



OFFICE OF THE INTEGRITY COMMISSIONER

REPORT REGARDING THE CONDUCT
OF A MEMBER OF AN ARENA BOARD
OF MANAGEMENT

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Integrity Commissioner
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INTRODUCTION

A formal complaint was made by a (now former) member (the "Complainant") of an Arena (the "Arena") Board of Management (the "Board") alleging that the Board Chair (the "Respondent") contravened Article VIII (Improper Use of Influence) of the *Code of Conduct for Members of Local Boards (Restricted Definition)* (the "Code of Conduct" or the "Code").

The complaint alleges generally that the Respondent had a "conflict of interest" and specifically that she improperly used the influence of her position on the Arena Board to establish an in-house adult women's hockey program to advance her personal interest in women's hockey. I have completed an investigation into the matter and, for the reasons below, find that the Respondent's conduct did not contravene the Code of Conduct.

Although I make no finding of a contravention, I have decided to provide this report to the Board after it is delivered to the Respondent and the Complainant. The *Code of Conduct Complaint Protocol for Members of Local Boards* provides me with discretion to make reports to the Board in "exceptional" circumstances.¹ In my view, a report to the Board is warranted because the issue of the Respondent's possible "conflict of interest" was discussed by the Board and because this report could assist Board members with understanding their obligations under the Code of Conduct.

The complaint was filed on May 25, 2016. As part of my initial review of the complaint to determine whether it was within my jurisdiction, I requested additional documents and information from the Complainant to understand the allegations. On August 4, 2016, after concluding the initial review, the Respondent was notified of my decision to investigate this matter. The exchange of complaint, response and reply was completed by August 23, 2016.

INVESTIGATIVE STEPS

Using the authority under section 160 of the *City of Toronto Act, 2006*, the following resources were reviewed: the Relationship Framework for the City and its Arena Boards of Management,² including the Arena; the agency description for the Arena on the City's

¹ *Code of Conduct Complaint Protocol for Members of Local Boards (Restricted Definition)*, Part B., s. 6(3).

² Relationship Framework for The City of Toronto and The Boards of Management for George Bell Arena, Larry Grossman Forest Hill Memorial Arena, Leaside Memorial Community Gardens Arena, McCormick Playground Arena, Moss Park Arena, North Toronto Memorial Arena, Ted Reeve Community Arena, William H. Bolton Arena
<https://www1.toronto.ca/City%20Of%20Toronto/City%20Managers%20Office/Agencies%20and%20Corporations/Files/pdf/spc-arenas.pdf>.

Public Appointments page (which includes a list of Board member qualifications) and the City of Toronto Public Appointments Policy; the City's Ice Allocation Policy; the Arena's approved ice allocation schedules for the 2015-2016 and 2016-2017 fall/winter hockey seasons; and correspondence between the City's Parks, Forestry and Recreation division ("PFR") and the Arena Manager about the ice allocation for the 2016-2017 season, including a letter stating that the Arena's schedule is in compliance with the City's Ice Allocation Policy. Interviews were conducted with City staff in the City Manager's Office and PFR.

All of the materials provided by the Complainant and the Respondent were reviewed. Both parties cooperated and provided comprehensive information. The Respondent provided additional clarifying information on request.

Using the authority under section 33 of the *Public Inquiries Act, 2009*, the Arena Manager was interviewed under oath. From my perspective, the Arena Manager provided a neutral view on the events underlying the complaint.

FINDINGS

Making Findings of Fact

In making findings of fact, I adhere to the standard of proof for fact-finders in civil cases identified by the Supreme Court of Canada: a balance of the probabilities.³ The balance of probabilities standard requires a fact finder to "scrutinize the relevant evidence with care to determine whether it is more likely than not that an alleged event occurred."⁴ Accordingly, the findings of fact throughout this section are based on whether it is more likely than not that alleged events occurred.

Background Facts

City Arenas

The City has over 80 arenas, rinks and dry pads, most of which are managed and operated by PFR. However, eight of the City's arenas, including the Arena, are managed by boards of appointed community members, to reflect community needs and interests. Section 2.1 of the Relationship Framework⁵ provides:

³ *F.H. v. McDougall*, [2008] 3 SCR 41, 61; 2008 SCC 53 (SCC), available at <http://canlii.ca/t/20xm8> (internal citations omitted).

⁴ *Ibid.* at 61.

⁵ Note 2, *supra*.

