



			Est. Time	For Information	For Approval Resolution #
1.	Meeting Opening 1.1 Chair Opening Remarks 1.2 Conflict of Interest Disclosures 1.3 Approval of Agenda 1.4 Approval of Board Minutes Wednesday, September 20, 2023	Chair of the Board Duncan McLean	5 minutes		10-01-23 10-02-23
2.	Finance and Administration Business 2.1 2023/2024 Insurance Renewal 2.2 Financial obligation to Provincial Restricted Reserves	Manager of Accounting Dave VanHouwelingen	15 minutes	x	10-03-23
3.	Facilities Operations/Property Management Business 3.1 Cleaning Services Contract	Manager of Accounting Dave VanHouwelingen	10 minutes		10-04-23
4.	Matters for Discussion 4.1 Executive Director Report	Executive Director Lori Trumper	15 minutes	x	
5.	In-Camera Business 5.1 Motion to go In-Camera 5.3 Personnel/Legal matter 5.4 Motion to come out of In-Camera	Executive Director Lori Trumper	15 minutes		10-05-23 10-06-23
6.	Matters for Noting [discussed only on exception basis] 6.1 Correspondence - Letter from Region of Waterloo - Annual Information Return Settlement 6.2 Board Business 6.3 Other Matters				
7.	Meeting Closing 7.1 Next meeting, Wednesday, November 15, 2023 7.2 Meeting Adjourned		5 minutes		10-07-23



PRESENT Chair: Duncan McLean
Directors: Melanie Goodfellow, Karyn Kipper-Day, Jordan MacLaughlin, Duncan McLean, AJ Vlcek, Tara Bedard, Sean Tait
Non-Voting Participants: None
Executive Director: Lori Trumper
Manager of Accounting: David Van Houwelingen
Manager of Resident Engagement/Recorder: Rebecca Warren
Michael Huber, Blackline Property Management

Mayor Berry Vrbancovic, Paulina Rodriguez (NVP), Andrew Portengen, Bil Ioannidis, Jason Deneault, Cassandra O'Brien

REGRETS

GUEST None

1 Meeting Opening: Duncan McLean Called Meeting to order at 4:07 PM

1.1 Res #09-01-23: Approval of Agenda

On a motion, by AJ Vlcek, seconded by Melanie Goodfellow and CARRIED, that the agenda be

1.2 approved as presented.

2 Res #09-02-23: Approval of Minutes: June 21, 2023

On a motion, by Jordan MacLaughlin, seconded by AJ Vlcek and CARRIED, it was resolved that

2.1 the June 21, 2023 board minutes be accepted as true.

3 Res #09-03-23: 2024 Market Rent Increases

On a motion, by Melanie Goodfellow, seconded by Karyn Kipper-Day and CARRIED, it was resolved that the board approve the proposed market rent increases as per the 2024 Market Rent

3.1 Schedule.

4 Res #09-04-23: Financial Report for the period ended August 31, 2023

On a motion, by Tara Bedard, seconded by Melanie Goodfellow and CARRIED, it was resolved that the board approve the attached financial report for the period ended August 31, 2023 as

4.1 presented.

5 Res #09-05-23: 2024 ROW Annual Subsidy Entitlement

On a motion, by AJ Vlcek, seconded by Melanie Goodfellow and CARRIED, that the board

5.1 approve the attached 2023 Annual Subsidy Entitlement submission as presented.

6 Res #09-06-23: 2024 Operating Budget

On a motion, by AJ Vlcek, seconded by Sean Tait and CARRIED, that the board approve the

6.1 attached 2024 Operating Budget as presented.

7 Res #09-07-23: 2024 Capital Plan

On a motion, by Karyn Kipper-Day, seconded by Melanie Goodfellow and CARRIED, it was resolved that the board approve the five-year capital expenditure plan to be submitted to the

7.1 Region of Waterloo as presented.

8 Res #09-08-23: Motion to go In-Camera

On a motion, by AJ Vlcek, seconded by Melanie Goodfellow and CARRIED, that the KHI Board

8.1 Meeting go In-Camera

9 Res #09-09-23: Motion to come out of In-Camera

On a motion, by Melanie Goodfellow, seconded by Karyn Kipper-Day and CARRIED, that the KHI

9.1 Board Meeting come out of In-Camera

10 Res #09-10-23: Adjournment

On a motion, by Jordan MacLaughlin, seconded by Karyn Kipper-Day and CARRIED, it was

10.1 resolved that the KHI Board meeting of September 20, 2023 be adjourned at 5:46 PM.

Date

Chair

Date

Vice Chair



BRIEFING NOTE

☐ **FOR INFORMATION**

☒ **FOR APPROVAL**

Resolution #10-03-23

REPORT TO: Board of Directors
SUBJECT: 2022-2023 Insurance Renewal
PREPARED BY: Dave Van Houwelingen
DATE OF MEETING: Wednesday, October 18, 2023

Recommendation

That the Board accept the proposed insurance renewal from Housing Services Corporation at a premium of \$306,789. including PST, for the annual term commencing November 1, 2023.

Background

Until two years ago, KHI requested insurance renewal proposals from the Housing Services Corporation/Marsh (HSC) and Frank Cowan Insurance for the period commencing November 1st. HSC is a group insurance program whereas Frank Cowan Insurance is an insurance company that provides specialized insurance programs that include risk management services to municipalities and organizations within the healthcare, education, community, children's and social services sectors. Prior to the last two years, we had been with Frank Cowan for several years. We reached out to Frank Cowan again this last year for a quote, they declined, stating that they were getting out of the sector because of the rising costs. KHI now doesn't have competing quotes for Insurance.

Reports

Appendix 1: Comparison of 2023-24 Insurance Proposal

Summary

The coverage offered by HSC is comparable to last year in terms the coverage offered except that the deductible has increased. HSC requires that those included in the group insurance program contribute to the Property Claims Fund as well as the Directors and Officers Claim Trust Fund.

In addition to property and Equipment breakdown insurance, the HSC proposal includes Crime coverage, Directors and Officers coverage and Cyber Coverage.

The quote for HSC is \$306,789, which is a 12% increase from last year, where the increase was 14%. Although it would have been good to have a comparable quote – the last year Cowan quoted theirs had gone up 24% - so even if they had reverted to a similar percentage increase as HSC the last two years, KHI would pay significantly more than this quote.

Kitchener Housing Inc.
Comparison of 2020-21 Insurance Proposals
October 11, 2022

APPENDIX 1

Revised October 11, 2022

Coverage Description	HSC Group Insurance Proposal			HSC Group Insurance Proposal		
	Coverage Limit	Last Year Deductible	Premium	Coverage Limit	Deductible	Premium
Property - All Risks	164,856,718	25,000	63,923	170,167,541	50,000	62,372
Contribution to Property Claims Fund	N/A	N/A	128,708	N/A	N/A	159,450
Equipment Breakdown (Boiler and Machinery)	50,000,000	25,000	2,183	50,000,000	50,000	2,230
Crime	250,000	-	1,974	250,000	-	2,073
Commercial General Liability	2,000,000	5,000	29,619	2,000,000	5,000	30,958
Umbrella Liability	3,000,000	10,000	6,890	3,000,000	10,000	6,769
Directors' and Officers' Liability	5,000,000	100,000	12,817	5,000,000	100,000	13,025
Cyber Extension	200,000	1,000	-	200,000	1,000	-
Contribution to Directors & Officers Claim Trust			7,188			7,188
Other Coverages		-	-		-	-
Total Premium			253,303			284,064
HSC Fee (2.5% of Premium)						-
Provincial Sales Tax			20,264			22,725
Total Cost (net of HST)			273,568			306,789

2021-22 including non-recoverable PST	273,568
2021-22 including non-recoverable PST	239,403
2020-21 including non-recoverable PST	217,112
2019-20 including non-recoverable PST	181,219
Percentage increase in 2020 from prior year	12%



BRIEFING NOTE

☐ **FOR INFORMATION**

☒ **FOR APPROVAL**

REPORT TO: Board of Directors
SUBJECT: Cleaning Contract
PREPARED BY: Dave Van Houwelingen
DATE OF MEETING: Wednesday, October 18, 2023

Recommendation

That the Board of Directors of Kitchener Housing Inc. approve the awarding of the cleaning contract to Hardcastle for one year for \$201,000 excluding HST.

Background

This year, KHI sent out Request to Bid invitations to several vendors for competitive pricing and the responses were received back by September 1, 2023.

Report

Appendix #1 – Summary of Quotes

Summary

In total, KHI received four quotes back for the cleaning contract. They ranged in price and detail. Hardcastle's quote included everything we requested for \$201,000. SQM Janitorial Services came in at \$258,975. Precise Janitorial, who currently has the contract, came in at \$297,794. JDI Cleaning Systems was the most expensive at \$390,960 and also did not have the detail of the other quotes. As a result, the recommendation is to go with Hardcastle.

Kitchener Housing Inc.
Summary of Cleaning Quotes Received
September 1, 2023

	Hardcastle					SQM					Precise					JDI			
	Cleaning	Garbage	Water Softener	Extra		Cleaning	Garbage	Water Softener	Extra		Cleaning	Garbage	Water Softener	Extra		Cleaning	Garbage	Water Softener	Extra
25 Joseph	1,850	700	50			11,681	1,123	518			19,200	4,888	980						
35 David	1,300	700				11,681	1,123	518			13,500	4,888	750						
15 Linden	550	350				11,681	1,123	518			15,000	4,888							
35 Cedar	1,100	350	50			11,681	1,123	518			23,000	4,888	750						
110 Lancaster	450					8,761	1,123	518			13,500	4,888							
278 Carwood	1,100	350	50			11,681	1,123	518			16,200	4,888	700						
430 Connaught	750	350	50			8,761	1,123	518			19,200	4,888	700						
59 Vanier	550					17,522	1,123	518			14,000	4,888							
454 Lancaster	1,400	350	50			14,602	1,123	518			25,800	4,888							
20 Union	1,200	700	50			11,681	1,123	518			21,660	4,888							
73 Church	1,300	350				14,602	1,123	518			19,200	4,888	750						
31 Oprington	200					8,761	1,123	518				4,888							
76 Penelope	200					14,602	1,123	518				4,888							
103 Gage						11,681	1,123	518				4,888							
35 Linden						5,841	1,123	518				4,888							
355 Charles						17,522	1,123	518				4,888							
5 Maurice						11,681	1,123	518				4,888							
45 Howe						8,761	1,123	518				4,888							
11 Weber	300					14,602	1,123	518			4,420	500							
Monthly Total	147,000	50,400	3,600	-		227,785	21,341	9,850	-		204,680	88,484	4,630	-		390,960	-	-	-
Grand Total				201,000					258,975					297,794					390,960



**Executive Directors Report
October 18, 2023**

Agenda Item 4.1

Financial Obligation

You will note that within the letter from the Region of Waterloo with respect to the final review of our December 31, 2022, financial statements, a couple of key items are noted:

- 1) During our review, it was noted that Kitchener Housing Inc. with 467 RGI is not meeting the approved service level standard of 508 RGI units. As market units become available, management is to fill these units with applicants on the housing waitlist to comply with the approved service level standards.
- 2) As a reminder, the \$1,958,016 from the provincial surplus has been used to assist with affordable housing program (re: 430 Connaught). The use of these funds from the provincial programs for the affordable housing program is a concern. These funds are to be re-paid from the KHI Non-Shelter Program to the KHI Provincial Program so that it is not affecting that taxpayers in the Region. A plan on how these funds will be repaid is required. Please provide this plan as soon as possible to the Housing Program staff.

The matter of the target of RGI units as noted in item 1) we are compliant as indicated. When a unit becomes available where the resident was paying a market rent, that unit becomes a rent geared to income unit and we fill from the housing waitlist.

The target of 508 is impacted by the following circumstances:

Where we have residents who entered our housing units eligible for an RGI unit and their income becomes sufficient to pay our market rent, they are no longer eligible for the subsidized rate and become market residents/tenants.

Similarly, if a family has a change in their household composition, i.e. – adult children move out, then the family becomes over housed. At that point the resident is advised that they must move to a suitably sized unit – i.e. - single people or couples to a one-bedroom unit. Sometimes the family may choose to pay the market rent rather than moving out of the community, assuming they can pay.

In every vacancy that exists we fill from the housing waitlist and treat the vacancy as an RGI unit to comply to our obligation to meet the service level standard of 508 RGI units.

With respect to the financial obligation of repayment to the externally restricted reserves of the provincial portfolio which are those buildings legislated by the Housing Services Act, in the amount of 1,958,016., this was originally reported to KHI as a direction in an operational review that was completed by the Region of Waterloo in September 2018. I presented the full operational review report to the Board at the December 2018 board meeting. I responded to the Region of Waterloo by the required timeline. A copy of the letter and operational review findings is attached to this report for information.

The background about this issue is as follows:

Previous management of KHI recorded accumulated surpluses derived from the provincial program which is taxpayer funds as internally restricted reserves. This implied that the organization had rights to use those funds which was incorrect. As Manager of Accounting at that time, I did advise the General Manager and the Board, that the final review of our reserves and how they had been reported and presented by previous management was still under review and the final determination of the appropriate treatment was yet to be confirmed and there was a risk that further restatement would be required.

Regardless, the decision to purchase and develop 430 Connaught was approved and the amount of \$1,958,016., was used to fund that project and should not have been. In the operational review conducted by the Region of Waterloo in 2018 it was noted that those funds would need to be repaid to the provincial portfolio. The Region has now specifically asked in the most recent correspondence for a plan as to how these funds will be repaid and that they need a response as soon as possible.

I will provide more information about this as the plan of action as to how and when those funds will be repaid as soon as possible.

The remaining questions or items noted for adjustment have been resolved and are standard accounting related questions and notations.

Capital Repair Projects

We are working on classifying specific projects that were identified during the preparation of the 5-year Capital Plan and supported by the Building Condition Audit that might attract repair funding. The criteria to meet is that the work must result in a reduction of at least 25% energy consumption and green house gases, at least 20% of units are accessible by the end of the repair period, best efforts to ensure a minimum of 33% of units repaired are those which target women and/or women and their children, and the units must be affordable.

We have a significant underfunded gap of capital projects as we have reported in various iterations of financial reporting and assuming we can meet the conditions to receive funding, any funding we can receive as a contribution/grant is helpful.

More information will be forthcoming about the result of our review and whether we meet the eligibility requirements for the funding.

Board Governance Training

Duncan McLean and I are attending the Capacity Canada Boot Camp on November 28, 29 and 30th. This is great learning opportunity and is typically designed for Chairs and Executive Directors/CEO's.

Capacity Canada also offers workshops throughout the year on a variety of governance related topics. They also offer a course called Modern Board Governance that is administered by Conestoga College and is a micro credential program.

I'll send out these opportunities to the board as they become available.

I have also attached a document entitled 20 Questions for Boards of Directors that is published by the CPA – Chartered Professional Accountants Association. This is an exceptionally helpful document for board members and identifies key areas for board review of duties of a director.



