

# Final Report

# Hockey Canada Governance Review

**The Honourable Thomas Cromwell, C.C.**

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## **I. EXECUTIVE SUMMARY**

The Terms of Reference questions are addressed more specifically in Chapters VII to XI. Before addressing the specific Terms of Reference, we begin by providing some background on Hockey Canada and its regulatory framework, as well as some general principles with respect to the governance of not-for-profit corporations. These topics are covered in Chapters IV to VI (following an Introduction (Chapter II) and a Table of Abbreviations (Chapter III)), and set the stage for an in-depth review of the issues in the Terms of Reference.

### **A. Term of Reference No. 1 (Chapter VIII)**

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

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

##### ***a. Is there appropriate oversight concerning payments out of the National Equity Fund?***

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

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

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

## **Recommendations and Conclusions:**

- We recommend that Hockey Canada take steps to provide timely disclosure of publicly available information to its Members regarding ongoing and potential claims. Once a settlement is reached, we recommend that Hockey Canada disclose all publicly available information (i.e., what was provided in the claim) while respecting the restrictions of any non-disclosure agreements in force. For example, where a nondisclosure agreement only precludes the disclosure of a settlement amount, Hockey Canada could inform its Members of the nature of the claim, the fact that a settlement was reached and how/when the settlement would be funded.
- Additionally, we recommend that Hockey Canada establish a formal policy governing the NEF, with a particular focus on where funds are collected, how they are and can be used, what types of approvals are needed to use the funds, and how Hockey Canada must report to the Board, Members, Participants, and the public when it uses the NEF. These restrictions will ensure that the NEF has a clear purpose, that its balance is representative of the quantum needed to serve that purpose, and that the funds are only used in ways that are consistent with that purpose. Overall, this will improve both the oversight and the transparency of the fund.

### **B. Term of Reference No. 2 (Chapter VII)**

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

The current By-laws are not significantly misaligned with the points of reference that we examined (i.e. Sports Canada's Governance Principles for Sport Organizations, the Canadian Sport Governance Code, Athletics Canada Athlétisme Canada, Canada Basketball, Curling Canada, Canada Soccer and Tennis Canada). However, we have several suggested changes.

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

Yes. Our recommendations are the following:

- Amend the corporation's Articles to increase the maximum number of Directors from 9 to 13.
- Amend the By-laws to provide that the Board will consist of a number of Directors between the minimum and maximum number of Directors specified in the Articles, rather than prescribing a fixed number.
- Amend the By-laws to provide that no more than 60% of the Directors are of the same gender, to bring this aspect in line with the Canadian Olympic Committee ("COC") Canadian Sport Governance Code.

- Amend the By-laws to provide that the Board will include at least one athlete representative, who will be nominated by the Nominating Committee with significant input from hockey players.
- Amend the By-laws to provide that at least a majority of the Directors on the Board be persons who, at the time of their election, are independent of Hockey Canada. By “independent” we mean a person who at the time of their election as a Director is not: a) an employee of Hockey Canada; b) an officer, director or employee of any Member of Hockey Canada (a “HC Member”); c) an officer, director or employee of an organization that is a member of a HC Member (including without limitation a local Minor Hockey Association); or d) an officer, director or employee of any other hockey club, league or team.

See our additional recommendations below under “c.” respecting the nominating process.

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

There are no significant divergences from best practices, but the following measures would strengthen the Board’s capacity:

- Increase the Directors’ terms to up to three years from two;
- Stagger Directors’ terms so that only about one third of the Board would be up for re-election in any year;
- Increase term limit to nine consecutive years from eight (e.g. three consecutive terms of three years);
- Increase term limit of the Board Chair to six consecutive years from four to align with the new three-year term for Directors (e.g. two consecutive terms of three years).

