

Item 14 – TCHC Board Meeting
February 19, 2015

Re: EX7.9

TERMS OF REFERENCE – OFFICE OF THE COMMISSIONER OF HOUSING EQUITY

Date: December 12, 2014

Background: At its December 11, 2013 meeting, the Board of Directors of Toronto Community Housing Corporation (TCHC) approved the creation of the Office of the Commissioner of Housing Equity (OCHE) in response to the recommendation made in the 2010 *Lesage Report*,¹ and further to the recommendations contained in the Report of the External Advisory Committee dated December 6, 2013 (TCHC:2013-78).²

Ms. Summers was retained as the Commissioner of Housing Equity (Commissioner) under an Employment Agreement between Ms. Summers and TCHC dated as of January 6, 2014.

The Commissioner reports directly to the Board through the Board Chair. While the OCHE operates independently of TCHC Management, the OCHE shall commit to working collaboratively with TCHC Management and staff in carrying out the mandate of the OCHE and in resolving issues of dispute as they arise.

The OCHE has been in operation since April 1, 2014. The intent of these Terms of Reference is to confirm the mandate and related operating processes of the OCHE to enable the OCHE, the Board and TCHC Management to better work together to fulfill this mandate.

1. **Mandate:** In keeping with the recommendations set out in the *LeSage Report*, the 3 core functions of the OCHE are as follows: (A) independent auditor; (B) facilitation of mediation and other alternative dispute resolution efforts; and (C) facilitation of linkage of tenants with community supports.

A. Independent Auditor Function:

The focus of this function is to ensure procedural fairness for seniors and vulnerable tenants facing eviction for rental arrears and potential loss of subsidy.

- (i) **Independent Auditor Function – Eviction Process:**
 - a. Once TCHC, through its Asset Management Division, has made a decision to evict a senior or vulnerable tenant for rental arrears, TCHC shall transfer such tenant's file to the OCHE for review and resolution within 30 business days from the date of file transfer.
 - b. In carrying out its review, the OCHE shall ensure that all relevant TCHC *Eviction Prevention Policies and Procedures* have been followed before such tenant's file is sent by TCHC to the Landlord and Tenant Board (LTB) for adjudication.
 - c. Where the OCHE determines that TCHC staff has not complied with TCHC *Eviction Prevention Policies and Procedures*, the OCHE shall advise TCHC staff

¹ *Report on the Eviction of Al Gosling and the Eviction Prevention Policy of Toronto Community Housing Corporation by Mr. Justice Lesage dated May 2010 (the Lesage Report).*

² See the December 11, 2013 Public Minutes of the TCHC Board of Directors, Item 14, Commissioner of Housing Equity Office.

- of the required remedial actions. TCHC shall not submit such tenant's file to the LTB until TCHC staff has carried out such remedial actions to the satisfaction of the OCHE, acting reasonably.
- d. Where TCHC and the OCHE cannot agree, each acting reasonably, that compliance to TCHC's *Eviction Prevention Policies and Procedures* has been met, TCHC shall have the right to submit such file to the LTB for its adjudication. In such case, TCHC shall bring to the attention of the LTB the OCHE's recommendations relating to this eviction which were not accepted.
- (ii) Independent Auditor Function – Loss of Subsidy Process
- a. Once TCHC, through its Asset Management Unit, has made a decision to revoke the subsidy of a senior or vulnerable tenant, TCHC shall transfer such tenant's file to the OCHE within 7 calendar days from the date that the loss of subsidy takes effect. The OCHE shall have 30 calendar days from the date of such transfer to complete its audit and report back to TCHC with its findings and any recommendations.
- b. In carrying out its review, the OCHE shall ensure that the procedural steps that TCHC is required to carry out relating to the revocation of a rental subsidy have been followed before such tenant's subsidy is revoked.
- c. Where the OCHE determines that TCHC staff have not carried out these required procedural steps, the OCHE shall advise TCHC staff of the required remedial actions. TCHC shall re-instate such tenant's subsidy and carry out such remedial actions to the satisfaction of the OCHE, acting reasonably, before any subsequent actions to revoke the subsidy are taken.
- d. Where TCHC and the OCHE cannot agree, each acting reasonably, that such requirements have been met, the parties may choose to seek assistance/advice from the Service Manager.

For greater clarity:

- a. The OCHE's mandate does not include the review of files relating to eviction "for cause" of any tenant.
- b. The OCHE shall not conduct investigations of cases outside of the referral process set out above. Where the OCHE receives a request from a tenant or a third party to investigate whether an individual is a vulnerable TCHC tenant, the OCHE shall refer such requests to Asset Management staff for their review and management.
- c. The decision as to whether an individual is a tenant of TCHC and whether such tenant is a senior and/or a vulnerable tenant, shall be made by TCHC staff prior to submitting an eviction for rental arrears or loss of subsidy file to the OCHE. To confirm, the role of the OCHE is not to make such determinations, but to audit to relevant TCHC policies and procedures to ensure procedural fairness for the affected tenant.
- d. In the initial phase of the implementation of the *TCHC Vulnerability Policy and Vulnerability Operational Guideline* (pending Board review on December 16, 2014), TCHC Management and the OCHE shall manage such file transfer in accordance with the *Interim Criteria for Identifying Potentially Vulnerable*

Tenants dated September 24, 2014, as set out in Appendix “A”. This *Interim Criteria* allows for a phased approach to the transfer of files of potentially vulnerable tenants, and for both TCHC and OCHE staff to gain experience in the management of such files.