COMMUNITY SERVICES
Housing Services

20 Weber Street East 4th Floor
Kitchener Ontario N2H 1C3 Canada
Telephone: 519-575-4400
TTY: 519-575-4608
Fax: 519-575-4026
www.regionofwaterloo.ca

November 27, 2018

Kitchener Housing Inc.,
Board of Directors,
c/o Lori Trumper, General Manager
11 Weber St. W.,
Kitchener, ON N2H 3Y9

Re: Kitchener Housing Inc. Operational Review Results

Dear Board Members;

Enclosed please find the Operational Review report for **Kitchener Housing Inc.** outlining the findings of the Operational Review conducted on September 18 and 19, 2018 by the Region of Waterloo.

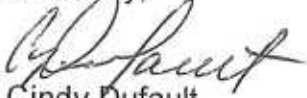
The report contains both requirements and recommendations. Requirements are those items that are to be completed by the Board or staff and the recommendations are suggested best business practices that the housing provider may consider adopting. A summary of the requirements and recommendations can be found at the beginning of the report for your review and convenience. The summary is provided as a guide for the provider and ongoing follow up will be conducted to provide assistance to staff and/or the Board in completing the listed tasks. A response from the Board indicating either their decision or the action that will be taken in regards to the items listed in the Executive Summary is required to be submitted to the Region by January 31, 2019.

During the review, it was noted that overall, Kitchener Housing Inc., meets the standards expected by the Region of Waterloo regarding Governance, Financial Management, Asset Management, RGI Administration and Resident Participation. Only a few requirements needing action were identified during the process. As is the case with all reports of this nature, shortcomings are identified. This is not meant to ignore, in any way, the many positive processes that we found in place during our review. Please extend my sincere thanks and appreciation to all the staff for their cooperation afforded during the review.

Should the Board have any questions or wish to meet further to discuss the findings, please do not hesitate to contact me at (519) 575-4789.

We look forward to our continued collaboration with Kitchener Housing Inc..
Thank you.

Sincerely,

A handwritten signature in cursive script, appearing to read "C. Dufault".

Cindy Dufault

Housing Programs Advisor

cc: Alba Michelucci, Financial Analyst

Sherry White, Supervisor, Community Housing and Housing Stability
Programs

Site Visit Report

Region of Waterloo
Community Services Department
Housing Services

Site Visit Report Kitchener Housing Inc.

In attendance:

Housing Advisors: Cindy Dufault, Lead
Helen Georgiou,
Teresa Rafferty
Financial Assistant: Fernando Leite

Please note that this report may include information, which is subject to the ***Municipal Freedom of Information and Protection of Privacy Act (MFIPPA)***, ***Housing Services Act (HSA)***, and the ***Personal Information and Protection and Electronic Documents Act (PIPEDA)***. No private information contained in this report should be released without the written consent of the individual to whom the information relates.

Purpose

The purpose of this site visit is to assist **Choose an item.** in meeting the requirements of the Service Manager(s) (the “Service Manager(s)”) which are set out in the Housing Provider Service Agreement (the “HPSA”) and to review the corporation’s responsibilities under the *Housing Services Act, 2011* (the “HSA”) and its regulations. The site visit also serves to review the corporation’s practices as compared to the sector’s best practices.

The site visit is intended to identify both those areas in which **Choose an item.** is successfully meeting the requirements of the legislation and the Service Agreement and those areas which present opportunities for improvement. Housing Providers are encouraged to look at the site visit report comprehensively and to recognize their successes and identify priorities for improvement, recognizing that compliance with some criteria are more significant or have greater impact on the successful operation and governance of the Housing Provider than others.

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- 2.2 Information Management

3.0 Asset Management

- 3.1 General Property Maintenance Observations:
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- 3.3 Capital Asset Planning and Implementation

4.0 Resident Selection and Ongoing Household Administration

- 4.1 Resident Selection
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5.0 Resident Participation, Rights and Responsibilities – Best Practices

- Resident Empowerment
- Participation in Housing Co-operatives (applicable to Co-operatives only)
- Complaints and Reviews

Executive Summary

Area of Review	Summary Findings	Housing Provider decision and action taken or planned
<p>1.0 Governance and Organizational Management</p> <ul style="list-style-type: none"> • Establishing and Maintaining Board of Directors • Roles and Responsibilities • Human Resource Management • Property Management Agreement (Contract) • Annual General Meetings & Members' Meetings • Conflict of Interest • Standard Reference Material 	<p>Directions</p> <ol style="list-style-type: none"> 1. As per the Form 1 filing provided, the current Board composition was not in accordance with the Organizational By-law at the time of the review. The Board needed to add one City Councillor and reduce the number of Community Board Members from 8 to 6. 2. In-Camera minutes should be stored at a secured location other than a Board members home. 3. Appropriate agreement restrictions need to be registered on title. All properties of KHI were not registered on title as per HSA, s. 161 and 162. Only the properties at 5 Maurice and 20 Union Lane had the appropriate registrations. 4. Committee's of the Board are to submit reports and keep minutes of meetings. 5. A succession plan for the Board should be formalized as per HSA s. 69 (5) and O. Reg 367/11 s. 87. <p>Recommendations</p> <ol style="list-style-type: none"> 1. An evaluation process and plan that assists the Board in determining if they are meeting the vision, goal and objectives of the organization should be 	

	<p>developed.</p> <p>2. A training and orientation plan should be developed for new members to the Board.</p> <p>2. A document retention policy should be adopted that outlines how long documents/files need to be retained and how documents and files are to be secured and stored.</p>	
<p>2.0 Administrative Systems</p> <ul style="list-style-type: none"> • Financial • Administrative Information Management—including compliance with MFIPPA 	<p>Directions</p> <p>1. \$1,958,016 of provincial surplus used for the affordable housing project funds are to be repaid for use by the provincial programs since funding for these programs are from the regional taxpayers</p> <p>2. Quarterly reports as listed in 2.1.4 and 2.1.7 are to be received from KHI's property management company</p> <p>3. Detailed information regarding the amount due to the Region of \$146,289.90 as per the trial balance as of August 31, 2018.</p> <p>4. A monthly process is to be used to balance accounts receivable (AR) sub-ledger to the AR control account. Confirmation that this issue has been addressed and a process is in place is required.</p> <p>5. Controls/reconciliation processes are</p>	

	<p>required to ensure that there are no discrepancies between those units classified as Market and RGI on the activity data report of the Annual Financial Return.</p> <p>Recommendations</p> <ol style="list-style-type: none"> 1. Purchasing and Spending Policies should be reviewed and updated as appropriate. 2. The General Manager should review and sign the monthly bank reconciliations 3. Ensure auditors management letter to the Corporation is easy to understand and clearly indicates if there were key issues uncovered during their audit. 	
<p>3.0 Asset Management</p> <ul style="list-style-type: none"> • General Property Maintenance Observations • Maintenance and Repairs • Capital Asset Planning and Implementation 	<p>Directions</p> <ol style="list-style-type: none"> 1. Playground inspections are to be undertaken each year. 	
<p>4.0 Resident Selection and Ongoing Household Administration</p> <ul style="list-style-type: none"> • Resident Selection • Ongoing Administration of Resident Files 	<p>Directions</p> <ol style="list-style-type: none"> 1. All tenants who identify they have no income or income below the non-benefit income threshold must pursue income as appropriate from Ontario Works, Employment Insurance, Old Age Security or Child Support 	

	<p>2. The rent indicated on the rent rolls should match what is contained in the tenant file.</p> <p>3. If subsidy is reinstated once removed, the tenant should be advised that subsidy was reinstated and give the reason why.</p> <p>Recommendations</p> <p>1. The reason for any rent change either during or outside an annual review should be clearly indicated on any correspondence or Notice of Decision.</p>	
<p>5.0 Residents Participation, Rights and Responsibilities</p> <ul style="list-style-type: none"> • Resident Empowerment • Participation in Housing Co-operatives (applicable to Co-operatives only) • Complaints and Reviews 	<p>Recommendations</p> <p>1. Develop opportunities to encourage resident involvement and participation within KHI communities</p> <p>2. Establish written policies that outline when resident input will be sought such as surveys regarding their current tenancy experience, future items they may wish to participate in or capital work idea's such as standard replacement items like flooring, countertops etc.</p> <p>3. Exiting Tenant surveys to assist KHI in identifying any ways they may encourage tenancy tenure or improve on their internal processes.</p>	

Overview of the Organization

Project Description

Project Name :	Kitchener Housing Inc.		
Project Address:	11 Weber St. E.,		
SM Project Number:			
End of Operating Agreement:	Various		
Fiscal Year End:	December 31		
Date of Site Visit:	September 14 and 15, 2018		
Dwelling Type:	<input type="checkbox"/> Apartment with elevator <input type="checkbox"/> Single <input type="checkbox"/> Stacked- Row	<input type="checkbox"/> Walk-up apartment <input type="checkbox"/> Row <input type="checkbox"/>	
Parking:	<input type="checkbox"/> Surface <input type="checkbox"/> Private garage/carport	<input type="checkbox"/> Underground	
Number of Stories:		Number of Units	
Unit Breakdown / Comments:			
Non-Shelter Space	Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	If Yes, describe non-shelter space

Housing Targets

HSA Total Targets for Portfolio		Actuals at Date of Review		HSA Mandate	
RGI Units	508	RGI Units	498	Seniors	<input type="checkbox"/>
Market Units	125	Market Units	135	Special Needs	<input type="checkbox"/>
		Rent Supplement		Supportive/Alternative	<input type="checkbox"/>
		Vacant Unit(s)		No Mandate	<input type="checkbox"/>
Total Portfolio	633	Total Portfolio	633		

Special Needs Units

Total number of modified units	
• Number of units modified for physical needs (wheelchair accessible) as per Targeting Plan.	43
• Other modified units in addition to Targeting Plan (describe).	
• Number of Special Needs units with provincially funded support services as per Targeting Plan.	0
• Modified units with support services in addition to Targeting Plan.	

1.0 Governance and Organizational Management

Section is concerned with the overall direction of the organization – setting policies, adopting budgets and other plans, supervising Management and generally to ensure the well being of the organization. Governance is the job of the Board of Directors which is accountable to the members who elect them. The Housing Provider must ensure that the corporation implements and follows a governance plan that ensures its compliance with all applicable legislation; provides effective oversight of the management and administration of the corporation and meets its fiduciary duty. The Board of Directors roles and responsibilities include (but are not limited to):

- Ensuring that the corporation is well managed.
- The use of sound business practices and policies that are in compliance with applicable legislation and operating agreements.
- Ensuring the corporation operates in compliance with its Articles of Incorporation/Letters Patent, by-laws, policies, etc.
- Maintenance of the housing portfolio so that it remains in a good state of repair and ready/fit for occupancy.
- Responding to the needs and concerns of applicants, tenants/members in an efficient and effective manner.
- Providing supervision and directing staff/management hired by the corporation.
- Operating in a fiscally responsible manner.

1.1 Establishing and Maintaining Board of Directors

Section 92 of O. Reg. 367/11 requires that every Housing Provider be incorporated under one of the prescribed Acts under which non-profit or co-operative corporations are normally incorporated. Housing Providers must comply with all applicable legislation including their governing legislation, the *Corporations Information Act*, the *HSA*, the *Municipal Freedom of Information and Protection of Privacy Act* and the *Personal Information Protection and Electronic Documents Act*.

Corporate Filing

The *Corporations Information Act* requires that a “Notice of Change” be filed with the Ministry of Government Services within 15 days of a change in directors/officers or a change in their home address. The Housing Provider must ensure that the corporate status is active, the member/director list is current and all corporate reporting is up-to-date.

Criterion	Y	N	N/A	Comments
The organization has a documented system for the nomination, selection and election of Board of Directors, which is clear and transparent.	Y			A Governance Committee is currently established. As per the terms of reference, part of the role of the Committee is to recruit new members.

Criterion	Y	N	N/A	Comments
All positions on the Board are filled.	Y			As per the organizational by-law (by-law #8) the current Board composition should be the ex-officio (Mayor of Kitchener) 3 City Councillors and 6 Community Members. The Board currently consists of the ex-officio, only 2 City Councillors and 8 Community Board Members.
The organization has a succession plan for the Board. <i>HSA, s 69 (5), O. Reg. 367/11 s 87</i>		N		As per the terms of reference of the Governance Committee, succession planning is part of their role. There is no formal, documented plan, however, the Committee has continually recruited new members to the Board.
The organization has processes to endeavour that the Board of Directors is composed of members who have a complementary mix of knowledge, skills and experience.	Y			The Governance committee ensures that when recruiting new members that their knowledge/experience will contribute to the organizations need.
The organization has an effective orientation and training process for Board members. Directors receive board training on a regular basis and a training plan is in place. <i>HSA, 69 (5), O. Reg. 367/11 s 87,</i>		N		Currently the General Manager is working to provide the Governance Committee/Board with information regarding orientation of new members and regular training so the Board may adopt a more formal plan.
A list of current directors was provided by the Corporation and reviewed. The list of directors should match the last Corporate Search that was undertaken.	Y			The current list of the Board of Directors does match the last Corporate search undertaken by the Region of Waterloo on September 24, 2018.
The group has been filing the appropriate "Notice of Change" forms with the Ministry of Government Services. <i>Corporations Information Act (CIA), s 4</i>	Y			Most recent Notice of Change form submitted by KHI on May 24, 2018 was provided.
The Board of Directors has a process to evaluate its performance.		N		At this time, the Board does not have a process to evaluate its performance. However, the Board does review how their actions reflect on the overall strategic plan they set.