***c. Does the nominating process need to be amended?***

Yes. Our recommendations are the following:

**Nominating Committee**

- The Nominating Committee should be comprised of up to nine individuals and that the fixed number always be an odd number.
- The Nominating Committee should be constituted as follows:
  - The majority of the committee members would be individuals who are at arm’s length from the Board (“Independents”). The Independents, who should be highly qualified and diverse, would be appointed by the Board with the assistance of a reputable board recruitment firm hired by Hockey Canada.
  - The Members of Hockey Canada, collectively, would be entitled to appoint up to two individuals to serve on the Nominating Committee.

- At least one member of the Nominating Committee would be an athlete representative, who would be appointed by the Board of Hockey Canada with significant input from hockey's athletes.
- At least one and up to two Directors of the Hockey Canada Board would be appointed by the Board to serve on the Nominating Committee. A Director who is up for re-election in the next election cycle would not be eligible to serve on the Nominating Committee.
- Update or replace the Nominating Committee Terms of Reference to revise its composition and how its members are appointed and to better define the committee's role and duties.

### **Nominating Process**

- Review and, if required, update the Board Matrix to ensure it reflects the skills, experience and diversity elements that are needed on the Hockey Canada Board; this can be put into effect immediately and should be done annually.
- For each election cycle (including the 2022 election), that the Nominating Committee use the Board Matrix as a tool to support the call for nominations and to articulate clearly the specific skills and competencies being sought for the Board positions to be filled.
- We strongly encourage the Nominating Committee to engage and consult with a reputable board recruitment firm to assist it with the review of the Matrix and recruitment of qualified candidates to serve as Directors. That firm could be the same recruitment firm retained by Hockey Canada to assist with the recruitment of candidates for the Nominating Committee.
- Members (along with the general public and the Nominating Committee) should continue to have the right to propose candidates for election as Directors. However, none of the names proposed (including those proposed by the Members) should automatically appear on the final ballot. Instead, the Nominating Committee should evaluate all candidates proposed and create a short-list of nominees. Only candidates who qualify and can demonstrate that they possess the skills, competencies, experience and qualities identified by the Nominating Committee (using the Matrix) should be nominated by the Nominating Committee.
- Amend the By-laws to provide that all persons proposed for nomination to positions of elected Directors be submitted to the Nominating Committee, who will have the authority to vet and create a short list of candidates to be placed on the election ballot. That includes amending and removing all language in the By-laws and the Nominating Committee Terms of Reference that states or suggests that all nominations of candidates proposed by the Members shall be included in the final ballot for the election of the Directors and the Board Chair. In that regard, we understand that the Members of Hockey Canada have already approved By-law amendments to that effect at a meeting of the Members held on October 15, 2022. That process of vetting, evaluating and short-listing candidates should

be done having regard to the Board Matrix. We recommend that this approach be implemented for the current election cycle and all future ones.

- The Members should be entitled to receive regular communications from the Nominating Committee on its recruitment work and given an opportunity to provide comments. The Board should also be entitled to receive such reports and given an opportunity to provide comments.
- The Nominating Committee, as part of its right to vet and create a short list of qualified candidates, should have the authority and discretion to determine the number of nominees whose names will be included on the final election ballot, which number could be equal to or exceed the number of Directors positions available on the Board. In either case, in accordance with the *Canada Not-for-profit Corporations Act*, SC 2009, c 23 (“CNCA”), the Members must elect the proposed candidates by ordinary resolution.

### **Board Chair**

- Amend the By-laws to provide that the Directors (and not the Members) have the right to appoint the Board Chair.
- Revise and update the current “Chair of the Board Terms of Reference” to ensure they are current and include a list of qualities and minimum competencies required of the Board Chair. Such a list should be created and used as part of the current nomination process for the new transition Board Chair.

### **Appointed Directors**

- Amend the By-laws to provide that the Board may appoint additional Directors within the legal limits imposed by the CNCA, rather than limiting the option to only one additional Director.
  - d. Is the structure of the various standing committees and task teams, including their Terms of Reference/mandates and reporting mechanism to the Board, appropriate?*

Hockey Canada’s standing committees generally align with the types of standing committees that one would expect in a large not-for-profit organization, namely the Audit and Finance Committee, the Governance Committee, the Human Resources Committee, the Nominating Committee and the Risk Management Committee.

