLUB and KITCHENER RANGERS JR “A” HOCKEY CLUB, LE TITAN ACADIE BATHURST (2013) INC., CLUB DE HOCKEY JUNIOR MAJEUR DE BAIE-COMEAU INC. o/a DRAKKAR BAIE-COMEAU, CLUB DE HOCKEY DRUMMOND INC. o/a VOLTIGEURS DRUMMONDVILLE, CAPE BRETON MAJOR JUNIOR HOCKEY CLUB LIMITED o/a SCREAMING EAGLES CAPE BRETON, LES OLYMPIQUES DE GATINEAU INC., HALIFAX MOOSEHEADS HOCKEY CLUB INC., CLUB HOCKEY LES REMPARTS DE QUÉBEC INC., LE CLUB DE HOCKEY JUNIOR ARMADA INC., MONCTON WILDCATS HOCKEY CLUB LIMITED, LE CLUB DE HOCKEY L’OCÉANIC DE RIMOUSKI INC., LES HUSKIES DE ROUYN-NORANDA INC., 8515182 CANADA INC. c.o.b. as CHARLOTTETOWN ISLANDERS, LES TIGRES DE VICTORIAVILLE (1991) INC., SAINT JOHN MAJOR JUNIOR HOCKEY CLUB LIMITED, CLUB DE HOCKEY SHAWINIGAN INC. o/a CATARACTES SHAWNIGAN, CLUB DE HOCKEY JUNIOR MAJEUR VAL D’OR INC. o/a VAL D’OR FOREURS, 7759983 CANADA INC. c.o.b. as CLUB DE HOCKEY LE PHOENIX, 9264-8849 QUÉBEC INC. c.o.b. as GROUPE SAGS 7-96 AND LES SAGUENÉENS, JAW HOCKEY ENTERPRISES LP c.o.b. ERIE OTTERS, IMS HOCKEY c.o.b. FLINT FIREBIRDS, SAGINAW HOCKEY CLUB, L.L.C., EHT, INC., WINTERHAWKS JUNIOR HOCKEY LLC, PORTLAND WINTER HAWKS INC., THUNDERBIRDS HOCKEY ENTERPRISES, L.L.C., BRETT SPORTS & ENTERTAINMENT, INC., HAT TRICK, INC., TRI-CITY AMERICANS HOCKEY LLC, and TOP SHELF ENTERTAINMENT, INC.

Defendants

Proceeding under the *Class Proceedings Act, 1992*

ACKNOWLEDGMENT OF EXPERT’S DUTY

1. My name is Dr. Peter Jaffe. I live at the Town of London of the Province of Ontario.
2. I have been engaged by or on behalf of the Lawyers for the Plaintiffs to provide evidence in relation to the above-noted court proceeding.
3. I acknowledge that it is my duty to provide evidence in relation to this proceeding as follows:
 - (a) to provide opinion evidence that is fair, objective and non-partisan;

- (b) to provide opinion evidence that is related only to matters that are within my area of expertise; and
- (c) to provide such additional assistance as the court may reasonably require, to determine a matter in issue.

4. I acknowledge that the duty referred to above prevails over any obligation which I may owe to any party by whom or on whose behalf I am engaged.

June 2, 2023

Peter Jaffe

Dr. Peter Jaffe

Carcillo et al. and **Canadian Hockey League et al.**
Plaintiffs and Defendants

Court File No.: CV-20-642705-00CP

ONTARIO
SUPERIOR COURT OF JUSTICE
Proceeding commenced at TORONTO

ACKNOWLEDGMENT OF EXPERT'S DUTY

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Proceeding commenced at TORONTO

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Plaintiffs and Defendants

Court File No.: CV-20-00642705-00CP

ONTARIO
SUPERIOR COURT OF JUSTICE

Proceeding commenced at TORONTO

Proceeding under the *Class Proceedings Act, 1992*

MOTION RECORD
(Returnable August 29, September 13 and
September 27, 2023)

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