1.2 Roles and Responsibilities

Criterion	Y	N	N/A	Comments
The organization has and uses documentation that clearly establishes:				
<ul style="list-style-type: none"> Its vision, values, mission and goals 	Y			Evidenced in the Letters Patent, Organizational By-Law and Strategic Plan
<ul style="list-style-type: none"> Roles, responsibilities of the Board of Directors 	Y			As outlined in the Organization By-law
<ul style="list-style-type: none"> Committee's membership and terms of reference 	Y			There are four committees: Growth, Resource, Governance, and Performance Management. All committee's have Terms of References that establish their purpose, scope and compositions.
<ul style="list-style-type: none"> How it conducts its business and makes decisions including the establishment of quorum as set out in the organizations by-laws. All decisions by the Board can only be made if there is quorum. <i>Corporations Act (CA), s 288</i> 	Y			As per the review of the Board minutes, the Board appropriately adheres to the establishment of quorum as set out in the by-laws. Decisions are made only when quorum was present.
<ul style="list-style-type: none"> How it manages the requirements related to the collection, use, disclosure and safeguarding of privacy of personal information. <i>HSA, s 169, O. Reg. 367/11, s 146</i> 	Y			The organization has a comprehensive Privacy and Confidentiality Policy updated in January 2012 and a Compliance with Municipal Freedom of Information Act procedure.
<ul style="list-style-type: none"> How it manages the requirements related to the retention and protection of documents <i>HSA, s 27 (1) (a), O. Reg. 367/11, s 11</i> 	Y			There is a policy on the protection of documents. The retention of documents does not appear to be contained within a specific policy, however, it is assumed that records are kept as per the legislative requirements

Criterion	Y	N	N/A	Comments
<ul style="list-style-type: none"> The Board has a predetermined meeting schedule and an annual calendar of activities that ensures it meets regularly enough to ensure effective oversight and management of the organization. 	Y			The Board currently meets monthly with the exception of the months of July and August.
<ul style="list-style-type: none"> The Board has policies and procedures in place related to code of conduct, confidentiality and privacy. 	Y			The Board has comprehensive confidentiality and privacy policies and procedures. A code of conduct policy/procedure has not yet been adopted.
A minute book is kept as a record of all Board business. CA, s 299	Y			Minutes for 2017 and 2018 were reviewed
Minutes are properly approved and certified by the Board to ensure that decisions made are recorded correctly and appropriate follow-up is taken on action items. CA, s 299	Y			Minutes were properly approved. The certified (signed) copies of the minutes are kept in the minute book.
In-Camera Minutes are recorded and securely stored (referenced in board minutes). CA, s 299		N		In-Camera minutes were not available for review. They are stored off site by the Board Chair.
There is evidence in the minutes that the Board is actively engaged in the direction and oversight of the Corporation and regularly review their operations through board review and approval of the:				
<ul style="list-style-type: none"> Annual operating budget. 	Y			Operating budget for 2017 was approved
<ul style="list-style-type: none"> Audited financial statements. 	Y			Approved at 2018 AGM

Criterion	Y	N	N/A	Comments
<ul style="list-style-type: none"> Monthly/quarterly financial reports. 	Y			Noted in minutes that the Board is to receive quarterly financial reports
<ul style="list-style-type: none"> Arrears report. 	Y			Detailed report not evidenced in packages or minutes. Total arrears amounts are reported to the BoD
<ul style="list-style-type: none"> Vacancy and unit allocation. 	Y			Detailed report not provided however, summary data is provided to the BoD
<ul style="list-style-type: none"> Maintenance report. 	Y			Board does not receive detailed maintenance reports but are part of approvals with larger operational and capital tenders and projects
<ul style="list-style-type: none"> Management reports 	Y			Management reports are provided with each Board package
<ul style="list-style-type: none"> Tenders/contracts. 	Y			Board receives and approves tenders/contracts as per the purchasing policy and guidelines
<ul style="list-style-type: none"> Committee and resident relations reports. 		N		Does not appear that the current Committee's submit reports or keep minutes of their meetings.
<ul style="list-style-type: none"> Service Manager documentation and correspondence. 		N		Unclear as none observed in review of Board packages or discussions noted in minutes.

1.3 Human Resource Management

Criterion	Y	N	N/A	Comments
The Board has established Human Resource policies.	Y			Human Resource policies are in place and were reviewed.
An open and competitive selection process is used to hire employees.	Y			Appears that an open and competitive selection process has been used.
A formal review / evaluation process for employees, performing delegated functions is conducted annually or as needed to ensure compliance.	Y			An Evaluation process is in place and is conducted by the Performance Management Committee

1.4 Property Management Agreement (Contract)

NOTE: Property Management is provided by the sister corporation of Kitchener Housing Inc. (Kitchener Non-Profit Property Management Inc.) . As such there is no contract in place as the KNPPMI was developed to provide property management to KHI and other organizations). Section 1.4 Intentionally left blank.

Criterion	Y	N	N/A	Comments
A copy of the current property management agreement was available for review.			N/A	
An open and competitive process was used to select the current property management firm.			N/A	
The provisions for property management contracts have been included as follows:				
<ul style="list-style-type: none">Does the term exceed three years?			N/A	
<ul style="list-style-type: none">The contract is not renewable.			N/A	
<ul style="list-style-type: none">The contract can be terminated on 60 days written notice for any reason and 30 days written notice for breach of contract.			N/A	
<ul style="list-style-type: none">Specific identification of the nature of the goods and services provided are specifically outlined in the contract.			N/A	
<ul style="list-style-type: none">The contract is non-assignable.			N/A	
<ul style="list-style-type: none">The employees of the property management company have signed Non-Disclosure Agreements, as required by the HPSA, and these are on file.			N/A	

Criterion	Y	N	N/A	Comments
A formal review / evaluation process for property management services, including delegated functions, is conducted annually or as needed to ensure compliance.			N/A	

1.5 Annual General Meetings & Members' Meetings

The Annual General Meeting (AGM) must be held as required under the *Corporations Act* and the *Co-operative Corporations Act* for the purposes of:

- The presentation of the financial statement and auditor's report.
- The appointment of an auditor.
- Election of directors.
- Confirming/rejecting any new by-laws.
- Appointment of officers if Letters Patent/by-laws so provide (otherwise they are appointed by the Board at the first meeting following the AGM).
- (Co-op's only) To give an opportunity to any member to raise any matter relevant to the affairs and business of the co-op.
- The corporation is in "good standing" (keeps records, holds AGMs)

Criterion	Y	N	N/A	Comments
The last AGM was held on <u>April 18, 2018</u> in compliance with the by-laws. CA, s 293 , CCA, s77	Y			AGM was held within 15 months of the preceding AGM (April 19, 2017).
The appointment of an auditor was confirmed at the last AGM. CA, s 94	Y			As per minutes, Auditor confirmed at AGM
The audited financial statements were approved by the Board / membership. CA, s 108 or CCA, s 139 (1)	Y			As per minutes, audited financial statements were approved
The membership elects directors as per their Articles of Incorporation and by-laws. CA, s 289	Y			Currently the current Board composition does not match the organizational by-law. The city of Kitchener must approve any member to serve on the Board of Directors.
Minutes of previous members' meeting are	Y			Minutes for the previous AGM were approved. Certified copies

approved by the membership, certified and stored.				were not viewed but GM indicates they are kept and minutes are signed off by two Board members.
Members receive the meeting notice, agenda and relevant information prior to meetings as required by the by-Laws. By-laws	Y			By-laws indicate only two(2) days notice is required
The corporation maintains records of minutes, registers, books and accounting and holds annual general meetings. CA, s 293,294, 299-305, CCA, s 77, 78, 113-122	Y			As evidenced by the 2017 and 2018 AGM minutes, the required records are maintained.

1.6 Conflict of Interest

Conflict of interest provisions apply to any director, officer, agent or employee of a Housing Provider. A conflict may exist if any of the above people:

Have business or personal interests that are in conflict with the interests of the Housing Provider.

Personally receives or have a relative or business associate who receives a gain, benefit, advantage or privilege, directly or indirectly.

Criterion	Y	N	N/A	Comments
The Board approved Conflict of Interest policy/by-law is in place. O. Reg. 367/11, s 100	Y			Conflict of Interest Policy was last reviewed in 2012.
Records of conflict of interest and their resolutions are available for review by Service Manager(s) staff.			N/A	There have been no conflicts of interest that required resolution
Conflict of interest declarations are made at the beginning of each board meeting.	Y			In review of the meeting minutes and agenda's, Conflict of Interest declarations are requested at the beginning of each meeting.
Board minutes verify that when a conflict of interest is declared, the director/staff person excuses themselves from the meeting or portion(s) of the meeting and withdraw from the discussions and abstain			N/A	As per meeting minutes reviewed, no evidence of conflict of interest being declared.

Criterion	Y	N	N/A	Comments
from voting.				
The Housing Provider is in compliance with their by-laws or articles of Incorporation relating to remuneration of board members. <i>O. Reg. 367/11, s. 100</i>	Y			Board members are not remunerated except for approved expenses/costs related to conducting the business of the organization.
The administrator/property manager confirmed there were no known conflicts of interest at the time of this review.	Y			As per the General Manager, there are no known conflict of interests at this time.

1.7 Standard Reference Material Available

Criterion	Y	N	N/A	Comments
The review revealed that the following documents are available for reference:				
• The Corporation's Incorporation documents.	Y			Reviewed.
• The Corporation's by-laws.	Y			Reviewed.
• The Housing Provider Service Agreement has been fully executed and is on file.	Y			Signed and on file. Delegates the responsibility of tenant placement and RGI administration to KHI by the Region of Waterloo.
• Service Manager(s) Service Manager Directives, Guidelines & Bulletins.	Y			Included in the Administration Guide that was available on site.
• A copy of the <i>HSA</i> and up-to-date Regulations.	Y			
• The <i>Residential Tenancies Act (RTA)</i> or the <i>Co-operative Corporations Act</i> .	Y			
• The Region of Waterloo	Y			A copy of the Region of Waterloo's Administration Guide was

Administration Guide. (January 2013)				available.
<ul style="list-style-type: none"> Service Manager(s)'s Guide to the Annual Information Return (AIR) March 2014 	Y			Finance staff have access to the guide.

Section 1.0 Governance and Organizational Management - Summary

DIRECTIONS

The Board is directed to ensure that:

1. The by-laws and Board composition match.
2. In-Camera minutes should be stored at a location other than a Board members home.
3. Committee's of the Board submit written reports to the Board and keep minutes of any meetings.
4. A formalized succession plan for the Board is developed
5. The appropriate registrations on title be completed as per the HSA sections 161 and 162 for all KHI properties.

RECOMMENDATIONS

It is recommended that the Board:

1. Establish an evaluation process and plan that assists the Board in determining if they are meeting the vision, goals and objectives of the organization and meeting their strategic plan.
2. Develop an orientation and training plan for new members
2. Establish a document retention policy that outlines how long documents/files need to be retained and how documents and files are to be secured and stored.

2.0 Administrative Systems

All Housing Providers are required to provide annual reports regarding the financial position of the corporation to the Service Manager. The *Housing Services Act, 2011 (HSA)* requires that Housing Providers submit financial information, including audited financial statements for the fiscal year; information required to calculate subsidy and statistical information on households.

Fiscal responsibility is not limited to providing reports or to maintaining an operating surplus. Internal controls must be in place to safeguard the financial integrity of the corporation. Properties must be appropriately maintained while remaining within budget. Board awareness and engagement in the corporation's operations is necessary to ensure that responsible management occurs throughout the entire year.

2.1 Financial Administration Systems

2.1.1 Subsidy Estimate & Operating Budget

Criterion	Y	N	N/A	Comment
The provider submitted the board-approved subsidy estimate and required supporting documentation to the Service Manager 90 days prior to the beginning of their fiscal year.	Y			The 2019 ASE was submitted to the BOD for approval and provided to the Region by the required due date.
The submitted subsidy estimates for the fiscal year ended <u>2019</u> was based on reasonable estimates of RGI units and occupancy charges.	Y			The estimates of 2019 RGI units were reasonable and based on the current rent roll. The market rents agreed to the proposed 2019 Market Rent schedule submitted to the BOD.
The housing provider submitted an operating budget based on reasonable projections of annual revenues and operating costs.	Y			The projection of annual revenue and operating costs were reasonable.
The housing provider has followed a timely process for the preparation and approval of its annual operating budget.	Y			

2.1.2 Annual Report

Subsection 80(2) of the *HSA* requires that a housing provider submit an annual report to the Service Manager, in accordance with the prescribed requirements within 5 months of their fiscal year-end. Furthermore, section 81 of the *HSA* requires housing providers to provide reports, documents, and information as the Service Manager's requests. The Service Manager(s) details the required submission in their annual reporting request (email) including the annual report submission checklist.

Criterion	Y	N	N/A	Comments
The housing provider submitted a complete annual report submission to the Service Manager within 5 months of their fiscal year-end.	Y			A complete annual reporting package for December 2017 was received by the Region by the due date.
The Corporation has correctly completed the Management Representation Report (AIR page A2) and resolved all issues identified.	Y			
Financial Position: Based on the most recent annual report as of December 31, 2017 the housing provider had a yearly surplus of \$58,165 and an accumulated surplus of \$3,246,185 for the provincial programs.				Overall, the accumulate surplus per the provincial is to be \$3,246,185. These funds are to be used for the purposes of maintaining the capital assets and operating viability for this program. In reviewing the financial statements for 2017 it appears that \$1,958,016 from the provincial surplus has been used to assist with affordable housing program (re: 430 Connaught). The use of the funds from the provincial programs receive ongoing funding from the Region and is a concern. These funds are to be re-paid for use by the provincial programs so that it is not impacting that tax payers in the Region.

2.1.3 Auditor's Management Letter Recommendations

Criterion	Y	N	N/A	Comments
The auditor has provided an unqualified opinion for the fiscal year ended December 31, 2017.	Y			
The auditor issued a management letter outlining serious deficiencies in internal controls for December 31, 2017.		N		Note to management. The management letter from the corporation auditor's was difficult to understand and determine if there were key issues uncovered.
The Corporation has addressed all of these internal control issues in a timely manner.	Y			

2.1.4 Financial Reports

Criterion	Y	N	N/A	Comments
Financial reports are provided to the Board on at least a <u>quarterly</u> basis.		N		<p>During our review it was noted that the reports provided to the board of directors were Inconsistent. The financial package to the board should consist of the following reports:</p> <ul style="list-style-type: none"> • Vacancy loss • Arrears report • Statement of Operations • Statement of Financial Position (Balance Sheet) and Capital Reserves <p>It was noted in the board minutes that financial reports were going to be provided on a quarterly basis.</p>
The following items are included in the financial report provided to the Board:				
<ul style="list-style-type: none"> • Accurate year-to-date (YTD) tenant/member rental revenues and non-rental revenues. 	Y			

• Overpaid/underpaid RGI subsidy has been accounted for separately in the interim financial reports.	Y			
• Accurate YTD operating costs.	Y			
• In addition to the YTD results, also include annual budget, budget-to-date, previous fiscal year actuals, and/or projected to fiscal-year-end.	Y			
• Accurate year-to-date balance sheet including assets (with up-to-date cash position), liabilities, net assets, and replacement reserve balance.		N		As noted above the balance sheet is currently not provided to the board of directors. It is required that this report be included in the quarterly financial reporting package.
• Material variances from the approved annual budget are noted in the report or the Board minutes.	Y			
• Report includes actions being taken to rectify operating deficits (current YTD operating deficit, or accumulated deficit).	Y			

2.1.5 Cash Flow Management

Criterion	Y	N	N/A	Comments
Most recent financial position as of August 31, 2018 is \$10,107,871. Bank balance(s) is \$1,492,270. Tenant receivables \$122,071, Payables \$441,707				The trial balance as of August 31, 2018 indicates an amount payable of \$146,289.90 to the Region. Please provide a detailed accounting of this amount owing to the Region as soon as possible.
The Corporation has a process for monitoring cash flow.	Y			

The Corporation has adequate cash flow to ensure its on-going financial viability.		N		As noted above, the use of \$1,958,016 of provincial surplus funds for the affordable housing project (re: 430 Connaught) is a concern to the Region that there are financial challenges to the affordable housing programs and that this may impact the financial resources that are to be available for the provincial reform program.
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2.1.6 Arrears & Accounts Receivable

Tenant/member arrears and market vacancies may cause difficulties for cash flow.