The general mandate of Arenas operated through Boards of Management is:

- a) to provide safe, full and equitable access to high quality indoor ice sport recreational facilities and where applicable other recreational facilities (e.g. community rooms, banquet halls);
- b) to allocate use of the arena and other recreational facilities in a fair and equitable manner among neighbourhood citizens and organizations and arena user groups, with particular consideration given to addressing the needs of the local community;
- c) to operate in a manner that balances meeting the needs of the local community with the objective of generating sufficient revenue to operate the facilities at the lowest reasonable cost to the City of Toronto and its residents;
- d) to direct and control the administration and programming at the Arena, including the setting of user fees;
- e) to engage in accordance with City Council's policy on Public Access and Involvement for City of Toronto ABCs (attached as Appendix C), the local community in the decision-making of the Arena Board; and
- f) to assist the City in long range recreational planning by advising the City Manager or the General Manager of Parks, Forestry and Recreation of the changing recreational needs of the local neighbourhood and community.

Prime Time Ice and the Ice Allocation Policy

During "prime time" hours (weeknights and weekends) in the fall/winter season, arena boards must schedule ice time in compliance with the City's Ice Allocation Policy, which is administered by PFR. Under the Policy, all groups that wish to rent prime time ice at City arenas must apply to the City. A mathematical formula is applied to allocate ice to them on a City-wide basis. In other words, the City, and not an arena board, determines the *amount* of prime time ice (if any) that applicant groups receive. Prime time hours are first allocated to City-run (or arena-run) programs.

The Ice Allocation Policy also provides that certain *types* of groups must be allocated a minimum percentage of an arena's hours. In particular, "community youth" hockey leagues, entry-level, not-for-profit leagues, in which children learn to play (and compete informally against other children only within that league and within the same age group), are given a priority, and must receive 60% of an arena's available prime time ice.

In the case of arenas run by boards, the board is responsible for scheduling the allocated time for its particular arena. However, the schedules are reviewed by the City to ensure the designated groups receive the required percentage of an arena's hours.

In addition, the policy provides, "[a]ll attempts will be made during allocation to allow for minor or youth organizations to permit ice in the local arenas where traditionally that league or association has participated." Accordingly, the City and arena boards try to allocate hours for youth groups where they have had ice time in previous years. In practice, this means that an arena's ice allocation schedule generally does not change much from year to year.

The Role of Arena Board Members

The Board is made up primarily of members of the public. The City's description of Board Member responsibilities includes:

- providing safe, full and equitable access to high quality indoor ice sport recreational facilities and where applicable other recreational facilities (e.g. community rooms, banquet halls);
- allocating the use of the facility in a fair and equitable manner among local neighbourhood citizens and organizations and user groups, while bearing in mind the need to generate sufficient revenue to operate the facility at the lowest reasonable cost to the City of Toronto and its residents; and
- developing proposed ice allocation schedules based on the applications received, and consistent with the targets and requirements set-out in the City's Ice Allocation Policy and the objectives of the Relationship Framework, for approval by the General Manager, Parks, Forestry and Recreation.

Further, the City seeks board members with qualifications specific to the running of an arena, including:

- an interest and commitment to volunteering and community development including an understanding of diverse neighbourhoods;
- a range of skills or experience such as fundraising, financial management, sports facility operation, event planning, amateur and children's sports development in the community, managing in the non-profit sector, law, or marketing;
- a majority of members residing in the local area; and
- demonstrated knowledge of the programs and activities of the arena.

In practice, the requirements that members live in the community and have familiarity with an arena and its programs means that many Board members have connections to the arena and/or its programming. The Arena Manager testified that several Board members participate in adult hockey leagues that use the Arena and are parents or past parents of children in hockey leagues that use the Arena.

Further, the City is actively seeking members with experience and skills that could be beneficial to an arena, including the marketing and promotion of arena activities.

The Arena and the Hockey Association

The Arena is a City arena, opened in the 1960s, and has been used as a practice facility for professional and university teams. It is also home to community hockey leagues and has been a host facility for a variety of special events.

One of the long-standing community leagues based at the Arena is a "community youth"⁶ hockey league or "house league" that teaches children (primarily those who live in the City)⁷ to skate and play hockey and provides them the opportunity to compete against other children in the league.⁸ The Hockey Association describes itself as a not-for-profit community hockey association with a goal of developing and maintaining fun, safe, fair and inclusive hockey programs for children and youths.

A New In-House Program at the Arena

After installing a new, more powerful dehumidifier, which allowed the Arena to keep temperatures down, the Arena began to provide summer ice time in 2014. The Ice-Allocation Policy does not apply to the provision of summer ice time.

Following consideration of programming options, the Board secured a number of contract rentals and also began a new in-house women's hockey program.