(iii) Consultation

- a. TCHC will consult with the OCHE with respect to the development of any policies, guidelines and processes that relate to loss of subsidy or eviction proceedings for arrears for seniors or vulnerable tenants. The OCHE shall provide TCHC with guidance and advice on such policies, guidelines and processes.

(iv) OCHE Decisions

- a. The OCHE and TCHC staff shall agree upon the format for reporting on compliance to relevant TCHC Policy and Procedures. The OCHE’s decisions on individual cases shall incorporate this format.
- b. The decisions of the OCHE shall focus on identifying and recommending to TCHC staff remedial action that needs to be taken to close any remaining gaps in the eviction and loss of subsidy management process and its implementation of the process improvement recommendations identified in the *Lesage Report* and/or the *2013 Ombudsman Report*. In particular, the OCHE’s decisions shall include a finding as to whether TCHC staff have followed the relevant TCHC Policy and Procedures in respect of the loss of subsidy or eviction proceeding, as the case may be, in the specific case.
- c. TCHC staff shall have the ability to discuss the OCHE’s recommendations with the OCHE in order to determine whether they are operationally or financially impractical. The collective goal is to ensure that TCHC staff are fully trained on, and acting in compliance with, its own eviction prevention policies to enable it to manage such eviction process in a procedurally fair manner. For greater clarity, the recommendations of the OCHE contained in its decisions are not final and binding on TCHC.

B. Facilitation of Mediation/Other Alternative Dispute Resolution Efforts Function:

- a. The focus of this function is as follows: to invite seniors and vulnerable tenants facing eviction for rental arrears to participate in mediation/other alternative dispute resolution efforts facilitated by the OCHE to encourage the resolution of rental arrears. It is recognized that not all tenants shall choose to participate in such mediation/other alternative dispute resolution efforts facilitated by the OCHE, and may prefer instead to seek mediation at the LTB or take other action.
- b. In keeping with the process identified in the *LeSage Report*, where the tenant elects to participate in this process, the OCHE shall facilitate mediated settlement discussions between the tenant and TCHC. As part of this facilitation, OCHE shall work with Asset Management staff to establish the parameters for the mediation including the range of payment terms for a Repayment of Arrears

- Agreement. TCHC staff shall approve and sign off on the final terms of an OCHE facilitated Repayment of Arrears Agreement
- c. For greater clarity, the OCHE shall not have the authority to bind TCHC to mediated settlement agreements without its approval, nor to enter into Repayment of Arrears Agreements with tenants, on its own behalf.
 - d. Where a tenant breaches the terms of a LTB Mediated Repayment of Arrears Agreement, TCHC shall have the right to proceed to eviction without further notice to the OCHE.
 - e. Where a tenant breaches the terms of an OCHE facilitated Repayment of Arrears Agreement, TCHC shall transfer such tenant's file back to the OCHE for its further review and resolution within 10 business days. The process outlined in this clause (d) shall be followed for 6 months from December 5, 2014. After 6 months (June 5, 2015), the OCHE and TCHC Management shall review this process and determine whether it should be revised taking into account, among other things, the success/failure rate of the OCHE facilitated Repayment of Arrears Agreement and the impact on the collection of arrears. The OCHE and TCHC Management shall report its findings to the Board along with any proposed revision of this process by no later than 2 months following June 5, 2015.
 - f. The job descriptions of the Early Resolution Officers in the OCHE shall be reviewed and amended as necessary to ensure that their role is consistent with these Terms of Reference.
 - g. In order to ensure that TCHC staff develop the skills necessary to negotiate settlement discussions with tenants directly, the OCHE shall either provide alternative dispute resolution skills training to TCHC staff involved in the eviction process or work with TCHC staff to establish such a program of skills training. This program should include refresher skills training as well as orientation training for new employees involved in the eviction process.

C. Linkage of Tenants with Community Supports Function:

- a. The focus of this function is as follows: prior to or during mediation/other alternative dispute resolution efforts by the OCHE, where the OCHE determines that the tenant requires third party assistance, the OCHE shall engage TCHC staff to connect the tenant to the appropriate agency to assist the tenant.
- b. For greater clarity, the role of the OCHE is to identify the need for such assistance, and to provide guidance, as required, to TCHC staff as they manage such linkage efforts.
- c. Noting that it is the responsibility of TCHC, through its Resident and Community Services (RCS) Division, to establish partnerships with community agencies to provide assistance to its tenants as required and to manage such partnerships, in some cases, the OCHE will be able to assist TCHC staff in developing relationships with new community agencies. In such cases, the OCHE shall work with staff in the RCS Division to facilitate such relationships. The objective is for TCHC staff to develop its internal capacity to manage such linkages to preserve individual tenancies.