However, we have several recommended changes:

- Divide the Audit and Finance Committee into two separate committees: an Audit Committee, and a Finance Committee.
- Adopt new terms of reference for each of the new Audit Committee and Finance Committee.

- Reassess the current duties of the Human Resources Committee and reallocate relevant duties to other committees or staff, with a view to disbanding the Human Resources Committee.
- Enhance the role of the Risk Management Committee to include receiving regular reports from staff and advising the Board on any material government investigations, litigation, contractual disputes, or legal matters. That role should be entrenched in the terms of reference for the Committee.
- Have one member of the Governance Committee be someone who is not a Director and who is independent from other provincial and local hockey associations.
- Have the Governance Committee take over the following responsibilities from the Human Resources Committee: establishing self-assessment tools for Directors and the Board, ensuring there is proper orientation, support and continuing education for the Directors, and ensuring there is an annual evaluation of the performance of individual Directors and the Board as a whole. To help support the Governance Committee with those functions, we recommend that Hockey Canada retain the services of a reputable governance consultant who can serve as a resource person and advisor, as needed.
- Assign to the Governance Committee responsibility for matters relating to Board ethics and Director conduct.
- Formally dissolve the Program Standards Committee, which has been inactive for approximately four years, and repeal its terms of reference. Remove from the By-laws all references to the Program Standards Committee.
- Maintain the Female Hockey Policy Committee, which plays a critical role in advancing a clearly defined strategic plan objective and initiative.
- Have the Board, in consultation with the Chief Executive Officer (“CEO”), re-evaluate all Task Teams and their respective Terms of Reference and Charters to determine whether they exist for a specific and short-term function related to the strategic plan and the Board’s functions. If they do not, we recommend that Hockey Canada reconstruct these Task Teams into operational committees or other forms of working groups.
- Amend the By-laws to remove all language that provides for the Members’ right to approve the financial statements and to instead provide that the Directors shall be the ones responsible for approving them.
- Ensure minutes are taken and kept for all meetings of Members, Forums and Congresses. Hockey Canada should designate a resource person and/or secretary who can assist with minute taking and preparation of reports to Members, as needed.
- Conduct an in-depth review of the overall committee structure with a view to: 1) streamlining and maintaining core committees focused on meeting the needs of the new Board; 2) restructuring or disbanding Committees or Task Teams that have lost their

relevance or that are operationally focused and perform staff functions; and 3) developing a suite of new, refreshed and robust terms of reference that clearly define each committee's mandate and role, its key duties and functions, what it is responsible for achieving, and to whom it reports and is accountable.

- Amend the By-laws to remove details of any particular committee structure and instead include only general language that provides for the Board's authority to establish and disband committees and working groups as needed.
- Adopt a consistent form of report for Standing Committees and Task Teams that is clear, concise and impactful, and focused on providing information to Directors that is directly related to the strategic objectives of Hockey Canada and not on operational details. The form of report should be streamlined and organized in a way that allows all Standing Committees and Task Teams to report to the Board in a consistent way, with themes that are focused on strategic outcomes and effectiveness, and assist the Board in carrying out its functions and fiduciary oversight.

**C. Term of Reference No. 3 (Chapter IX)**

**3. *Does the Board exercise an appropriate degree of oversight of senior management as compared to similar organizations?***

No. The roles of senior management and the Board are not clearly defined nor distinguished. This, at times, leads to the Board involving itself too deeply in day-to-day operations. Moreover, the reporting relationship, particularly regarding the transfer of key information, is informal and unstructured. The Board should follow the example of the Comparator Associations by putting in place policies to formalize and clarify these gaps, and should look to increase efficiency in its Board and Committee processes.