For the in-house women's program, the Arena does not lease ice to a tenant, but registers participants and charges them an individual fee. The Arena Manager is responsible for organizing the in-house programming, meaning that he registers participants, hires referees and time-keepers, and provides administrative support to the participants (such as scheduling games for teams to compete against each other).

⁶ City of Toronto Ice Allocation Policy, https://www1.toronto.ca/city_of_toronto/parks_forestry__recreation/permits/files/pdf/ice_allocation_policy.pdf.

⁷ Ibid.

⁸ It also has a "select" hockey program in which more experienced players play against teams in other, similar hockey organizations.

The Arena Manager testified that he considers the summer in-house women's hockey program a success, that it has now run for three seasons, and that he expects it to continue. Accordingly, the Board discussed the possibility of starting a winter in-house program at its meetings in September 2014 and September 2015, following the summer seasons.

The Board continued to discuss the possibility of winter in-house programming at its October and November 2015 meetings. While the Board was open to programming options, discussion focused on the possibility of an adult women's hockey program, based on the success of the summer program.

The Board considered what the impact would be on the Arena's fall/winter tenants and the Arena's compliance with the City's Ice Allocation Policy, since the Board would have to allocate ice time to new programming. The Board also considered the financial implications of starting a winter in-house program, since any new programming would need to generate net revenue (after hiring referees and time-keepers) that equaled or exceeded the rent the Arena could earn for leasing the same amount of ice time. At its November 2015 meeting, the Board directed the Arena Manager to email the Board with information about the revenues and expenses for in-house programming at other City arenas.

At its January 21, 2016 meeting, the Arena Board considered three separate issues (and voted on three separate motions):

1. Does the Board want in-house programming during the winter ice season?
2. What type of programming is most viable?
3. When to allocate ice time.

The Board approved a motion to introduce new in-house programming for the winter season; approved a motion to focus the programming on a women's hockey league; and, approved a motion to use three hours of weeknight, prime time ice for the in-house programming. As with the summer in-house program, the Arena Manager would register participants, hire referees and time-keepers, and provide support to the participants forming teams to compete against each other.

At its February 18, 2016 meeting, the Board approved an ice allocation schedule with in-house programming hours scheduled for Monday nights from 6-9 pm.

The Board's decision to allocate prime time hours to in-house programming removed three available hours from the previous year's prime time schedule, a decision that would have an impact on the Hockey Association.

Impact on the Hockey Association

The schedule that the Board approved in February would have reduced the time allocated to the Hockey Association by three hours.

Following a review by PFR, the Manager recommended that the Board approve a revised schedule that would reduce the impact on the Hockey Association. The revised schedule had the result of reducing the time allocated to the Hockey Association by one hour instead of three. The other two required hours were taken from another tenant, an adult league. PFR found time to recover the lost hours for both the Hockey Association and the adult league at other City arenas. The Board approved the revised schedule. PFR reviewed the revised schedule and determined that it was in compliance with the City's Ice Allocation Policy.

The Arena Manager administers the new in-house women's hockey program, including promoting the program and registering participants. Eighty individuals are registered to play.

The Respondent

The Respondent has been on the Arena Board since 2010. In November 2015, she became Chair. The Respondent describes herself as a grassroots organizer for the women's hockey community worldwide and as an advocate for equity and accessibility.

The Respondent promoted in-house women's hockey programming at the Arena. She posted information on social media about both the summer and winter programs. She assisted the Arena Manager with administration of the summer and winter program and registered as a participant. She has not earned any remuneration from the program.

The Respondent participated in Board discussions and voted on whether the Arena should provide winter in-house programming, the nature of the programming, and how much time to allocate to the programming.

The Respondent also participated in the Board's consideration of and votes to approve the ice allocation schedules recommended by the Arena Manager.

In her response to the complaint, the Respondent characterized her actions in relation to the program as consistent with her role as a Board member who is generally supportive of in-house programming. The Respondent has cooperated fully with this Office's investigation and has indicated a willingness to follow any advice or guidance that flow from the investigation.

ANALYSIS

Article VIII (Improper Use of Influence)

The complaint raises issues under Article VIII of the Code (Improper Use of Influence), which states:

VIII. IMPROPER USE OF INFLUENCE

No member shall use the influence of her or his office for any purpose other than for the exercise of her or his official duties as a member of the local board.

