



## STAFF REPORT ACTION REQUIRED

### The Relationship of the Toronto Community Housing Commissioner of Housing Equity to the City's Accountability Offices

<b>Date:</b>	June 10, 2015
<b>To:</b>	Executive Committee
<b>From:</b>	Acting City Manager
<b>Wards:</b>	All
<b>Reference Number:</b>	

#### SUMMARY

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On March 25, 2015, the Executive Committee requested that the City Manager report back on the current mandate, reporting structure and funding model for the Office of the Commissioner of Housing Equity (OCHE), and options to better align the OCHE with the City of Toronto's Independent Accountability Offices, including the potential benefits of having the OCHE report directly to City Council or a Committee of Council and the actions required to achieve such a structure

This report responds to the Committee's request and sets out comments with respect to the Terms of Reference of the OCHE.

#### RECOMMENDATIONS

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##### The City Manager recommends that:

1. City Council request the Board of Directors of the Toronto Community Housing Corporation to consider the City's comments in section 4 of this report for amendments to the Terms of Reference of the Office of the Commissioner of Housing Equity.

## Financial Impact

There are no financial implications resulting from the implementation of the recommendation in this report. The Deputy City Manager and Chief Financial Officer has reviewed this report and concurs with the financial impact statement.

## DECISION HISTORY

At its meeting on March 25, 2015, the Executive Committee requested the City Manager to report back on options to better align the Office of the Commissioner of Housing Equity with the City of Toronto's independent Accountability Officers.

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2015.EX4.15>

At its meeting on June 25, 2014, the Community Development and Recreation Committee in considering the report, *Update on the Implementation of Housing at Risk Council Recommendations for the City of Toronto*, requested the City Manager report on the relationship of the Office of the Commissioner of Housing Equity (OCHE) to the Board of Directors of the Toronto Community Housing Corporation (TCH), and outline the best practice for reporting relationships for independent accountability officers.

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2014.CD30.7>

At its meeting on June 11, 12, and 13, 2013, City Council adopted the Ombudsman's report entitled, *Housing at Risk: An Investigation into the Toronto Community Housing Corporation's Eviction of Seniors on the Basis of Rental Arrears*, which requested the Deputy City Manager, Cluster A, report on the establishment of a Commissioner of Housing Equity for TCH, as recommended in the LeSage report.

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2013.CC36.5>

[http://www.torontohousing.ca/news/20100618/lesage\\_review\\_report\\_made\\_public](http://www.torontohousing.ca/news/20100618/lesage_review_report_made_public)

At its meeting on April 1, 2 and 3, 2014, City Council adopted the follow-up report from the Ombudsman, entitled *Housing at Risk: An Investigation into the Toronto Community Housing Corporation's Eviction of Seniors on the Basis of Rental Arrears*.

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2014.CC50.3>

At its meeting on April 1, 2 and 3, 2014, City Council adopted the follow-up report and recommendations from the City Manager conveying Toronto Community Housing's response to the Ombudsman's report, including an update on the establishment of a Commissioner of Housing Equity.

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2014.CC50.4>

## ISSUE BACKGROUND

At its meeting on June 25, 2014, the Community Development and Recreation Committee in considering the report, *Update on the Implementation of Housing at Risk Council Recommendations for the City of Toronto*, requested the City Manager to report

on the relationship of the Office of the Commissioner of Housing Equity (OCHE) to the Board of Directors of the Toronto Community Housing Corporation (TCH), and outline the best practice for reporting relationships for independent accountability officers.

The City Manager reported back to the Committee on August 14, 2014 and advised that the established reporting relationship of the Commissioner to the TCH Board of Directors is in line with best practice, promotes public confidence in the function, and safeguards the Commissioner's ability to carry out their duties.

## **COMMENTS**

### **1. Office of the Commissioner of Housing Equity (OCHE)**

City Council established the Toronto Community Housing Corporation (TCH) as an arm's length corporation in 2001 under the *Business Corporations Act of Ontario* (OBCA). The City of Toronto is the sole shareholder of TCH. TCH owns a large portfolio of social housing and is governed by a 13-member Board of Directors, which includes four Toronto City Council members that manage the business and finances of the corporation. The City's role as Shareholder for TCH is governed through a City Council approved *Shareholder Direction* (SHD) that sets out specific requirements for TCH with respect to mandate, governance, program management, and accountability.