**a. *Is the Board's current structure, as a volunteer Board with accountability for oversight of the organization, appropriate and in the best interest of hockey in Canada?***

Yes and No. Volunteer boards (rather than compensated boards) are standard practice in the not-for-profit sector. With more clearly defined roles and functions, increasingly efficient Board and committee processes, and an increase in the number of Directors sitting on the Board, Hockey Canada can reduce the time commitment required of its directors, and thus attract even more qualified and diverse candidates. This, in turn, will help Hockey Canada maintain and pursue its strategic vision.

**b. *Is there a clearly defined process describing what items staff must report to the Board (policy vs. operations)***

No. Hockey Canada lacks policies and procedures governing what senior management is required to report to the Board, when, and in what format. The Board should work to create clear reporting

guidelines and policies to ensure the upward flow of information key to the Board's role, while filtering out information of an operational nature.

- c. Is the reporting structure to the Board (staff and committees) comprehensive enough to ensure the work of Hockey Canada is efficient, effective, and of the highest quality?*

No. See above under "b" respecting the need to develop a reporting policy.

- d. What role should the Board play in operations versus policy and strategy?*

The Board must choose its governance model, which will dictate the degree to which the Board involves itself in policy decisions vis-à-vis operational decisions. Strategic decisions are linked to the organization's strategic plan, and involve long term, big picture decisions about its growth and direction. On the other hand, operational decisions in the short and medium term are how the organization carries out its strategic decisions in the short and medium term.

The Board must choose a governance model that allows the corporation to implement its strategic plan. Though the governance model best suited for Hockey Canada may change over time, and the Board is responsible for determining what model works best for the organization, we recommend for the time being a model that falls somewhere between a management board and a policy board.

The Board must reassess its governance model regularly in order to ensure it remains the most effective to implement the corporation's strategic vision. In doing so, it must reinforce the roles of management and of the Board through communication, policies and training/orientation.

### **Recommendations and Conclusions:**

- The Board must reassess its governance model with a view to selecting and implementing a model that will best help achieve the strategic vision of the organization. In our view, for the time being, Hockey Canada's Board will be best served by a model that falls somewhere between a policy board and a management board.
- Beyond developing a statement of roles and policies, the Board must actively manage and reinforce the line between itself and management through clear and consistent communication with senior management. This can also be done via comprehensive training and orientation. Indeed, following the last election cycle, the Hockey Canada Board received comprehensive orientation in which the role of the Board was distinguished from that of senior management. We recommend that Hockey Canada continue this practice, particularly as the Board re-evaluates its governance structure and its relationship with senior management.
- We do not recommend moving to a board that is compensated.
- Hockey Canada has advised that the Audit and Finance Committee currently provides quarterly reports to the Board on the required remittances and payments for which directors are personally liable that have been paid. Similarly, they advised that the Board receives a formal financial report at each Board meeting. We recommend that the Board evaluate its

needs from each area of senior management and implement a reporting practice commensurate with the quantity and type of information needed from each area.

- Hockey Canada advised that the Executive Assistant to the Board maintains a list of action items from Board meetings. Having a process in place to follow up on action items flagged in relation to senior management's reports is indeed essential. We recommend that the Board continue this practice, and that it adopt a practice or procedure of following up on items regularly (for example, noting action items from one Board meeting to the agenda for the following meeting).
- We understand that Hockey Canada has begun implementing key alignment tools for Board reporting and discussion, including an Initiative Tracker, a Calendar of Commitments, and the Hockey Canada Scorecard (to track the organization's progress across all areas of business, including organizational development, continued financial stability and Member engagement). We also understand that Hockey Canada has developed a number of templates for Board reporting, including the Initiative Charter (all initiatives must be chartered and approved), an approved PowerPoint Template, approved Task Team and Working Group templates, and an upcoming Word Template. We recommend that Hockey Canada continue to develop and use tools of these kinds to improve the flow of key communication to the Board in all areas. Further, we recommend that the Board formalize the use of these tools across the organization (e.g., through a policy) for increased consistency in Board reporting, which is intimately linked to transparent, effective and efficient decision making.
- We recommend that board training include the role of the board vis-à-vis the role of management, with a focus on the governance style adopted by the board and examples of what that means in practice.