Examples of prohibited conduct are: the use of one's status as a member of a local board to improperly influence the decision of another person to the private advantage of oneself, or one's parents, children or spouse, staff members, friends, or associates, business or otherwise. This would include attempts to secure preferential treatment beyond activities in which members normally engage on behalf of others (similar to constituents of a Member of Council) as part of their official duties as a member of the local board. Also prohibited is the holding out of the prospect or promise of future advantage through a member's supposed influence within the local board or at the City, in return for present actions or inaction.

For the purposes of this provision, "private advantage" does not include a matter:

- a. that is of general application;
- b. that affects a member, his or her parents, children or spouse, staff members, friends, or associates, business or otherwise as one of a broad class of persons; or
- c. that concerns the remuneration or benefits of a member.

Article VIII of the Code prohibits members of local boards from using the influence of their office for any purpose other than the work of the board. This means that board members cannot use the influence of their position to drive an issue or agenda that is unrelated to the general work of the board.

Article VIII states that, in particular, a member cannot use "one's status as a member of a local board to *improperly* influence the decision of another person to the private advantage of oneself" or one's family, friends or associates.

Inevitably, a member of an arena board will participate in decisions of the board that benefit themselves as a member of the community. The Code therefore clarifies the

kinds of matters that cannot amount to a "private advantage": (1) those that are of general application; (2) those that affect a member of the Board or his or her family or friends as one of a "broad class of persons": or, (3) those that concern the remuneration of the member. This framework is consistent with similar frameworks in the realm of public sector conflict of interest and ethics regulation.⁹

The only concern raised by the Complainant in this case is that the Respondent is supportive of women's hockey, is a hockey player, and was supportive of establishing an in-house women's hockey program at the Arena. The Complainant cited in support of his complaint that the Respondent helped sign people up for, and worked to raise awareness of, the program. The Respondent does not deny being supportive of the program, as a long time and well-known supporter of women's hockey, and she explained that her assistance flowed from her general duties as a board member.

The Respondent's general and long standing interest in women's hockey, *in general*, could not give rise to any issues under Article VIII. Personal affinity for a particular type of sport is a characteristic that is intrinsic to a person and not capable of attracting concern under the Code of Conduct. When one considers the criteria for membership on the Arena Board it is also obvious that members will, more often than not, come with some exposure or personal connection with sports that are traditionally played at the Arena.

For completeness, there is no evidence (and there has never been any suggestion) that the Respondent gained financially from the decision of the Board to establish an in-house program.

Therefore, the only possible competing interest that the Respondent faced when deliberating over the decision to create an in-house program was the likelihood that she would play in the program as a regular, paying participant. In my view, the wish of arena board members to participate in any given program at an arena is not sufficient to give rise to any issues under Article VIII of the Code of Conduct. I form this view in consideration of the criteria established by the City for arena board members and the language of Article VIII.

The City's criteria for Arena Board membership includes that members reside in the local area, have knowledge of the programs and activities of the arena and have skills that include "amateur and children's sports development in the community." The concerns raised by the Complainant are merely manifestations of some of the ways in which the Respondent met the stated criteria of Board membership.

⁹ E.g. Members' Integrity Act, 1994, S.O. 1994, c. 38, s. 1 (defining "Private Interest").

Furthermore, if one could conclude (which I do not) that a wish to play in the program constitutes a private advantage, Article VIII is clear that interests that are of general application or that affect a member of a board as a broad class of persons do not constitute a private advantage within the meaning of the Code. The wish to participate in a program *offered by the Arena* is clearly an interest of general application, meaning that it affects the Respondent as a local resident. This principle, which is a common framework for conflict of interest regulation, recognizes that inevitability that public officials, which board members are, will be required to make decisions on behalf of the community to which they belong. While it is not a *carte blanche* to absolve every issue and every case must be decided on its own, it is my view that possible participation in an *in-house program* clearly falls into the category of things that are of general application and do not attract concern under the *Code of Conduct*.

At its core, this complaint appears to arise from a dissatisfaction about the application of the Ice Allocation Policy. Having had the opportunity to review the application of the Policy in the particular circumstances of this case, I observe that here the Policy appears to have served important competing interests well. Arena boards provide important local input, but the Policy takes a City-wide view that ensures that ice time is allocated in an equitable way. The Board considered a community demand for a program, brought a local interest forward, adjusted the schedule, took advice and input from City staff about the application of the Policy, and modified its decision accordingly.

CONCLUSION

For the reasons stated above, I find that the Respondent's conduct did not contravene the Code of Conduct.

Arena boards are in need of clarification and guidance about when certain interests give rise to a conflict of interest or issues under Article VIII. It is my goal to issue guidance to arena boards in general about this issue in the coming months.

Valerie Jepson
Integrity Commissioner
November 10, 2016