#### ***A. Background***

On June 17, 2013, the Toronto Community Housing (TCH) Board of Directors adopted the recommendations contained in the Toronto Ombudsman's report, *Housing at Risk: An Investigation into the Toronto Community Housing Corporation's Eviction of Seniors on the Basis of Rental Arrears*, including that TCH establish an independent Office of the Commissioner of Housing Equity (OCHE), as recommended in the LeSage report released in May 2010. The Honourable Justice Patrick LeSage was appointed by the TCH Board of Directors to conduct an independent review of TCH's eviction practices on the basis of arrears for vulnerable tenants after a TCH tenant died after being evicted for arrears.

In August 2013, TCH established a 16-member External Advisory Committee independent of TCH to make recommendations to the TCH Board of Directors on the establishment of an independent Office of the Commissioner of Housing Equity (OCHE) including the operating framework for the Office. At its December 11, 2013 meeting, the TCH Board unanimously approved the Advisory Committee's report for the establishment of the Office and appointment of Cynthia Summers as the first Commissioner of Housing Equity beginning her role on January 6, 2014. The OCHE has been in operation since April 1, 2014.

## ***B. Mandate***

The Commissioner of Housing Equity is responsible for providing oversight and supporting effective eviction prevention at TCH. In keeping with the recommendation set out in the LeSage Report, the Commissioner's two major focus areas include:

- Ensuring that TCH, its staff and contracted companies, conform to all TCH policies and procedures related to evictions and loss of subsidy for seniors and other vulnerable residents.
- Ensuring that all avenues have been exhausted that may result in a loss of subsidy for seniors and other vulnerable residents.

Specifically, the OCHE serves three roles:

- **Review.** To provide assurances to the Board of Directors that all eviction prevention policies and procedures are properly applied by TCH, and that all matters relating to senior and vulnerable residents are only referred for eviction proceedings at the Landlord and Tenant Board (LTB) as a last resort;
- **Resolve.** To assist senior and vulnerable residents in achieving healthy and successful tenancies through the resolution of rental arrears and loss of subsidies, and in doing so, reduce the number of referrals to the LTB; and
- **Recommend.** To provide guidance to the Board of Directors on recommended improvements to TCH's eviction prevention policies and procedures.

## ***C. Funding***

The OCHE is funded through the TCH operating budget. Annually the Commissioner develops the Office's budget which is considered and approved by the TCH Board of Directors.

## ***D. The Commissioner's Reporting Relationship to the TCH Board of Directors***

As recommended by the LeSage report and subsequently in the Toronto Ombudsman's *Housing at Risk* report, TCH established the Commissioner of Housing Equity as an independent office, separate from the TCH operations and management and reporting to the TCH Board of Directors ("the Board").

The Commissioner is required to report quarterly to the Building, Investment, Finance and Audit Committee (BIFAC), a Committee of the TCH Board, and the Commissioner's reports are required to be considered and approved by the Board. The Commissioner may also report directly to the Board if the Commissioner deems necessary.

## ***E. OCHE's Terms of Reference***

During the Fall of 2014, the OCHE engaged in a collaborative process with the TCH Board of Directors, TCH management and the City of Toronto, to develop a set of Terms of Reference for the OCHE. Drawing on the experiences during the OCHE's first 6 months of operations, the intent of the Terms of Reference is to provide clarity and

direction on the OCHE's role, the Board's expectations of the OCHE; and refinement of the processes developed and implemented by the OCHE. The Terms of Reference were adopted by the Board on December 17, 2014 and made public at the TCHC Board of Directors meeting on February 19, 2015.

As the Commissioner noted in her September to December 2014, Performance Report, the Term of Reference, among other things:

- Aligned the Commissioner's decision-making authority with that of other Accountability Officers;
- Confirmed the timing for delivery of both arrears and loss of subsidy reports;
- Sought to better coordinate the use of TCH staff resources, where appropriate;
- Established that the Commissioner may make recommendations to changes to the Terms of Reference annually; and
- Identified that TCHCs President/CEO will have the opportunity to provide comments to the Commissioner on the OCHE's reports before they are submitted to the Board of Directors.