**D. Term of Reference No. 4 (Chapter X)**

**4. *Is the Senior Management Team properly structured and constituted to oversee the operations of Hockey Canada, from the grassroots level to the high-performance level?***

We believe that some changes are needed. We recommend that:

- The job descriptions be updated regularly to reflect the current management structure, and that each member of the Senior Leadership team be reminded of their roles and responsibilities on a regular basis.
- As it recruits the CEO, the Board identify the most important needs of the organization in order to engage a President/CEO who can successfully pursue those matters.
- The duties and responsibilities associated with the role of President/CEO be better defined.
- The By-laws be amended to remove the reference to the Chief Operating Officer and Chief Business Development Officer positions, and to modify the definition of President.

- Hockey Canada replace the Director Women & Girls position with a senior leadership position which would be responsible for women's hockey (Vice President Women & Girls).
- Hockey Canada divide the Senior Vice President Hockey Operations & Development position in order to have one position responsible for hockey development (Vice President Hockey Development) and one person responsible for national teams (Vice President Hockey Operations).

**E. Term of Reference No. 5 (Chapter XI)**

**5. *In the area of governance, are there any other recommendations for actions that the Board of Directors and senior management could take to improve the confidence Canadians have in Hockey Canada?***

We recommend that:

- The current directors retire from office when their current terms expire at the December 17th annual meeting of Members and not put their name forward for re-election.
- Hockey Canada in the current election cycle and with the assistance of the nominating committee put in place a Board and Board Chair who agree to serve for only one year.
- The new directors and the Members should as soon as possible revise the Board structure and nominations process in line with my recommendations so that the new structure is in place for the 2023 election year.
- The Board should retain a top-notch board-recruiting firm. That firm should assist Hockey Canada with revising the skills matrix for directors and the Chair of the Board, revising the constitution and mode of appointment of the Nominating Committee and assist with populating both that committee and the Board. All of this should be in place for elections for the full Board and the Chair of the Board in 2023.
- The current system of weighted voting, like the current nominating process, has not produced the sort of Board that Hockey Canada needs. We believe that shifting to a system where each Member has the same number of votes, for the election of the Directors, coupled with the changes to the nominating process that we have recommended, will provide the most likely path to meaningful change. This will require the approval by both the Board and the Members at duly constituted meetings, and the filing of Articles of Amendment and revisions to the By-laws. We therefore recommend that the Board recommend to the Members this amendment to the voting structure and then make necessary changes to the governing documents if the amendments are approved.
- We recommend that Hockey Canada consider expanding the duties of the Senior Vice President Legal/General Counsel to include those of a Chief Risk Officer, who would also be responsible for identifying, considering and assisting in mitigating risks the organization, and the sport generally, are facing.

## II. INTRODUCTION

Hockey Canada engaged me on August 3, 2022 to conduct an independent and impartial review of its governance.<sup>1</sup> This is my third and final report setting out my conclusions and recommendations.

As the Terms of Reference make clear, this review is about Hockey Canada’s governance, not its handling of any particular incident or issue. I have not evaluated the appropriateness of Hockey Canada’s settlement of individual claims or made specific suggestions about how to change what has been described as a toxic culture in the sport. This does not mean, however, that my review is not responsive to these matters. Good governance is the foundation of everything that the organization does. It ensures that the organization can handle claims appropriately and can lead the change for which so many have called in a transparent and accountable way. Adoption of my recommendations will ensure that Hockey Canada has this essential foundation firmly in place.

Good governance does more than ensure sound operating practices and appropriate capacity for change. It also sees to it that the organization establishes, maintains and enhances stakeholder and public confidence. “Confidence” – trust or belief in the powers, trustworthiness or reliability of the organization – relates directly to some key principles of good governance.