Criterion	Y	N	N/A	Comments
Arrears report being prepared monthly for management.	Y			It is required that a monthly process be used to balance the accounts receivable (AR) sub-ledger to the AR control account. Management is to provide confirmation that this issue has been addressed and a process is in place.
<ul style="list-style-type: none"> Includes information on the number of tenants in arrears and actions being taken to collect amounts owing. If a listing of tenants is provided to management, the names are replaced with identifiers. 	Y			
<ul style="list-style-type: none"> Report includes aging schedule that reflects arrears (i.e. over 30 days, 60 days, 90+ days). 	Y			
Bad debt write-off amount for latest fiscal year is less than benchmark level.	Y			
Processes are in place that encourages timely rent payments, such as reminders and fines.	Y			
Legal action is being taken or a repayment plan is in place for all arrears outstanding for more than one month.	Y			

Action is taken to collect all former tenant/member arrears including those written off.	Y			
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2.1.7 Vacancies & Unit Activity Reporting

Criterion	Y	N	N/A	Comments
Vacancy loss and unit turnover report provided to the Board on a regular (i.e. monthly) basis. The report includes such information as: type of vacancy, date vacated, date of notice, work required, and other.		N		<p>A high level summary is provided to the board advising of vacant units (i.e. tenant placement activity report dated October 18, 2017). In reviewing the 2018 board minutes, it appears that there were no vacancy reports to the board.</p> <p>It is required that a vacancy loss report detailing both vacant units and financial cost be provided to the board on a quarterly basis. Additional details such the type of vacancy loss i.e. market and rent geared-to-income (RGI) and by program will assist staff meeting the RGI targets as required for the provincial programs.</p>
The Housing Provider has a marketing plan, waitlist, unit inspections upon receiving notice, turnover plans, and other strategies to minimize market vacancy loss.	Y			
Market vacancy loss reported in the 2017 audited financial statements was \$36,729. This represented 11 months of vacancy (vacancy loss of 0.09%). Market vacancies are filled in a timely manner.	Y			
RGI vacancies totalled 40 months for the period of January 2017 to December 2017. (Vacancy loss of 0.08%) RGI vacancies are filled in a timely manner (less than 2 months).	Y			
Are strategies in place to survey or interview vacating tenants to determine reasons for their departure?		N		Best business practice should include feedback from exiting tenants. This information will assist in developing program improvements.

Criterion	Y	N	N/A	Comments
RGI households paying geared-to-income rent equivalent to market were reported as RGI households on page “Unit Activity Data Report (UAD)” of the AIR.		N		A number of RGI units were classified as market on the 2017 unit activity data report of the Annual Information Return (AIR). This created a discrepancy of \$90,884 (page S5A2, line 672a). Adjustments have been made to correct this on the finalized 2017 AIR from the Region. Controls/reconciliation processes are to be put in place to eliminate this discrepancy.
The “Unit Activity Data Report (UAD)” is consistent with rent rolls.	Y			See comment above.
The rent rolls clearly indicate RGI or market status, unit types, rent paid, type of vacancy, and clearly outlines required information to complete page A7.	Y			

2.1.8 Revenues

Criterion	Y	N	N/A	Comments
Market rents are currently being charged at or above benchmark rents.	Y			
Market rents are reviewed on an annual basis and have been appropriately increased over the last 5 years.	Y			
Non-rental revenues (i.e. parking, laundry etc.) are reviewed annually and have not decreased.	Y			

2.1.9 Internal Controls for Revenues include:

Criterion	Y	N	N/A	Comments
Electronic fund transfers (EFTs) are strongly encouraged for rent deposits.	Y			
Cash payments by members are discouraged whenever possible.	Y			
There are adequate internal controls in place over the collection and recording of non-rental cash revenue (laundry).	Y			
HST filings are completed at least annually. Housing provider uses appropriate designation of municipal and/or qualifying non-profit organisation.	Y			

2.1.10 Internal controls for disbursements include:

Criterion	Y	N	N/A	Comments
Written purchasing/spending policies/bylaws and tendering procedures are in place and followed.		N		A policy exists however, this should be updated since the last updated in 2005.
Board approved delegated signing authorities are in place.	Y			
Invoices/documentation are reviewed and approved by a delegate (normally the Treasurer) and cheques (pre-numbered) are signed by two delegated signing officers.	Y			
Appropriate payroll remittances are being made to CRA.			N/A	Not applicable.
Where on-line banking is used and there are sufficient controls over access and payments.	Y			

A petty cash fund (in the amount of \$500) for the reimbursement of minor out of pocket expenses are kept in a secure place and is reimbursed by duly supported receipts on a regular basis.	Y			
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2.1.11 Bank Statement Review

Criterion	Y	N	N/A	Comments
Bank statements are reconciled monthly.	Y			
Reconciliations are reviewed by at least one person other than the preparer (preferably a Board member or delegate).		N		It was noted that the bank reconciliations are being prepared and finalized by the Manager of Accounting without review from a senior staff. It is required that the General Manager review and sign the monthly bank reconciliations.

2.1.12 Replacement Reserve Fund

Replacement Reserve funds are intended to be used to maintain the integrity of the shelter structure through major replacement of capital items (e.g. roofs, windows, boilers, appliances etc.). Service Manager Directive 03-14 requires that capital reserves be invested through the Housing Services Corporation and its appointed agent, and *HSA, 2011 – O. Reg. 367/11, s 98(5)* requires the transfer to be made within 5 months after your fiscal year end.

Criterion	Y	N	N/A	Comments
The capital reserve fund account has been correctly established and maintained.	Y			
The capital reserve fund is fully funded as required and the funds are invested through the SHSC Financial (Encasa Financial).	Y			
Capital Replacement funds are being expended properly for eligible expenditures	Y			

Criterion	Y	N	N/A	Comments
The funds have been invested in order to yield appropriate rates of return based on short-term and long-term capital needs.	Y			

2.2 Information Management

Criterion	Y	N	N/A	Comments
Efficient methods and processes for collating and analysing the information collected to be used in reporting and monitoring the state of the organization and for making decisions.	Y			
A policy and system to ensure personal information is protected in adherence to privacy legislation.	Y			
Data bases are adequate and well maintained (Appropriate security and access protocols, files are systematically backed up, security measures ensure confidentiality within the system etc)	Y			

Section 2.0 Administrative Systems - Summary

DIRECTIONS

The Board is directed to ensure that:

- 1) \$1,958,016 of provincial surplus funds used for the affordable housing project funds are to be re-paid for use by the provincial programs since funding for these programs are from the regional taxpayers.
- 2) Quarterly reports as listed in 2.1.4/2.1.7 are to be received from KHI's property management company (KNPPMI).

- 3) Please provide detailed information regarding the amount due to the Region of \$146,289.90 as per the trial balance as of August 31, 2018. The trial balance indicates an amount payable of \$146,289.90 to the Region.
- 4) It is required that a monthly process be used to balance accounts receivable (AR) sub-ledger to the AR control account. Management is to provide confirmation that this issue has been addressed and a process is in place.
- 5) A number of RGI units were classified as market on the 2017 unit activity data report of the Annual Information Return (AIR). This created a discrepancy of \$90,884 (page S5A2, line 672a). Adjustments have been made to correct this on the finalized 2017 AIR from the Region. Controls/reconciliation processes are to be put in place to eliminate this discrepancy.

RECOMMENDATIONS

It is recommended that the Board:

- 1) Written purchasing/spending policies/bylaws and tendering procedures are in place and followed. A policy exists however, this should be updated since the last updated in 2005.
- 2) It was noted that the bank reconciliations are being prepared and finalized by the Manager of Accounting without review from a senior staff. It is required that the General Manager review and sign the monthly bank reconciliations.
- 3) Ensure that the auditors management letter to the Corporation is easy to understand and clearly indicates if there were any key issues uncovered during the audit.

3.0 Asset Management (Maintenance)

All Housing Providers are required to adhere to all applicable local and provincial codes, regulations and standards related to building site components and systems and to ensure compliance with:

The Housing Services Act, 2011

S.O. 2011 Chapter 6, Schedule 1

Part VI General rules for transferred housing programs and projects

General duty of housing provider

69.(2) To maintain the program housing projects owned by the corporation in a satisfactory state of repair and fit for occupancy

Housing Providers properties must be appropriately maintained while remaining within budget. Board awareness and engagement in the corporation's operations is necessary to ensure that responsible management occurs throughout the entire year.

3.1 General Property Maintenance Observations

NOTE: As inspections of all KHI properties for the Building Condition Audits have recently been completed, on site inspections were not conducted. Section 3.1 intentionally left blank. Section 3.2 was completed.

Site Maintenance

	Satisfactory			Comments
	Yes	No	N/A	
1. Litter pick-up and debris.				
2. Grass, Planting beds, Trees, Hedges, Shrubs.				
3. Walkways, Stairs and railings.				
4. Roadways and parking areas.				

5. Fences and gates (patio, boundary)				
	Satisfactory			Comments
	Yes	No	N/A	
6. Exterior pole mounted lighting				
7. Playground equipment <ul style="list-style-type: none"> • CAN/CSA-Z614 • Annual inspections • Regular maintenance 	Comments			
8. Community Gardens	Comments			
	Satisfactory			Comments
	Yes	No	N/A	
8. Maintenance buildings				
9. Garbage disposal area				
10. Retaining Walls				
11. Other				

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Building Exterior

	Satisfactory			Comments
	Yes	No	N/A	
1. Masonry / Concrete / Cladding (brickwork, blocks, stucco, aluminum/vinyl/wood siding etc.)				
	Satisfactory			Comments
	Yes	No	N/A	
2. Windows and doors				
3. Balconies and railings.				
4. Roofing, eavestroughs, downpipes, fascia and soffits.				
5. Exterior wall mounted fixtures (lighting, exhaust/ intake grilles etc.).				
6. Roof Anchors Current (annual) inspection report posted	Comments			
	Satisfactory			Comments
	Yes	No	N/A	
7. Exterior painting.				
8.Solar <ul style="list-style-type: none"> Photovoltaic Domestic Hot Water 				
8. Other:				

Building Interior

(Common Areas)	Satisfactory			Comments
	Yes	No	N/A	
1. Lobby Area.				
2. Laundry Room(s).				
3. Lounge / Meeting Room				
4. Public Washrooms.				
5. Corridors.				
6. Stairwells.				
7. Service / Maintenance Rooms				
8. Elevator Cab(s). (TSSA / Elevating Devices) <ul style="list-style-type: none"> • Current Licence • Elevator Machine Room (Where accessible) • Maintenance Log Book • Maintenance / Service Contract 	Comments			

<p>9. Mechanical Room(s)(TSSA/ Pressure Vessels / B-149 / Ontario Electrical, Plumbing Code)</p> <ul style="list-style-type: none"> • Heating Boiler(s) • Circulation Pump(s) • Air Make Up Unit(s) • Controls /BAS (Building Automation System) • Domestic Hot Water Boilers • Domestic Hot Water Storage Tank(s) • Domestic Water Booster Pumps /Panels • Maintenance/ Service Contract(s) 	Comments			
	Satisfactory			Comments
	Yes	No	N/A	
<p>10. Garbage Disposal</p> <ul style="list-style-type: none"> • Compactor • Bins • Sanitation • Recycling 				
<p>11. Electrical Room(s) (Ontario Electrical Code)</p> <ul style="list-style-type: none"> • Panels /Meters • ESA Log Book • Maintenance /Service Contract • Vaults 	Comments			
	Comments			

12. Fire Protection / Suppression System (Ontario Fire Code) <ul style="list-style-type: none"> • Annunciation Panel(s) • Audible devices • Fire Plans • Smoke Detectors • Sprinkler System /Pumps • Log Book • Hose cabinets • Extinguishers • Maintenance / Service Contract 				
13. Accessibility features (Ontario Building Code) <ul style="list-style-type: none"> • Ramps • Doors • Automatic Door Openers • Fire alarm Audible / Strobe Lights • Washrooms • Maintenance / Service Contract 	Comments			
	Satisfactory			Comments
	Yes	No	N/A	
14. Other – Office.				
15. Emergency Power Supply <ul style="list-style-type: none"> • Generator • Diesel Storage / Day Tank(s) Maintenance /Service Contract	Comments			

Vacant/Occupied Units

(Where available)	Satisfactory			Condition/Comments
	Yes	No	N/A	
1. Occupied Unit Unit Number:				
4. Unoccupied Unit Unit Number:				

3.2 Maintenance and Repairs

	Satisfactory			Comments
	Yes	No	NA	
Documentation present to support a timely, competent response to maintenance needs.	Y			Reviewed 2017 and 2018 Work Order requests and completion.
Response to provincial and municipal work orders	Y			As per Asset/Maintenance staff, no current municipal or provincial work orders outstanding.
Maintenance /repair program in place for building components other than service contracts with external companies.	Y			As per work order report, items are designated as part of a preventative maintenance plan

3.3 Capital Asset Planning and Implementation

	Satisfactory			Comments
	Yes	No	N/A	
Capital reserve fund balance appears sufficient to meet short-	Y			

term needs for the next 5 years.				
Capital reserve fund balance appears sufficient to meet long-term needs beyond 10 years.			N/A	Did not assess.
Current capital plan in place.	Y			Board will be approving new capital plan (5 year) at the next Board meeting.
	Satisfactory			Comments
	Yes	No	N/A	
Capital reserve fund changes are being updated in asset planner in a timely manner.	Y			Staff and Board review and update the capital plan each year.

Additional comments or Observations
Elevator licences documentation were in evidence. Verification of appropriate roof anchor inspections also provided. As per Maintenance staff, playground inspections are not completed on their own but in some cases are inspected as part of the yearly insurance updates.

Section 3.0 Asset Management - Summary

DIRECTIONS

The Board is directed to ensure that:

1. Playground inspections are undertaken as appropriate each year.

RECOMMENDATIONS

It is recommended that the Board:

No current recommendations at this time.

4.0 Resident Selection and Ongoing Household Administration

4.1 Resident Selection

Ontario Regulation 367/11 s. 47 of the *HSA* requires Housing Providers to participate in the centralized wait list (CWL) system for selection of all RGI households. In the Service Manager(s), the Social Housing Registry of Ottawa manages the CWL on behalf of the Service Manager(s). Applicants for RGI communicate with the Registry directly. The Registry is responsible for ensuring that accurate and up-to-date information is available to all Housing Providers.

The CWL is maintained in an electronic format. Housing Providers are currently able to access their wait list through Lotus Notes. To ensure that the household being offered RGI accommodation is, in fact, still at the top of the Housing Provider's wait list, Housing Providers must update their wait lists during the rent-up process. Under the terms of their HPSA, Housing Providers are responsible for selection in accordance with the provincial and Service Manager priority rules.

Criterion	Y	N	N/A	Comments
All RGI selections are in compliance with regulations and Service Manager (SM) Directives. <i>O. Reg. 367/11, s 45-51</i>	Y			
Records of RGI applicant selections are available for review (including contacts and applicant refusals) <i>O. Reg. 367/11, s 102</i>				
A copy of the Centralized Wait List (CWL) used to offer RGI subsidy is available. <i>HSA, s 46, O. Reg. 367/11, s 47</i>	Y			Wait list is obtained and followed upon a vacancy being reported.
On-line access to the waiting list is used (Lotus Notes)	Y			
Special priority applicants are given first consideration when there is a vacancy <i>HSA, s 48, SM Directive 10-01</i>	Y			
In-Situ market to RGI requirements are applied (<i>Housed min. 1 year, active on CWL, decrease in income, met occupancy standards</i>). <i>HSA, s 48,</i>	Y			Reviewed one Market to RGI file. CHAC approval and proper process appears to have been followed.
Over-housed priority is applied per SM Directive. <i>HSA, s 48,</i>	Y			Files reviewed indicate that households are appropriately deemed overhoused and process required is followed.