- d. Where the OCHE identifies matters involving a potential breach of the Ontario *Human Rights Code*, the OCHE shall refer the matter to TCHC’s General Counsel.
- e. Where the OCHE identifies matters involving a potential fraud, the OCHE shall refer the matter to TCHC’s Chief Internal Auditor.
- f. Where the OCHE identifies matters involving potential unethical practices, the OCHE shall refer the matter to TCHC’s Chief Internal Auditor and to TCHC’s General Counsel.

2. Reporting

- a. The Commissioner will report to the Board, or through a Board Committee to be identified by the Board, on a quarterly basis on the OCHE’s performance as against an agreed upon work plan.
- b. The Commissioner will provide a copy of the OCHE quarterly performance report to the TCHC President and CEO for his/her review and feedback.
- c. The Commissioner’s Report will indicate any findings of non-compliance by TCHC staff to TCHC’s *Eviction Prevention Policies and Procedures* in the case of evictions for arrears of senior and vulnerable tenants, and with the procedural requirements in the case of the revocation of subsidies of senior and vulnerable tenants, noting where TCHC disagrees with such findings.
- d. The Commissioner’s Report will also identify any recommendations regarding process improvements together with the responses received from TCHC to such recommendations.
- e. The Commissioner shall also report to the Board annually, outlining the Commissioner’s performance for the preceding year, as well as making recommendations to changes to these Terms of Reference. The Commissioner will provide a copy of the OCHE annual performance report to the TCHC President and CEO for his/her review and feedback.

3. Operations

- a. The Commissioner will be responsible for reviewing the staff structure and budget and will make recommendations for variations to this structure, as appropriate, to the Board through its Corporate Affairs & Audit Committee as part of the annual budget approval process.
- b. On a day-to-day basis as required, the Commissioner shall take advice and direction from the TCHC Board Chair or his/her delegate.
- c. TCHC shall provide all infrastructure support required by the OCHE including information technology, human resources, facilities and communications support.
- d. All media requests received by the Commissioner for interviews, comments or information shall be managed in accordance with TCHC’s *Media and Issues Protocol*. For clarity, all such requests require the prior approval of the Board Chair, or his/her delegate.
- e. The Board Chair, or his/her delegate, shall additionally approve all public speaking engagements by the Commissioner or OCHE staff. Where approved, the Commissioner shall work with TCHC’s Public Affairs Department on the content of such presentations.

4. Term:

- a. The OCHE has been established for a 3 year term and will expire on March 31, 2017, unless the Board determines that it wishes to extend this initial 3-year term. The Board will advise the Commissioner of its decision to extend this initial 3-year term no later than 6 months' prior to March 31, 2017, being September 30, 2016.
- b. All employment agreements for OCHE staff shall be limited to a 3-year term expiring March 31, 2017, subject to renewal.
- c. The OCHE's work plan shall identify the objectives of the OCHE for the balance of its initial term, and critical paths to implement these objectives which should include, among other things, delivering recommendations to improve systemic deficiencies or commonly encountered issues/opportunities for improvement.

5. Dispute Resolution / Review of Terms of Reference:

- a. Issues relating to the interpretation or application of these Terms of Reference shall be identified by the OCHE and TCHC as part of the OCHE quarterly performance reporting process to the Board.
- b. Either of the Commissioner or the TCHC President and CEO shall have the right to request that matters of dispute relating to the interpretation or application of these Terms of Reference be referred back to the Board for its resolution.

Review and Approval: These Terms of Reference shall be reviewed and approved by the Board on an annual basis, or as required. As noted above, the process outlined in clause (e) of Section B, Facilitation of Mediation/Other Alternative Dispute Resolution Efforts, shall be reviewed by TCHC Management and the OCHE after June 5, 2015, and reported on to the Board by no later than 2 months from that date.

Next Review Date: August, 2015.

**Appendix “A” – Interim Criteria for Identifying Vulnerable Tenants dated
September 24, 2014**

This criteria is as follows: where the tenant has arrears and any combination of the following:

- A Unit Clutter rating of 7-9 in the Annual Unit Inspection database
- An Easytrac record with the category “Vulnerable Tenant Alert” within the last 18 months
- An Easytrac record with the category “Referral to Agency” within the last 18 months
- Is living in a unit modified for accessibility needs, as tracked in HMS
- Is a known client of the Office of the Public Guardian and Trustee, as tracked in HMS
- Is living in a unit covered by a referral agreement with an agency, as tracked in HMS