As we describe in Chapter VI, the *Canada Not-for-profit Corporations Act*, SC 2009, c 23 (“CNCA”) provides a framework for accountable and transparent governance. These elements are especially important for corporations in the not-for-profit sector because they must establish and maintain a high level of public confidence in order to succeed. It follows that accountability and transparency are not just important within the organization’s internal governance; they are also key elements of the organization’s relationship with stakeholders and the broader public.

Confidence takes time to build, but can be quickly lost. Hockey Canada’s recent experience is testament to that. Parliamentarians, Hockey Canada’s members (“**Members**”), sponsors, Participants (defined below) and many others have been vocal in expressing that they have lost confidence in the organization. At the root of this loss of confidence is concern about good governance and good governance will be at the root of rebuilding that confidence.

The 89-day timeline has been challenging, considering the extensive scale and depth of the review, but with much assistance and sustained effort I have met the October 31 deadline. I gratefully acknowledge the assistance that I have received from Hockey Canada and the many other groups and persons who have responded to my requests for information and assistance. The remarkable team at Borden Ladner Gervais LLP that has assisted me, led by Nadia Effendi and Victoria Prince and including Sylvie Lalonde, Melanie Laframboise, Paige Miltenburg, Sandrine Mainville, Mathieu Dompierre, Erica McLachlan, Julia Martschenko, Julie Peacock-Singh and Vincenza Carrera, has risen to the challenges posed by the scope of and timelines for this review. I also wish to thank Larrass Translations for their assistance in translating the report.

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<sup>1</sup> My Terms of Reference have been made public and can be found here: <<https://www.hockeycanada.ca/en-ca/news/thomas-cromwell-to-lead-hockey-canada-governance-review-corp-2022>>.

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

- Interviewed more than 80 individuals resulting in over 60 meetings and many follow-up emails, including with current and former members of Hockey Canada’s Board of Directors and committees, current and former Hockey Canada employees, representatives of the Members of Hockey Canada, representatives of hockey associations and leagues, representatives of comparator National Sport Organizations as well as the Canadian Olympic Committee, the auditors for Hockey Canada, representatives of Sport Canada, experts and other individuals with knowledge of the history of Hockey Canada, hockey generally, and/or sports governance;<sup>2</sup>
- Made numerous requests for information to Hockey Canada resulting in over a thousand documents, including minutes of Hockey Canada Board of Directors and Committees meetings, officers meetings and Members meetings (such as annual and semi-annual general meetings and Member forum meetings) as well as financial statements and ledgers related to the National Equity Fund (“NEF”), all of which have been reviewed;
- Reviewed the governance, including relevant documents, of other comparator National Sport Organizations to determine best practices;
- Researched sport legal and policy framework and best practices regarding governance and reserve funds;
- Reviewed written submissions and documents provided by Hockey Canada Members, additional stakeholders and others; and
- Prepared the September 30 interim report, the October 10 memorandum to the Hockey Canada Board of Directors and this report.

The Executive Summary that precedes this Introduction sets out an overview of my conclusions and recommendations. Implementing the changes that I recommend will require Members and the Board of Directors to work together differently than they have in the past.

In particular, the recruitment of Directors for the Board of Hockey Canada (the “**Board**” or “**Board of Directors**”) needs to be fundamentally rethought and this will require the support and assistance of the membership. Several Members have expressed their loss of confidence in Hockey Canada’s leadership. But ultimately the Members control who are in these leadership positions. A new approach to filling these positions is urgently needed.

Hockey Canada has a complex mandate and a large budget. These factors alone mean that there is a high bar for the quality of leadership necessary to pursue the vision, mission and objects of the organization and to ensure healthy and productive relationships with stakeholders. In addition, there is the challenge of bringing about significant cultural change. Such change typically requires modification of traditional – perhaps ingrained – approaches and attitudes. This sort of change is difficult to bring about and often gives rise to strong resistance. Leadership of an organization with

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<sup>2</sup> See Appendix A for the list of all individuals who were interviewed.

such a complex mandate in urgent need of significant cultural change is an enormously challenging task.