Criterion	Y	N	N/A	Comments
Local priorities are applied per SM Directive HSA, s 48,	Y			
Past tenant/member arrears are provided to the CWL administrative office immediately for inclusion in the social housing arrears database. Details may follow related to final arrears amounts.	Y			A review of arrears database indicates past tenant/member arrears are appropriately reported to the Coordinated Access Centre.

Criterion	Y	N	N/A	Comments
Refusal to offer unit				
Records of refusals to offer are available for review O. Reg. 367/11, s 50	Y			Currently only one refusal has been made in 2018.
Refusals to offer are in accordance with reasons outlined in legislation O. Reg. 367/11, s 102 (4)	Y			Refusal reviewed was for income resulted in a Market rent.
Letters have been sent to all households where it has been decided to refuse to offer the applicant a unit and Community Housing Access Centre is notified O. Reg., s 61	Y			Copy of refusal letter attached to copy of CHAC reporting form submitted.
An internal review process is in place to review the decision to refuse to make an offer O. Reg. 367/11, 156,	Y			An internal review process is in place and outlined in the refusal letter. One prior refusal did submit a review which resulted in the Board overturning the decision to refuse.

4.2 Ongoing Administration of Resident files

4.2.1 Rent-Geared-to-Income (RGI) Assistance

Ontario Regulation 298/01 s. 52(1) of the HSA requires the Service Manager to review eligibility for RGI at least once annually. The Service Manager, has entered into a Service Agreement, their HPSA, with Housing Providers to perform all RGI calculations. Housing Providers are required to conduct RGI and eligibility reviews (*O. Reg. 367/11 s. 59 (1) (a)*) at least once per year or when new information is provided. Households must meet all eligibility requirements. Proper notice of all rent/housing charge changes must be given to households, including information on the households' right to a review (appeal) of a decision with the Internal Review Panel.

4.2.2 Tenant/Member File Review

The tools utilized for review were the Service Manager(s) RGI Guide, the Housing Services Branch RGI Review Checklist and the Special Needs Housing File Review Checklist.

Criterion	Y	N	N/A	Comments
18 Resident files were reviewed.				
Records kept for at least 7 years. <i>O. Reg. 367/11, s 102</i>	Y			
CWL/Registry application files are in tenant/member files.		N		Applications are not always in current tenant files. KHI Staff indicate that some have not been sent by CHAC upon housing applicants.
Eligibility is confirmed for special needs units. <i>O. Reg. 367/11, s51</i>	Y			Evidence that applicants who indicate need for accessible units are asked to provide necessary information to support need
There is an internal transfer policy.	Y			Internal Transfer Policy was reviewed and meets requirements
An internal transfer policy/procedure is in place related to over-housed households.	Y			The internal transfer policy specifically details procedure to follow for overhoused households
Occupancy standards are being met. <i>SHRA, O. Reg. 298/01, s 26-34</i>	Y			Evidence in files that household composition is reviewed annually and when possible changes are reported to the housing provider.
Overhoused households are administered in compliance with regulations.	Y			Process for addressing overhoused households is followed as per policies and regulations.
Eligibility for RGI is properly assessed. <i>HSA, s 45</i>	Y			
Verification documents are completed and meet the requirements as listed in the 2013 Service Manager(s) RGI Guide and legislation <i>O. Reg. 367/11, s 29</i>		N		Some documentation was not pursued in instances where a household needed to verify they had no income.
A Release and Consent form is on file and is signed annually by all household members	Y			Annual Review form does contain a release and consent statement that is to be signed and submitted each year by all

Criterion	Y	N	N/A	Comments
age 16 and over				RGI households.
Household composition is reviewed as required. <i>O. Reg. 298/01, s 52, 53</i>	Y			
Household income is reviewed, and is accurately determined, as per legislation. <i>O. Reg. 298/01, s 52, 53</i>		N		Household income is reviewed, however, appears that households not being directed to pursue income where applicable
Eligible sources of income have been requested to be pursued (pursuit of income). <i>See above</i>		N		Pursuit of income not being enforced. Some households report no income or income below threshold but are not being requested to pursue (OW, EI, OAS, Child support)
Rent calculations are accurate in accordance with the Region of Waterloo RGI Guide and legislation.		N		Some calculations are not correct as they do not have all the necessary income information in order to establish an accurate rent.
Households have received proper notice of rent/housing charge increases, which are <u>signed</u> and dated by the housing provider. <i>(HSA, O.Reg. 298/01 s. 52 and 53)</i>	Y			Letters are signed and dated by the HP however ,content is ambiguous as to the reasons why a rent has changed.
The rent/housing charges agree with the income/rent register/rent roll		N		There were some discrepancies between the rent noted in the file and what was evident on the rent roll.
Appropriate follow-up where household changes have not been reported within the required timeframe.	Y			Appropriate requests for information and attempt to determine time of changes not reported are noted in the files reviewed.
The Housing Provider has provided a clear and documented rationale to reinstate RGI subsidy in a new notice of decision after an original notice of decision to remove eligibility has been issued. The provider has retained communication demonstrating it consulted with the Service Manager prior to reinstating the subsidy, where appropriate.		N		No evidence in letters that the reinstatement of subsidy was undertaken or the reasons for the reinstatement.
Information on a household's right to request a review of a decision has been provided to	Y			Letters contain the information on the Community Housing Review System

Criterion	Y	N	N/A	Comments
households.				
Once an arrear or a subsidy overpayment for a household is determined, the Housing Provider immediately initiates a process to recover funds, including either full repayment or a repayment plan.	Y			There is a process established in which timelines are set out for the collection of delinquent accounts and arrears payments.
Tenant/ member files are organized and complete	Y			Tenant files were very well organized.

4.2.3 Lease and Occupancy Agreements

It is a requirement under [section 96 and 97 of O. Reg 367/11 of the HSA](#) that Housing Providers enter into a written lease or occupancy agreement with each household prior to the household beginning to receive RGI assistance.

Criterion	Y	N	N/A	Comments
The lease/occupancy agreement for tenants/members receiving RGI subsidy assistance contains the following required clauses:				
<ul style="list-style-type: none"> Specifies the RGI rent/housing charge payable by the household for one month. 	Y			
<ul style="list-style-type: none"> Specifies the market rent/housing charge. 	Y			
<ul style="list-style-type: none"> Restricts occupancy. 	Y			
<ul style="list-style-type: none"> Identifies additional charges allowable under the <i>RTA</i> or the <i>HSA</i>. 	Y			
<ul style="list-style-type: none"> Specifies the tenancy/occupancy as non-assignable. 	Y			
<ul style="list-style-type: none"> Clearly states guest/visitor policy rules. 	Y			

Criterion	Y	N	N/A	Comments
<ul style="list-style-type: none"> Leases/occupancy agreements are properly completed, signed and witnessed. 	Y			
<ul style="list-style-type: none"> Initial leases/occupancy agreements are signed and executed and are amended appropriately every time there is a change in household composition. 	Y			
<ul style="list-style-type: none"> The initial fee for membership (co-operatives only) 			N/A	
<ul style="list-style-type: none"> New leases/occupancy agreements are signed and executed when households move to another unit within the housing provider. 	Y			

Section 4.0 Resident Selection and Ongoing Household Administration - Summary

DIRECTIONS

The Board is directed to ensure that:

1. All tenants who identify they have no income or income below the non-benefit income threshold must pursue income as appropriate from Ontario Works, Employment Insurance, Old Age Security or Child Support.

RECOMMENDATIONS

It is recommended that the Board:

1. The reason's for any rent change due to a review either in or outside of the annual review process should clearly indicate the reason for the change and not provide various options that might be the reason for the change. (see current notice of decision letter).

5.0 Resident Participation, Rights and Responsibilities – Best Practices

Drawing on the *Framework for Social Housing Standards (FSHS)*, this section highlights best business practices of the Housing Provider as it relates: to resident empowerment and participation; participation in resident-run co-operatives, complaints and review processes.

The purpose is to acquire a better understanding of the extent to which the corporation involves/engages its residents across a range of interests and concerns that affect the quality of residential life. The distinction is made between tenants in their role as residents within a Non-Profit or members residing within a Co-operative Housing Corporation and their role as active participants within a Housing Co-operative.

Standard 6.2 entitled Resident Empowerment and Participation and 6.3 Participation in Housing Co-operatives (applicable to Co-operatives only) covers the involvement of residents in the organization's decision-making process. This standard takes the perspective that organizations are encouraged to incorporate processes to ensure residents' views can be heard and accounted for.

Standard 6.5 entitled Complaints and Reviews covers the right of an applicant or a resident household, or people or agencies in the community to voice concerns about issues they have with the organization or the service received.

Criterion	Comments
<p><u>Resident Empowerment and Participation</u>: Residents contribute to and participate in the decision-making of the organization</p> <ul style="list-style-type: none">• The organization has written documents that reflect a commitment to enable resident participation.• Resident participation might be sought in a number of different ways.• The organization has processes in place that regularly seek feedback from residents.• The organization has processes that allow them to consult with residents who will be directly affected by a decision before making major changes.• The organization provides opportunities for residents to participate in its decision-making processes.• The organization has identified and addressed	<p>Although there is no formal written documentation/policies that apply to resident involvement and participation, KHI is determining a consultation processes with residents. For example:</p> <ul style="list-style-type: none">• KHI has indicated that they will be undertaking community feedback regarding playgrounds and the type of equipment the families need or if playgrounds• Encourage tenant associations to be developed <p>Further plans for resident participation will be reviewed as opportunities come forward</p>

Criterion	Comments
<p>barriers that might limit residents' participation in the organization.</p> <ul style="list-style-type: none"> • The organization monitors the level of resident participation. 	
<p><u>Complaints and reviews</u>: The organization has established a system of addressing complaints and requests for review in a prompt and fair manner.</p> <ul style="list-style-type: none"> • The organization has a documented system for complaints and reviews that make it easy for individuals to lodge a complaint or request a review. This ensures that individuals are dealt with promptly and fairly; and have access to a body, not involved in the original decision, if the matter cannot be resolved to the person's satisfaction. • The organization has processes in place to ensure people are given easy access to simple written information about how to lodge a complaint or request a review. • The organization has a way of informing residents of how to access advocacy organizations or individual advocates to assist them resolve a complaint or request a review. • Any member of the organization likely to receive complaints or handle reviews is trained in how to deal with them. • The organization regularly monitors the effectiveness of the complaints and review processes. 	<p>KHI does have a documented review policy that allows both applicants and tenants to submit a complaint or request for review. The requests for reviews are referred to the Board as appropriate.</p>

Section 5.0 Resident Participation, Rights and Responsibilities - Summary

RECOMMENDATIONS

It is recommended that the Board:

- 1) **Develop opportunities to encourage resident involvement and participation within KHI communities**
- 2) **Establish written policies that outline when resident input will be sought such as surveys regarding their current tenancy experience, future items they may wish to participate in or capital work idea's such as standard replacement items like flooring, countertops etc.**
- 3) **Exiting Tenant surveys to assist KHI in identifying any ways they may encourage tenancy tenure.**

Disclaimer

The Service Manager(s) makes no representations as to the accuracy, timeliness or completeness of the information listed in this report. The Service Manager(s), its officers, employees, agents, successors and assigns are not liable for any injury or damage (including death), property loss, damage, costs or expenses sustained by or claims or actions against Choose an item., its directors, officers, employees, independent contractors, residents, members or any other third party, which may arise directly or indirectly from oral or written statements made by the Service Manager(s), its officers, employees, agents, successors or assigns as a result of the site visit conducted by the Service Manager(s). This report and the information contained herein are solely for the use of the Service Manager(s) and the Housing Provider and may not be used or relied upon by any other person either in connection with this or any other matter or for any other purpose. Although the Service Manager(s) goes to great lengths to make sure the information is accurate and useful, we recommend that you consult a lawyer if you want professional assurance that the information and your interpretation of it is appropriate for your particular corporation.

Choose an item. is responsible for implementing and ensuring compliance with any legislative and contractual requirements.

20 Questions Directors of Not-for-Profit Organizations Should Ask About Director's Duties

Jane Burke-Robertson and Nicole D'Aoust



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Preface

The Not-for-Profit Governance Committee of Chartered Professional Accountants of Canada (CPA Canada) has developed this second edition of our guide to help directors of not-for-profit organizations (NFPs) understand and fulfill their director's duties.

Directors of not-for-profit organizations have various duties and responsibilities, the most fundamental of which are the fiduciary duty, or the duty of loyalty, and the duty of care. Successful fulfillment of these duties is critical both in terms of the wellbeing of the organization and in order to protect directors from liability. Not-for-profit organizations are very diverse and range from small all-volunteer groups to large, sophisticated enterprises. This publication will focus on the duties of directors of organizations in the corporate form, both those that are registered charities and those that are not. The law on directors' duties is complex, and this document is a general overview of the subject. Directors should seek expert advice on particular issues as they arise.

The Not-for-Profit Governance Committee acknowledges and thanks the members of the Corporate Oversight and Governance Board for their invaluable advice, and the CPA Canada staff who provided support to this project. A special thank-you is extended to the late Jane Burke-Robertson for authoring the first edition of this publication, and to Nicole D'Aoust for her work in updating that publication to create this second edition.

Bobbi-Jean White, CPA, CA
Chair, Not-for-Profit Governance Committee

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Introduction

Directors of not-for-profit organizations have various duties and responsibilities. The most fundamental of these is the duty of care and the duty of loyalty, which is also known as the “fiduciary duty.”

Directors are sometimes referred to as the “directing mind” of the organization. Since the organization itself is in some sense an “artificial” construct, the law and the public look to the directors to ensure the organization remains accountable.

Where do directors’ duties and responsibilities come from? Some of them are codified in written laws in the form of statutes, while others are not. In Canada’s common-law provinces and territories, much of the applicable body of law on this subject is generated through court decisions. In Quebec, the rules are provided for in statutes, including the *Civil Code of Québec*. While the law varies to some degree across the country, the basic duties of directors are substantially the same. It helps that the Supreme Court of Canada, whose jurisdiction covers all of Canada, has provided guidance on this issue through landmark decisions.

It is important to note that some organizations may not refer to their fiduciaries as “directors.” In such cases, regardless of whether they are referred to as “directors” or another name (for example, the director-like officials may be called “trustees,” “governors,” “administrators,” “board members” or similar), the same basic duties and responsibilities apply to those individuals.

Throughout this publication, the term “not-for-profit organization” (NFP) or “organization” is used as an umbrella term to refer to all the different types of organizational structures available in Canada. This is only not the case where a section explicitly deals with a specific type of organization.