Since the Board's adoption of the Terms of Reference, the OCHE has worked closely with the Vice President of Asset Management to develop the necessary processes between the OCHE and TCH to ensure the Terms of Reference are properly operationalized.

## **2. Best Practice for Reporting Relationships of Independent Accountability Functions**

While the Commissioner of Housing Equity was established with features of independence, including appointment by and accountability to the TCH Board of Directors, a defined appointment and renewal process, and carriage of the office including budget and staffing, it is not a legislated function like the City's accountability offices whose mandate, authority, powers, judicial protections, investigative powers and confidentiality requirements are set out in law.

For both the City's accountability offices and the Commissioner, a requirement of their independence is the ability to report directly to the governing body responsible for establishing the function and appointing them. This is a standard and best practice for functions that are established as independent of the administration. For the Commissioner, this reporting relationship safeguards the function's independence, and establishes the Commissioner's accountability to the TCH Board of Directors, which is achieved through the Commissioner's annual report, annual budget and quarterly reports.

Given the best practice that governs the reporting relationships of independent functions, the TCH's Board of Directors is the correct body for the Commissioner to report to. Having the Commissioner report to Toronto City Council or a Committee of Council would not be consistent with the legal and governance framework of TCH and it would add another layer of reporting for the Commissioner. Furthermore, the Board of

Directors which includes two tenant representatives provides a direct opportunity for tenants to exercise some oversight over the function.

The Honourable Justice LaSage in his May 2010 report, recognized that TCH tenants needed more assistance to maintain “healthy, successful tenancies”. He acknowledged that while TCH tenants have access to the Office of the Toronto Ombudsman to investigate matters on their behalf, tenants required additional assistance to navigate the complicated subsidized housing system. To this end, he recommended the establishment of a separate Commissioner of Housing Equity to ensure TCH staff have satisfied all prerequisites prior to an eviction matter proceeding to the Landlord and Tenant Board.

#### **4. Office of the Commissioner of Housing Equity (OCHE) – City Comments on Terms of Reference**

As noted earlier, the TCH Board of Directors adopted Terms of Reference in early 2015 for the OCHE that outline the role, responsibilities and authority of the OCHE, TCH staff and the Board in order to operationalize the OCHE function.

The Terms of Reference require that they be reviewed and approved by the Board on an annual basis (or as required), and enable both the Commissioner and TCH to raise any issues related to their interpretation or application through the Commissioner’s quarterly performance report to the Board. In addition, either the Commissioner or the TCH President and CEO has the right to request that matters of dispute relating to the interpretation or application of the Terms of Reference be referred back to the Board for resolution.

City staff have reviewed the Terms of Reference and have identified a number of requirements that may limit the Commissioner’s independence and direct accountability to the TCH Board of Directors, including:

- Background Section (pg. 1). The requirement that the Commissioner reports directly to the Board through the Board Chair. *This is inconsistent with the requirement that the Commissioner report to the Board as a whole through a Committee as set out in the External Advisory Committee's report that established the function.*
- Section C. 3(b). The requirement that the Commissioner will on a day-to-day basis as required, take advice and direction from the TCH Board Chair or his/her delegate. *This is inconsistent with the requirement that the Commissioner report to the Board as a whole through a Committee as set out in the External Advisory Committee's report that established the function.*
- Section C. 3(d). The requirement that all media requests received by the Commissioner for interviews, comment or information require the prior approval of the Board Chair, or his/her delegate. *The requirement for prior approval is inconsistent with the independence of the Office; consider having a notification requirement rather than approval.*

- Section C. 3(e). The requirement that all public speaking engagements by the Commissioner or the Commissioner’s staff must be approved by the Board Chair or his/her delegate. Where approved the Commissioner will work with TCH’s Public Affairs Department on the content of such presentations. *The requirement for prior approval is inconsistent with the independence of the Office; consider having a notification requirement rather than approval.*

It is recommended that TCH consider the City’s comments for amendments to the Terms of Reference of the Office of the Commissioner of Housing Equity.

## **CONTACT**

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## **SIGNATURE**

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John Livey  
Acting City Manager

Attachment 1: Terms of Reference – Office of the Commissioner of Housing Equity,  
February 19, 2015