There is no doubt that Hockey Canada has been served by Directors who are passionate about hockey, deeply committed to the organization's mission, vision and values and who donate large – even unreasonable – amounts of time and energy to the organization's governance. However, the complexity of the organization's leadership challenges have outgrown the responsive capacity of the present board recruitment and election processes. In short, the current board nomination process has not provided Hockey Canada with the wide range, depth and diversity of experience, both professional and personal, that the board collectively requires to govern this complex organization and to lead significant cultural change.

During the review, stakeholders raised several issues and challenges they believe Hockey Canada, and the sport generally, were facing, which were outside the scope of this review and I was not able to consider. However, I wish to make a note of these issues so that Hockey Canada and its broader constituency may consider them as part of their future efforts to effect change. These include: the toxic culture of the sport and the requirements for broader culture change, the additional support required for women's hockey, the eligibility criteria for Hockey Canada Members, the support, or lack thereof, afforded to para hockey, the relationship between Hockey Canada and the Canadian Hockey League/Canadian Junior Hockey League and the challenges with respect to the "Residential Restriction Rule" as well as the Major Junior path (also referred to as the "Canadian Development Model") versus the NCAA path. While I have not, and could not, address these matters directly, I believe that the strengthening of the governance of Hockey Canada that I propose will provide the foundation on which these issues will be addressed.

Implementing my recommendations will require strong support and openness to change on the part of the membership, Participants and stakeholders. Hockey Canada alone will not be able to achieve all the changes required. Indeed, it is just one entity in the web of organizations and entities that have a role to play in hockey in this country. Furthermore, the average player, parent, coach, trainer, volunteer or official is more likely to come into direct contact with those organizations than Hockey Canada. Change will require support and implementation at all levels of hockey across the country. Hockey Canada has an important leadership role to play, but it cannot by itself bring about the change for which so many are calling.

It is also time for other entities and stakeholders to reflect on their own roles and responsibilities. Some who have been quick to announce their loss of confidence in Hockey Canada have been slow to acknowledge their own past contributions to its troubles. The underlying causes of the current crisis are not of recent origin. The Members have controlled who is on the Board. Sport Canada, as recently as June 2022, gave Hockey Canada a top rating for some aspects of governance (such as board structure, composition and development, dispute resolution, financial strategy and control and risk management) in its Report Card process. It is not my role to point fingers or assign responsibility. I will simply observe that many could have done more to address the issues sooner. It is now time for the whole hockey community, including all those under the Hockey Canada umbrella, its stakeholders and Sport Canada to work together to make our game the safe and inclusive sport that it ought to be. My hope is that the governance recommendations that I make in this review will provide Hockey Canada with the capacity to play its important role in making

the changes that are so urgently needed. But it will not be able to do this alone. All stakeholders will have to work together to bring these changes about.

Hockey Canada is at a crossroads. I believe that if it commits itself to the fundamental governance reform that I recommend, it will have a solid foundation upon which to rebuild the confidence of stakeholders and the public and be well-positioned to achieve its mission to “Lead, Develop and Promote Positive Hockey Experiences.”

Ottawa, Ontario

October 31, 2022

### III. TABLE OF ABBREVIATIONS/GLOSSARY

<b>Abbreviation</b>	<b>Complete word, phrase or definition</b>
Athletics Canada	Athletics Canada Athlétisme Canada
Board or Board of Directors	Board of directors of Hockey Canada
CAHA	Canadian Amateur Hockey Association
Canada Basketball	Canada Basketball
Canada Soccer	The Canadian Soccer Association Incorporated L' Association canadienne de soccer incorporée
CBDO	Chief Business Development Officer
CEO	Chief Executive Officer
CFO	Chief Financial Officer
CHL	Canadian Hockey League
CNCA	<i>Canada Not-for-profit Corporations Act, SC 2009, c 23</i>
COC	Canadian Olympic Committee
COC Code	Canadian Sport Governance Code
Comparator Associations	Five National Sport Organizations promoting and regulating an amateur sport in Canada on a nationwide basis, notably Athletics Canada, Canada Basketball, Curling Canada, Canada Soccer and Tennis Canada
COO	Chief Operating Officer
CMO	Hockey Canada Chief Medical Officer
Co-operators	Co-operators General Insurance Company
Crawford	Crawford & Company
CSP	Canadian Sport Policy
Curling Canada	Canadian Curling Association
Director of Finance	Director, Financial Services