Specifically, not-for-profit organizations may be structured as non-share capital corporations, societies, co-operatives, unincorporated associations or trusts. An organization’s structure is different from its tax status under the *Income Tax Act* (Canada) as either a non-profit organization (NPO), another type of tax-exempt organization, or a registered charity. There are three types of registered charities: charitable organizations, public foundations, and private foundations.

The structure and type of organization with which one is involved has a direct impact on the duties of directors. The discussion that follows will focus on the duties of directors of NFPs that are corporations. While it will refer to some potential

For more information see
CPA Canada’s publication
[Governance for Not-for-Profit
Organizations: Questions to Ask](#)

liabilities faced by directors, this is not the focus of this publication. The law on directors' duties is complex and this publication provides a general overview of the subject. Directors should seek legal advice on particular issues as they arise.

1. What is the role of a director of a not-for-profit organization?

A director is a person who participates in the administration, guidance, supervision, and approval of the affairs of an organization by being part of the governing, or decision-making body, of the organization — the board of directors. A director is one individual on the board of directors. Note again that the title may not be “director”; it may be governor, trustee, administrator, board member, or a different title.

In a small organization, the board may be hands-on, with a director wearing multiple hats. In addition to their role as director (overseeing the activities of the organization), they may also have separate roles as an officer (responsible for the day-to-day operation of the organization) and perhaps as a member of the organization. As an organization reaches maturity, the board becomes a governance board, with the director and officer roles fulfilled by different individuals.

Directors have an overall responsibility for the organization and oversee the strategy for achieving the organization's legal purpose. Directors are required by statute and the common law to understand:

- why the organization exists
- how it is legally structured
- what interests its stakeholders (the individuals and other beneficiaries the organization is established to serve)
- what its financial situation is
- how it manages the risks it faces

Directors should also be involved in the approval and, at times, the development of the strategic plan.

Each province and territory in Canada has its own statute that sets out the rules that both the not-for-profit organization and its directors must follow. The same is true for federal not-for-profit organizations. Similarly, each jurisdiction also has its own “standard” against which directors are judged by a court if the organization is involved in a lawsuit.

For more information see CPA Canada's publication [*Governance for Not-for-Profit Organizations: Questions to Ask*](#)

For more information, see [Question 9.](#)

2. Are there different kinds of directors?

A “true” director of a not-for-profit organization is an individual who is elected or appointed to sit on the board of directors of the organization and who has full voting privileges as a director. Individuals who sit on an advisory board, or who are *ex officio* non-voting or honorary directors, are generally in a different legal position than “true” directors. Some examples include:

Ex officio directors

Ex officio directors are individuals who qualify as directors by virtue of an office they hold, rather than being chosen through a selection process. The by-laws usually say that they are entitled to be directors by reason of holding some other office. An example of a by-law provision providing for an *ex officio* director is:

The President of ABC Corporation shall be a director of ABC Non-Profit.

Certain statutes, such as the *Canada Not-for-profit Corporations Act*, do not permit *ex officio* directors; however, all or a portion of the directors on the board can be required to possess certain qualifications in order to be eligible to serve as directors. For example, the by-laws could provide in the director qualification section that at least one director on the board must have previous involvement with the organization as an officer of the organization.

Honorary directors

The term “honorary director” is sometimes used to refer to an individual who is given the title as appreciation for their service and does not have voting rights. An advisory board consists of individuals (often past directors) not actively involved with the organization but who provide advice as needed.

A non-voting individual is generally permitted to attend but not vote at board meetings and may or may not be entitled to attend in-camera meetings of the board (generally speaking, in-camera meetings are confidential meetings of the board held without the presence of management or directors who are in a conflict of interest). To avoid confusion and potential legal claims, it is best not to use the word “director” when referring to individuals who are advising the board or who are not intended to be “true” directors.

While those who do not have voting privileges do not have the same duties and responsibilities as a voting director, if an individual who is not a true director acts like a director, making decisions along with the rest of the board, there is a risk that a court could subject them to the same fiduciary duty and other obligations as a director, including liabilities.

If the limitations on the role, duties, and rights of non-voting individuals are not clearly set out in the by-laws of the organization, such individuals may be mistaken for true directors. This puts them at risk that the courts will treat them as directors if the organization faces any claims, grievances, or court actions.

Example

Jasmine has spent many years volunteering on behalf of Small Town Figure Skating Club and has acquired a tremendous amount of knowledge about the organization. Jasmine does not want to be a director of the organization, so in appreciation for her many years of hard work, the organization suggests that Jasmine assume the role of honorary director. She attends board meetings and provides her views; however, Jasmine is not entitled to vote on any matters discussed by the board.

Issue: During a practice, Pierre and Manon, a promising ice-skating pair who train with the organization, collide with the rink boards. Manon suffers a broken arm and Pierre breaks his leg. Neither will be able to compete this season, and as a result may not be spotted by the national coach looking for new protégés. Due to the size of the organization, the directors oversee the day-to-day management of the organization’s few employees through the human resources committee of the board.

A few weeks before the accident, the directors approved the committee’s recommendation to dismiss the employee responsible for overseeing the safety of the facility. The board resolved to post a job ad to fill the vacant position as soon as possible, but in the meantime did not make alternative arrangements. Jasmine was at the meeting where the board approved the recommendation, and she took part in the discussions. When the chair of the meeting asked for a show of hands of those in favour of the resolution, Jasmine raised her hand.

Problem: If the by-laws of the organization do not clearly set out the rights and restrictions of an honorary director, there could be confusion about Jasmine’s role, and even though neither she nor the organization intended for her to be a director, it may appear to others that she is a true director. If the organization and its directors are sued as a result of the accident, Jasmine’s actions may be taken into account when the court is assessing potential wrongdoing on the part of the organization. In the lawsuit, she may also be liable as a director.

3. What is a “fiduciary”?

A fiduciary is a person who has a legal duty to act for another person’s benefit. The law imposes duties on those in a fiduciary relationship to protect those who are vulnerable from those who have power over them. Fiduciaries must put the interests of the other person above their own.

Directors are in a fiduciary relationship because of the position they occupy within the organization. The assets belong to the organization and are even “public” assets in some circumstances and can only be managed through its directors.

For more information, see [Question 12](#).

Another example of a fiduciary relationship is a trust relationship. The trust property is held and owned by trustees who have complete control over it, and the beneficiary is for all intents and purposes at the mercy of the trustees. The law imposes an obligation on the trustees to safeguard the rights of the beneficiary.

Being a fiduciary means that directors will be held to high standards of good faith, fair dealing, and loyalty regarding the organization. The specific duties are similar across corporate sectors (for-profit and not-for-profit) and have been imposed by statute in some Canadian jurisdictions.

4. What is the duty of loyalty?¹

The duty of loyalty is also known as the “fiduciary duty,” and it requires that a director act honestly and in good faith in the best interests of the organization. It is one of the primary duties of directors. It is a personal duty and cannot be delegated.

For more information, see [Question 17](#).

The duty of loyalty also means, among other things, that a director is not allowed to profit from their office and must avoid all situations in which their duty to the organization conflicts, or appears to conflict, with their interests or duties to others (the “no-conflict” rule). Unless sanctioned by the board, directors must not share the organization’s confidential business outside board meetings. They must treat in-camera meetings as strictly confidential. The board chair should keep any minutes of in-camera meetings separate from the organization’s minute book.

For more information, see [Question 5](#).

Directors retain many of these duties even after they resign or retire. For example, it is a breach of the duty of loyalty to compete with an organization for a lucrative contract which a director became aware of while on its board. Similarly, former directors should not disclose or in any way use confidential information they learned about while they were in office, nor should they disclose or use information that was the subject of board or committee meetings generally.

1 Adapted from the now archived publication *Primer for Directors of Not-for-Profit Corporations*, published by Innovation, Science and Economic Development Canada, 2002.

5. How can a director fulfill the duty of loyalty?²

Most questions about how to fulfill the duty of loyalty arise in the context of a conflict of interest. A conflict of interest can develop in two general ways:

1. A personal conflict between the director's self-interest and their duty to act in the organization's best interest. For example:
 - A director stands to gain financially, or some other material or intangible way, from a proposed contract or transaction between the director (or their corporation or firm) and the organization.
 - A director has a child, relative, friend, business partner or contact who may benefit from the organization.
2. A conflict between the duties the director owes to the organization they serve and those they owe to another organization. For example:
 - A director serves on the board of two organizations – and owes the same duty of loyalty to each – and the organizations are involved in a transaction.

Example

A charity's mandate is to work with underprivileged children. One of its projects is to sponsor underprivileged kids for summer camps by awarding scholarships to those who meet certain criteria the board has developed. Gisele, a board director, has a brother who has fallen on hard times and cannot afford to send his daughter to music camp this summer. Gisele's niece is a very talented pianist, and the summer camp experience would help her improve her playing to the point where she might win a university scholarship to study music.

Issue: Gisele is in a conflict position because she has a fiduciary duty to the charity. Even though she would prefer to recommend her niece for a scholarship, Gisele is required by law to do what is in the best interests of the charity, rather than what is in the best interests of her niece. Gisele could recommend to her niece that she apply. However, the law and the organization's policies would require that she declare her conflict to the board and recuse herself from adjudicating her niece's application or being in any related discussions. For Gisele's niece to be considered for a scholarship without the organization risking being off-side of its legal obligations – and Gisele of her fiduciary duty – the organization must have clear, objective criteria in place to determine applicants' financial need. It is possible that Gisele's niece could qualify by meeting the objective criteria alone, as determined by the other directors or those qualified to judge [applications](#).

The courts are very strict about the no-conflict rule as it relates to personal conflicts. A director must avoid not only actual conflict, but also the appearance of conflict.

Fulfilling the duty seems simple enough. Directors must:

1. act with a view to the best interests of the organization and not their own interests
2. avoid situations in which they have competing fiduciary duties.

2 See Footnote 1.

But not all situations in which directors find themselves are clear cut: Many organizations have directors who are in a conflict of interest from the moment they are elected or appointed as a result of an inherent conflict (such as being a beneficiary of the organization's programs). Some of these conflicts of interest are unavoidable, for example, where a specific board composition is considered desirable and especially where the perspective of certain types of directors is important to running the organization's programs.

In such cases, the intent is not to eliminate the real or perceived conflicts of interest, but rather to manage them appropriately by ensuring conflicts are declared and recorded and that board members in a conflict-of-interest position recuse themselves from decision-making.

For example, it is easy to see why it may be desirable for the board of a golf club to include directors who are members of the club, or for the directors of a school to include parents of the school's students. That said, it is important to remember that a director has ongoing fiduciary obligations to the organization they serve, even outside of board meetings and committee meetings.

To help avoid conflict-of-interest situations or deal with conflicts as they arise, you may find the following tips useful:

- Remind yourself of the reason you wanted to join the organization as a director.
- Ask yourself who you want to benefit: Is it the organization and the individuals it was established to serve? Or is it yourself, a family member, friend or business connection?
- If you, or a person related to you, are going to benefit in some way (either directly or indirectly, materially or intangibly), then you will likely be in a conflict situation. Whether you are indeed in a conflict will depend on the facts of the particular situation. That said, you must disclose all real or potential conflicts so that they can be dealt with appropriately.
- If the organization has a conflict-of-interest policy, review it on a regular basis, understand it, and apply it to the situations you face as they come up.

If the organization is a charity where you also receive a direct or indirect benefit, they may need to seek court approval or pass resolutions confirming that they considered certain specific factors before allowing you to sit on the board. The procedure that needs to be followed for a director to continue to benefit depends on the jurisdiction in which the organization is established. In most instances, regardless of a particular jurisdiction's rules, charities should proceed with great care when considering whether a director should benefit. It is important for boards to document potential conflicts, and their discussions and decisions on how they are addressed.

For more information, see [Question 14](#).

For reputational reasons, or to maintain the charity's registration under the *Income Tax Act*, it may not be possible or in the best interests of the organization for directors to benefit in any way.

Representative directors

A representative director is someone who holds the role by virtue of being a named representative (such as the president) of another organization.³ This creates unique challenges.

Example

A director sits both on the board of a chapter of a national non-profit and on its national board of directors. The board of the chapter considers that the director sits on the national board in a "representative" capacity. In other words, the chapter's board expects that the director will further the chapter's agenda. At law, the director owes fiduciary duties to both the national organization and the chapter organization when carrying out their director responsibilities with each.

The director must declare any potential conflicts involving the two organizations. In such cases where the chapter's best interests are not aligned with those of the national organization, or vice versa, the director may be in an untenable situation. The organizations could be prejudiced and the director may have triggered personal liability by failing to discharge their fiduciary duty.

If you sit as a director of two "related" boards in an association or national structure, consider the following tips:

- Apply each organization's conflict of interest policy to conflicts as they arise, which will likely involve regularly declaring conflicts and abstaining from both discussion and voting on various issues during meetings.
- If being on two boards in an organization creates continuing conflicts of interest both inside and outside the boardroom, consider speaking to the chair of each board to voice your concerns; if they cannot or do not address your concerns to your satisfaction, consider resigning from one or both boards.
- Where there is significant overlap between two related boards resulting in more than one director with a conflict of interest, consider whether either or both organizations should review their by-laws as it may be time to change the composition of the boards.
- Consider the reasons why there may be conflicts between the two organizations. It is in the best interests of the organizations to address any underlying sources of conflict in a productive way.

³ Having a person sit as a "representative director" is different from a structure where a local chapter is itself a member of a national non-profit. Under this structure, the local chapter appoints an individual representative who receives instructions from the board of directors of the local chapter to vote, as a member of the national non-profit, in a manner that benefits the local chapter at its (i.e., the member's) discretion.

6. What should a director do if faced with a conflict of interest?

Before joining the board of an NFP, prospective directors should consider whether their personal interests or fiduciary duty to another organization might lead to a conflict of interest that would prevent them from fulfilling their duty to the not-for-profit organization and, thus, from joining the board. Once on the board, where possible, directors should avoid conflicts of interest. However, should a conflict of interest arise:

- Where the conflict arises at a board meeting, a director should immediately declare the conflict and abstain from voting (and, if necessary, recuse themselves from the meeting).
- Where the conflict, or potential conflict, arises outside of a board meeting, the director should take the following steps as soon as possible:
 - Review the organization’s conflict of interest policy to determine whether there are specific requirements or an identified process that they must follow for declaring a conflict and, if so, who the designated person is that they should report the conflict to.
 - Consider the organization’s governing legislation to determine if it addresses the declaration of a conflict of interest.
 - Speak to the designated person identified in the conflict-of-interest policy (or, failing that, the chair or vice-chair) about the nature of the conflict, particularly where the director is unsure if a conflict truly exists.
- Where the conflict places the director in a situation in which they believe they cannot act in the organization’s best interest, they should resign.

Most not-for-profit corporate legislation in Canada provides for a narrow exception to the no-conflicts rule where a director has an interest in a contract or proposed contract with the organization, declares the conflict and follows the process outlined in the legislation.⁴

This kind of statutory exception is not generally available to directors of registered charities, depending on the province in which the charity operates. Because of the premise that charities are there for the public good, directors of charities must avoid any interest in a contract unless they receive court approval ahead of time or specific resolutions are passed.

It is important to note that legislation typically only refers to “material” contracts and transactions and does not cover all conflicts.

4 For example, section 141 of the *Canada Not-for-profit Corporations Act* states that it is the duty of a director to declare an interest in a proposed or existing material contract or transaction with the organization. The section contains specific requirements relating to the timing and content of their declaration of interest. With limited exceptions, it prohibits directors from voting on the existing or proposed contract in which the director is interested. The Act specifically provides that a director who has complied with the declaration of interest provisions is not accountable to the organization or its members for any profit realized by such contract and the director will escape any liability where the members of the corporation have confirmed that they are aware that the director stands to make a profit.

7. What is the duty of care?⁵

The duty of care is a duty to exercise care, diligence and skill. This means that a director must generally be informed about an issue before making a decision relating to that issue. The law does not require directors to be experts but rather to act in accordance with a particular standard of care.

For more information, see [Question 9](#) and [Question 10](#).

It is generally accepted that the duty of care is heightened for directors of a charitable organization. Generally speaking, this means that directors on the board of a charity must take additional care and attention when discharging their duty of care.

For more information on the duty of care specific to directors of charities see [Question 11](#).

8. How can a director fulfill the duty of care?

The duty of care requires that directors pay attention and try to make good decisions for the organization. This duty comprises the following responsibilities:

The duty to act honestly

- Directors must deal honestly with the organization and not act for an improper purpose.
- Directors should be candid about informing the chair if they can no longer afford the time commitment of being a director.

The duty of diligence

- Directors must be diligent in attending to their legal duties. They do so by being familiar with the organization, being informed, and preparing for and attending meetings.
- Where advice of a specialized nature is required, the board should engage qualified professionals.
- Directors should exercise their best judgment when voting on any decisions, and not simply vote with the majority without being informed or having formed a view on the particular issue.
- Directors must properly maintain minutes of meetings and ensure that all other corporate books and records of the organization are being maintained accurately and in proper order.

⁵ See Footnote 4.

The duty to exercise power

- Directors are ultimately responsible for the organization and thus must make decisions. Because they are responsible for furthering the organization’s goals and objectives, they can breach their duty through inaction and inattention.
- Directors should develop standards for measuring senior management performance and carry out annual performance [reviews](#).
- In the case of a charity, funds received from the public for a specific charitable purpose must be held in trust for the charitable purpose and directors have an obligation to apply the funds in keeping with the charitable purpose for which the public understood they would be used.

The duty of obedience

- Directors must comply with all applicable laws and the organization’s governing documents (letters patent or articles, by-laws, etc.)
- Directors must ensure that corporate decisions are being implemented.

9. What does it mean to have a “standard of care”?

Directors must carry out their obligations with an appropriate degree of skill and care and in accordance with the relevant “standard of care.” The standard of care may be an objective or subjective standard – it varies across the country. In some provinces and territories, the incorporating statute is silent as to the relevant standard, thus the common-law subjective standard applies.⁶ In others, the statutes explicitly provide for an objective standard.⁷

What is the difference between a subjective and objective standard of care?

The objective standard judges all directors against the same criteria. Directors are required to exercise the degree of care and skill of a “reasonably prudent person.”

The subjective standard judges directors against their own personal characteristics, attributes, skill level, education, experience and profession. Each director must exercise the degree of care and skill that one may reasonably expect of a person with their particular knowledge and experience. The more sophisticated the director, the greater the care they must exercise. As a result, if a director is a professional such as a lawyer or accountant,

⁶ This is the case in Alberta, New Brunswick, Nova Scotia, Nunavut, Prince Edward Island, Quebec and the Yukon.

⁷ This is the case in British Columbia, Manitoba, Newfoundland, Ontario, Saskatchewan, and federally under the *Canada Not-for-profit Corporations Act*.

the law expects them to apply that expertise in their director role, and they will be held to a higher standard. Likewise, a director with sophistication in running a business or other organization – whether or not they also hold a professional designation – will also be held to a higher standard.

It is recommended that prospective directors be familiar with the standard of care that applies to them in carrying out their duties. If an organization or a director is sued, the court will consider whether the director acted in accordance with the appropriate standard.

10. How knowledgeable do directors have to be in order to discharge their duties?

The law does not require directors to be experts. While directors of not-for-profit organizations owe a duty of care, it is not realistic to expect directors to understand in detail all of the operations, laws and government policies affecting the organization. However, directors *should* be well-informed.

Examples

The organization has paid staff – Directors should know that there are laws affecting the organization and its relationship with employees related to employment, human rights, income tax, Canada Pension Plan and unemployment insurance. They should know when to seek legal advice.

The organization is an incorporated charity – Directors should be aware of and seek legal advice about legislation that applies to the organization, including laws governing:

- income tax
- corporations
- trusts
- provincial charities
- fundraising registration and licensing
- municipal, provincial, and federal lobbyist legislation
- privacy
- anti-spam

The organization owns heritage property – Directors will need to understand what they are permitted to do with the property and within the province or territory (and usually within the city or town) in which the property is located.

The courts recognize that directors must be guided by what is referred to as the “business judgment rule.” They look to see that the directors made a *reasonable* decision, not a *perfect* one. In coming to a decision, directors must show that they acted prudently and on a reasonably informed basis.⁸

⁸ *Peoples Department Stores Inc. (Trustee of) v. Wise*, 2004 SCC 68.

As a result, directors should:

- have a general knowledge of what laws affect that type of organization
- inform themselves about the governance model and structure of the organization, what the organization does, how it does it and who its beneficiaries are

The following guidelines have been established by the courts:

- Directors are not liable for mere errors of judgment.
- Directors are not required to give continuous attention to the organization's affairs.
- The directors' responsibilities are intermittent and performed at periodic board and committee meetings.
- Directors need not attend all board meetings.⁹
- Directors may entrust certain matters of business to officers of the organization.
- Where there are no grounds for suspicion, directors are justified in trusting that officers of the organization will perform their duties honestly.¹⁰

11. Are directors of charities held to a higher standard of care?¹¹

Where a not-for-profit organization is also charitable (either a registered charity or charitable according to common law),¹² directors may be required to meet additional expectations – and a higher standard of care. This is especially true when the organization carries on all or some of its activities in Ontario.¹³ That province's legislation specifically characterizes the legal nature of a charitable organization as that of a trustee, and Ontario case law has determined that directors of charities “are, to all intents and purposes, bound by the rules which affect trustees.”¹⁴

9 While attendance at all board meetings is not required, there should be a clear expectation of 100% attendance at board and committee meetings, barring extenuating circumstances.

10 *Re City Equitable Fire Insurance Company Limited*, [1925] Ch 407.

11 See Footnote 1.

12 It is important to note that some organizations may have purposes that make them charitable pursuant to case law, but they are not registered charities under the *Income Tax Act* (Canada). This situation should be avoided. Directors should review the purposes of the organization, and if they are charitable, the organization should apply to the Canada Revenue Agency for registration as a charity. Otherwise, the purposes should be amended to ensure that the letters patent or articles of the organization meet the requirements of the desired type of organization.

13 *Charities Accounting Act*, RSO 1990, c C.10, subsection 1(2).

14 *Ontario (Public Guardian & Trustee) v. AIDS Society for Children (Ontario)*, [2001] O.J. No. 2170, 39 E.T.R. (2d) 96.

This means that they must take proactive steps to protect charitable property. Any loss of charitable assets due to the directors' inactivity or failure to act could result in liability where the director has to pay damages to the organization, or even in criminal liability.

While the law is not uniform or even settled on this point across the country, it is prudent for directors of charities to carry out their duties as though they have charge of property that is subject to a trust. This "trustee standard" is generally considered to be more demanding in law, and it goes beyond what is ordinarily expected of either a not-for-profit or a for-profit director. This standard requires directors to exercise the degree of skill and prudence comparable to how a reasonable and prudent person would manage their own affairs. Under this standard, directors of charities must maintain the trust property and are responsible for making prudent investment decisions, subject to any requirements of provincial trust statutes.

From a practical perspective, this means that directors of charities should pay close attention to risk issues affecting the organization, especially as they pertain to the organization's finances. Organizations should develop a risk register capturing the risks to the organization's operations, assessment of the impact and likelihood of the risk, and mitigation strategies put in place by management. Boards should review the risk register at least once a year to gain assurance that [organizational](#) risks have been identified and are well mitigated. In addition, directors should require regular financial reporting, especially as it relates to donations received and terms or conditions attached to grants and donations (special purpose or restricted gifts). This financial reporting should also ensure that the organization properly applies donations, endowments and investments of its funds. Directors of charities should ensure that the organization develops and maintains an investment policy that observes applicable legal requirements around investments.

For more information see [Question 15](#).

12. To whom are these duties owed?

In a not-for-profit organization (NPO), the board of directors owes these duties to the organization itself. Although the members of the organization elect the directors and usually have the ability under the by-laws to remove the directors, the directors generally do not owe the members these duties.¹⁵ In situations where the interests of the members are at odds with those of the organization, in most circumstances the directors' duty is to the organization, not to the members (as opposed to the for-profit context where the duty is to the shareholders).

¹⁵ Directors may have other, non-fiduciary obligations towards members pursuant to the legal rules and documents that govern the organization.

There is a narrow exception for certain NPOs. NPOs can generally be divided into two categories: mutual benefit and public benefit.

- Mutual benefit NPOs are accountable to their members in a direct way – their purpose is tied to benefitting members.
- In public benefit NPOs, the members are more like supporters than they are like beneficiaries of the NPO's activities – in these cases, the directors need to demonstrate accountability to the NPO's "public" rather than to its members.

The directors of registered charities are considered to have "trustee-like" attributes, and they are subject to a duty to act as quasi-trustees of the organization's charitable property. Their duty is owed to the charitable purposes of the organization, the charity itself and – some would argue – even to the charity's donors. Directors of charities must act with extra diligence and care when carrying out their duties.

13. Can the directors permit the organization to act outside the scope of its objects?

A not-for-profit organization is allowed to carry on those activities that fit within its objects, which are described in its letters patent or articles. Objects are essentially corporate "purposes" – they set out the general reasons for which the organization was established. Directors have an obligation to know and comply with the organization's objects and should ensure that its activities and programs are permitted by its objects. If directors cause the organization to act outside of these objects, these actions are void, and directors may be personally liable for any resulting losses.

The directors of registered charities must also ensure that the charity's programs and activities qualify as charitable under the law. Carrying on programs and activities that do not qualify as charitable is grounds for revocation of a charity's status under the *Income Tax Act* (Canada).

Organizations also have statutory powers set out in the legislation that applies to them. These statutory powers generally permit the directors to take certain actions on behalf of the organization that are not specifically contemplated in the organization's objects or potentially elsewhere in their governing documents (i.e., in their articles, letters patent, constitution or by-laws). These actions include borrowing money, and buying and selling property. These statutes may also contemplate that organizations have the rights, powers and privileges of a "natural person." This essentially means that the organization has the same rights, powers and privileges as a real individual. The organization can enter into contracts, sue or be sued and be convicted of a crime.

Example

The letters patent of a not-for-profit corporation state that the corporation's object is to relieve poverty by gathering and distributing used clothing to the homeless. The corporation applies for and receives charitable status.

A few months later, the COVID-19 pandemic hits. The directors realize that what is really needed is equipment and supplies to help protect homeless people from contracting the virus. As fiduciaries, the directors must understand on what basis this new activity qualifies as charitable. The corporation should amend its objects if it plans to carry on this activity permanently.

14. Can directors of charities receive remuneration or other benefits?

This question is a common one, and it is not easily answered.

Depending on the province in which the organization operates and whether the organization is a charity, the duty of loyalty and the no-conflict rule may prohibit directors from receiving any direct or indirect benefit from the organization.

The issue can come up for directors of charities in different ways. Here are some example scenarios:

- The founder of a charity is also a director and, as the charity grows, the founder becomes a paid executive director.
- An organization's by-laws provide for a beneficiary of the organization (a person receiving benefits or services from the organization) to sit as a director.
- An organization develops a practice over time that the chief staff person will be on the board of directors.

Leaving aside any conflict issues that these arrangements could involve, the question of whether the director can receive any benefit will depend on the province in which the organization operates. The general rule of thumb is that directors of charities are prohibited from receiving remuneration or other benefits, whether directly or indirectly, in their capacity as directors. While tax¹⁶ and corporate statutes¹⁷ do not generally prohibit directors of charities from being paid, the common law and in some cases provincial trust laws may prohibit payment to a director without a court order.

16 The guideline used by the Canada Revenue Agency is "reasonableness."

17 Some non-profit corporate statutes (i.e., Ontario and Saskatchewan) specifically allow directors to receive reasonable remuneration. But directors of charities are also subject to the common law and provincial trust laws.

In limited circumstances, directors of charities may also be employees of the charity or paid by the charity for services they provide. In some cases, this may require a court order. In other cases, the directors must pass resolutions that confirm that they considered certain factors before approving the payment. It is recommended that you seek legal advice if your charity is considering remunerating a director.

There is generally no such prohibition on directors of not-for-profit organizations that are considered NPOs (i.e., not registered charities) under the *Income Tax Act* (Canada). These directors can usually receive remuneration or other benefits from the organizations they serve. To complicate matters further, a non-profit may be considered charitable at common law but not be registered federally as a charity under the *Income Tax Act* (Canada); as such, they would be prohibited from remunerating directors.

Remember that there is a difference between being paid by the organization and being reimbursed for legitimate out-of-pocket expenses incurred while performing a director's duties. Directors are almost always entitled to be reimbursed for reasonable out-of-pocket expenses subject to any provision to the contrary in the by-laws or operating policies of the organization.

Example

André is a director of a charitable organization established to relieve poverty in Africa by providing food, housing and marketable skills to those in need. The organization is incorporated in Ontario and has its head office address in Ontario. André spends most of his time in Africa working with the local population to carry out the charity's mission. André considers his work on behalf of the charity as his "job." He has an expense account which covers his travel, accommodation, food and clothing.

In Ontario, it would generally be acceptable for the organization to pay for André's travel, accommodation and food for certain types of trips that he needed to take in his capacity as a director. In most cases, it would not be reasonable for an organization to pay for a director's clothing or for unreasonable or unnecessary travel, accommodation and food expenses. The organization should seriously consider whether all the expenses related to André's work are in fact necessary (for example, perhaps some of the work can be carried on from head office via video-conference or other electronic means) and only pay for those expenses that are truly reasonable and necessary.

Since André spends most of his time in Africa working directly on the charity's programs, the organization needs to consider whether the work André is doing on behalf of the organization is in the nature of work carried on by an employee or a service provider. It would be advisable in this circumstance for the organization to also consider:

- whether it needs to obtain court approval in order for André to remain a director while being paid by the charity, or
- whether, before doing so, the directors can pass resolutions confirming that the payments are appropriate and that they have considered the factors required by Ontario legislation and policy.

In other jurisdictions in Canada, André may be able to receive a reasonable compensation by the charity without having to go to court or pass specific resolutions.

Seek professional legal advice before paying directors of charities.

15. What duties do directors of charities have when it comes to gifts?

Fundraising is important to most charities. Whether the fundraiser is a walkathon, a readathon, a door-to-door canvas, crowdfunding, a public campaign, an event, or a gift through an estate, directors of charities must pay attention to:

- how a charity raises funds¹⁸
- for what purpose donors understand that the money is being raised
- how the money is ultimately used
- how it is accounted for and reported to the Canada Revenue Agency¹⁹
- how the organization provides receipts²⁰

In addition, directors of charities have a legal duty to apply special-purpose or restricted gifts towards the purpose specified by the donor. If they fail to do so, directors may face personal liability. The heightened duty of care for directors of charities, discussed in [Question 11](#), applies to directors who manage property that is subject to a trust.

Examples

Consider these two scenarios:

- A charity completes a fundraising drive to raise funds for a particular educational conference. The fundraising material tells prospective donors that their gifts will be used to hold the conference.
- June Bukowski leaves \$10,000.00 in her Will to the Anytown School. She leaves instructions that the money should be used for the charity's reading program offered specifically to special needs children.

Depending on the specific circumstances of these donations, what is called a "special-purpose charitable trust" *may* be created, and the money the charity receives must be used for the specific charitable purpose. Note that the terms attached to the charitable trust may be created by the charity or by the donor. Directors may be found in breach of trust if they do not comply with the terms of a special purpose charitable trust, meaning that they could be found personally liable if they do not comply with the trust's terms.

18 Alberta and Saskatchewan have fundraising registration requirements for charities or fundraising companies working for charities.

19 The Canada Revenue Agency sets out its policy on fundraising by registered charities in guidance number CG-013 "Fundraising by registered charities," issued on April 20, 2012.

20 The *Income Tax Act* (Canada) and the Canada Revenue Agency have strict rules on the receipting of gifts by registered charities.

Directors should:

- be aware of and comply with the terms of any special purpose trust funds
- oversee the organization's fundraising program so that they are aware of staff or professional fundraisers' methods that may lead to a special-purpose trust fund being created
- ensure the organization has an internal means of tracking ongoing compliance with the terms of any special-purpose trusts
- apply for a court order to vary the terms of the trust if the charity is no longer capable of fulfilling the terms of any special-purpose trust

16. What if a director breaches their duties?²¹

Directors who breach their duties are at risk of being found personally liable if the organization suffers a loss which can be attributed to the directors' actions or omissions.

For an individual director to be held liable (and to pay damages), the breach has to result in a loss which can be traced back to them. In the case of a charitable organization, the loss could be to charitable property comprising a special-purpose charitable trust. For example, directors could be held personally liable for breach of trust if they mismanage the charity's assets – meaning that they can be personally responsible for the full amount of any loss to the charitable assets.

In each case, liability will depend upon the particular facts and circumstances at play, thus obtaining legal advice is critical.

It should be noted that the organization's indemnification provisions in its by-laws or its policy on indemnification may not be available to directors who have breached their duties; similarly, insurance coverage may not be available.

21 See Footnote 1.

17. Can directors delegate their authority and/or their responsibility?²²

Directors are entitled to delegate some of their responsibilities to committees, officers, staff or **even members** of the organization. However, even though they may have delegated a certain task, they are still responsible for it. They must be legally entitled to delegate the particular responsibility, and they must continue to monitor performance.

A director cannot delegate all of their director's responsibilities to another person. The reason: Wholesale delegation would usurp the roles of the organization's directors, which contemplate that each have separate duties and responsibilities.

If intending to delegate core responsibilities, it is wise to set out such delegation in the by-laws or policies of the organization that the directors have approved by resolution. These documents should include:

- the scope and duration of the delegation
- the requirements for reporting back to the full board
- the relationship between the board and the body or individual the matter is being delegated to

Further, such delegation should ideally only be made to a board committee or individual authorized by the by-laws or board-approved policy.

Where directors of charities may be considered trustees, their ability to delegate decisions about the treatment of charitable property may be even more constrained. At common law, trustees are generally not allowed to delegate these types of decisions. However, directors should consult provincial legislation governing trustees to determine if it permits some delegation by trustees.

The following are examples of both permitted and non-permitted delegation:

Example 1: Permitted delegation

The directors hire an executive director. The executive director runs the organization's day-to-day activities and reports to the board of directors at each board meeting. Day-to-day activities the board may delegate include hiring and supervising the office staff and volunteers, running programs, arranging board meetings, implementing the budget approved by the board, etc.

Example 2: Non-permitted delegation

The directors hire an executive director and delegate all responsibilities of the organization to that role. The executive director sells significant assets of the organization. This is a matter that may not be delegated by the directors.

²² See Footnote 1.

18. What if a director disagrees with a decision the rest of the board has made?

Whether by majority, two-thirds or some other level of decision-making, a decision made by the board of directors, means that the board has spoken on behalf of the organization. Every director is responsible for the decision, whether or not they were at the meeting. This also means that every director is jointly and severally liable along with the other directors if a loss occurs as a result of their decision.

If a director disagrees with a decision, silence is never a prudent course. It is important for a director who disagrees with a decision made by the board to voice their objection at the meeting and to ensure that their dissent is recorded in the meeting minutes, preferably with reasons. Then, at the start of the next board meeting, they should follow up to ensure that the minutes properly record their dissent.

Depending on the circumstances, a properly recorded dissent may result in the director limiting their personal liability. In addition to fulfilling their duty of diligence, being present for all board meetings (barring extenuating circumstances) can be helpful in limiting a director's liability in certain instances as long as the board takes appropriate steps when the director disagrees with the rest of the board.

If you are a director who cannot attend a meeting, obtain copies of the minutes and any materials considered at the meeting. Read the minutes and be sure to immediately state any objection you may have in the form of a written dissent to the secretary or chair of the board.

If you are concerned about liability, seek independent legal advice.

19. When should a director seek independent legal advice?

When a director retains and pays a lawyer to provide advice, they are seeking independent legal advice – that is, independent from the organization and the board.

Disputes and disagreements among directors can arise. A director may disagree with the direction the organization is going in and may be a minority voice on the board. At other times, the board may not function effectively, and a director may feel that they cannot fulfill their duties for a variety of reasons. To limit liability, it may be sufficient to require

that the organization record the director's dissent in the minutes of a board meeting; but there are times when a director may need specific legal direction – usually to minimize their exposure to liability.

There are any number of instances in which it may be advisable to get independent legal advice, several of which are discussed earlier. As a general rule, if you are a director who feels you cannot properly discharge your obligations to the organization for any reason, or if you consider that you may have personal liability, seek independent legal advice.

The following examples may help you determine when a director of a not-for-profit organization should consider obtaining independent legal advice:

- A director believes that a particular program may not be permitted by the organization's objects, and the board has decided not to seek related legal advice.
- A director is concerned about a certain issue or matter involving the organization and does not feel that their concerns have been properly addressed.
- A director believes that the board may be found negligent as a result of a particular decision or omission.
- A director considers that another director has an insurmountable conflict of interest regarding a certain matter, which is being ignored by the board as a whole.
- A director is unable to obtain certain financial or other information about the organization from its board and staff, and as a result they are concerned about meeting their obligations.
- A director is concerned about their personal liability regarding an ongoing program and requires advice on the effects of their resignation.
- The organization is insolvent, and the director wishes to determine if they will have liability for debts of the organization, especially those involving employees and taxes.

20. What tools can directors use to assist them in discharging their duties?

Directors have many tools available to them to discharge their duties. The following are helpful, particularly to new directors:

- board manuals including the following items:
 - the letters patent and supplementary letters patent of the organization, or articles of incorporation / continuance and articles of amendment
 - current by-laws of the organization

- code of conduct for directors
- financial information
- charitable registration information
- minutes of recent meetings
- insurance policies
- board policies (which may also be included in board manuals) such as:
 - conflict of interest
 - risk management
 - fundraising, gift acceptance, endowments and donor advised funds
 - human resources
 - investment
 - privacy / cybersecurity
 - anti-spam

Educational sessions on subjects such as corporate governance and risk management can be very enriching and informative for boards. As well, board retreats allow directors, and often the senior staff, to get together for an extended period to review the vision, mission and/or strategic plan of the organization without outside distractions.

Professional assistance is a key tool that boards should use in discharging their duties. It is important for boards to seek professional advice for various matters including legal issues, accounting issues and investment advice.

When in doubt, a director should not hesitate to ask the chair or senior paid staff for the information that they need to fulfill the duties associated with their position. While not-for-profit organizations will be at various stages in their organizational development, and some may not have board manuals and well-developed policies, it often takes just one motivated director to bring these tools into existence for the benefit of future boards and the organization as a whole.

Where to find more information

CPA Canada Publications on Not-for-Profit Governance

Available at www.cpacanada.ca/nfpgovernance

About the authors

Jane Burke-Robertson, B.SOC. SCI., LL.B.

The first edition of this publication was written by Jane Burke-Robertson, who was a leading charity and not-for-profit lawyer in Canada. Jane was consistently recognized as an expert by numerous rankings, including Lexpert and The Best Lawyers in Canada. She was a founding co-chair of the Ontario Bar Association's Charity and Not-for-Profit Law Section and a founding co-chair of the Annual CBA Charity Law Symposium. Jane was a frequent speaker and wrote extensively in this subject area. She received numerous awards for her contributions to the sector, both as a legal practitioner and a tireless volunteer. Jane sadly passed away from cancer in 2013. She is remembered with immense fondness and admiration by her many friends and colleagues in the sector.

Nicole D'Aoust, B.A., M.A., LL.B.

Nicole is a partner in Miller Thomson LLP's Social Impact Group. She practices exclusively in the area of charity and not-for-profit law. She works with many different types of organizations, including charities, non-profits, and social enterprises, with activities in Canada and internationally. Nicole advises clients on a wide range of topics and issues including corporate structure, governance, operations, charitable gifts and receipting, social finance, tax and corporate compliance, duties and liabilities of directors, fundraising campaigns, planned giving, endowments, donor advised funds, domestic and overseas activities, audits, reorganizations, mergers, political activity, public policy, lobbying, anti-spam, and privacy. She works with clients across Canada in English and French.

Before developing a full-time practice in charity and not-for-profit law, Nicole practiced corporate tax law at a Big Four accounting firm. She has completed CPA Canada's three-year In-Depth Tax Course and the Canadian Board Diversity Council's Corporate Governance Education Program.

She has written for many publications, including the Canadian Tax Journal, and spoken at numerous conferences on charity and non-profit related matters, including conferences hosted by the Canadian Tax Foundation, the Canadian Association of Gift Planners, and the Association of Fundraising Professionals. For many years, she was a contributing

editor to *Canadian Tax Focus*, the young practitioners' newsletter of the Canadian Tax Foundation. Currently, she is the co-editor of Miller Thomson LLP's free *Social Impact Newsletter*.

Nicole sits on the Executive of the Ontario Bar Association's Charity and Not-for-Profit Law Section. She is an active volunteer in the Toronto community and is the former Co-Chair of the Young Leadership Council of the Toronto Symphony Orchestra.



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September 20, 2023

Ms. Lori Trumper, General Manager
Kitchener Housing Inc.
11 Weber Street West, Kitchener, ON N2H 3Y9

Dear Ms. Trumper:

Re: Annual Information Return for December 31, 2022

We have completed our review of your audited financial statement and annual information return submission (AIR) for the year ending December 31, 2022. The following changes were made to the AIR:

- The revenues for capital reserves has been adjusted to include the COCHI Yr. 3 funding payment as received in July 2022 for mold in the amount of \$33,952.
- The property taxes for the Provincial Program were overstated by \$20,162 and has been adjusted from \$1,232,503 to \$1,212,341 to exclude the commercial taxes (CT) from the St. Joseph site.
- Investment income for the Provincial Program has been adjusted from \$131,846 to \$191,899 by removing KNPPI interest expense.
- Page 7, re: Rental Schedule has been adjusted to eliminate the variance when compared to the revenue section of the Statement of Operations.

As a result of our review, the total overpayment of subsidy is \$48,095. This amount will be deducted in full from your September (payable October) subsidy payment. The approved annual information return (AIR) and subsidy payment schedule are attached.

During our review, the following items were noted:

- During our review, it was noted that Kitchener Housing Inc. with 467 RGI is not meeting the approved service level standard of 508 RGI units. As market units become available, management is to fill these units with applicants on the housing waitlist in order to comply with the approved service level standards.
- Due to KNPPI has increased to \$4,973,085 in 2022 from \$3,080,027 in 2021. Please provide an explanation to this significant payable.
- When compared to the prior fiscal year, the following increases require an explanation and details need to be provided:

.../2

<u>Account</u>	<u>2022</u>		<u>2021</u>		Increase	
					\$	%
Security	\$	122,485	\$	53,298	\$ 69,187	130%
Other Expenses		291,799		241,658	50,141	21
Bad Debts		92,748		802	91,946	11,465

- As a reminder, the \$1,958,016 from the provincial surplus has been used to assist with affordable housing program (re: 430 Connaught). The use of these funds from the provincial programs for the affordable housing program is a concern. These funds are to be re-paid from the KHI Non-Shelter Program to the KHI Provincial Program so that it is not affecting that taxpayers in the Region. A plan on how these funds will be repaid is required. Please provide this plan as soon as possible to the Housing Program staff.

Please contact Fernando Leite, Accounting Specialist (Housing) at fleite@regionofwaterloo.ca with any questions.

Yours truly,

Fernando Leite

on behalf of

Alba Michelucci, CPA

Financial Analyst, Housing Services

c: Sarah Gillies, Housing Programs Advisor

Name	Kitchener Housing Inc.					
Period of:	January 1 - December 31, 2023					
Vendor #:	10947					
Program:	Provincial					
Month Payable	Payable On	Total Subsidy Pmt. Sum of 1 to 4	Budgeted Operating Pmt. (1)	Financial Stat Review (2)	Scheduled Pmt./Recov. (3)	Special Payment (4)
Jan-23	Feb-23	\$ 478,735.00	\$ 478,735.00			
Feb-23	Mar-23	\$ 478,744.00	\$ 478,744.00			
Mar-23	Apr-23	\$ 478,744.00	\$ 478,744.00			
Apr-23	May-23	\$ 478,744.00	\$ 478,744.00			
May-23	Jun-23	\$ 478,744.00	\$ 478,744.00			
Jun-23	Jul-23	\$ 478,744.00	\$ 478,744.00			
Jul-23	Aug-23	\$ 478,744.00	\$ 478,744.00			
Aug-23	Sep-23	\$ 478,744.00	\$ 478,744.00			
Sep-23	Oct-23	\$ 430,649.00	\$ 478,744.00	\$ (48,095.00)		
Oct-23	Nov-23	\$ 478,744.00	\$ 478,744.00			
Nov-23	Dec-23	\$ 478,744.00	\$ 478,744.00			
Dec-23	Jan-24	\$ 478,744.00	\$ 478,744.00			
Total		\$ 5,696,824.00	\$ 5,744,919.00	\$ (48,095.00)	\$ -	\$ -