<b>Abbreviation</b>	<b>Complete word, phrase or definition</b>
Director Women & Girls	Director, Women & Girls Hockey
DSO	Director of Sanctions and Outcomes
ED HCF	Executive Director, Hockey Canada Foundation
External Candidate	An individual who is interested in being nominated for a position of elected Director by the Chair of the Nominating Committee
FHP Committee	Female Hockey Policy Committee
HEO	Hockey Eastern Ontario
HNO	Hockey Northwestern Ontario
IF	International Federation
IIHF	International Ice Hockey Federation
ITP	Independent Third Party
IRS Fund	Insurance Rate Stabilization Fund
Legacy Trust	Participants Legacy Trust Fund
Members	Provincial, regional or territorial associations/federations that manage and foster amateur hockey within their geographic regions and have the responsibility to represent their constituents. The 13 Members of Hockey Canada currently are: British Columbia Hockey, Hockey Alberta, Hockey Saskatchewan, Hockey Manitoba, Hockey Northwestern Ontario, Ontario Hockey Federation, Hockey Eastern Ontario, Hockey Québec, Hockey New Brunswick, Hockey Nova Scotia, Hockey Prince Edward Island, Hockey Newfoundland and Labrador, and Hockey North. These Members have certain rights and obligations under Hockey Canada's constituting documents
MHA	Minor Hockey Association
NEF	National Equity Fund
NSF	National Sport Federation
NSO	National Sport Organization

<b>Abbreviation</b>	<b>Complete word, phrase or definition</b>
NOCA	Northern Ontario Curling Association
OAS	Ontario Artistic Swimming
OHF	Ontario Hockey Federation
OSIC	Office of the Sport Integrity Commissioner
OTP	Own the Podium
OWHA	Ontario Women's Hockey Association
Participant	All players, coaches, referees, assistant coaches, trainers, managers and volunteers of Hockey Canada and its Members, including local associations and teams
PASA	<i>Physical Activity and Sport Act, RSC 2003 c. 2</i>
PCH	Federal Department of Canadian Heritage
Program	National Equity Fund Insurance Program
P/TSO	Provincial/Territorial Sport Organization
RCAAA	Registered Canadian Amateur Athletic Association
SDRCC	Sport Dispute Resolution Centre of Canada
SFAF	Sport Funding and Accountability Framework
SFC	Shooting Federation of Canada
SSP	Sport Support Program
SVP Operations & Development	Senior Vice President Hockey Operations & Development
SVP Operations	Senior Vice President Strategy, Operations & Brand
Task Team	Task Teams are struck to undertake a specific task or project
Tennis Canada	The Canadian Tennis Association L'Association canadienne de tennis
U7	Under seven years of age
U21	Under 21 years of age

<b>Abbreviation</b>	<b>Complete word, phrase or definition</b>
UCCMS	<i>Universal Code of Conduct to Prevent and Address Maltreatment in Sport</i>
VP BD&P	Vice President Business Development & Partnerships
VP Events & Properties	Vice President Events & Properties
VP Member Engagement	Vice President Member Engagement
VP PC&I	Vice President, People Culture & Inclusion
VP Sport Safety	Vice President of Sport Safety
WJC	World Junior Championship

## IV. HOCKEY CANADA BACKGROUND

### A. Introduction

Hockey Canada (formerly, Canadian Hockey Association and Canadian Amateur Hockey Association) is a not-for-profit corporation continued under and governed by the *Canada Not-for-Profit Corporations Act*, SC 2009, c 23 (“CNCA”). Hockey Canada is also a Registered Canadian Amateur Athletic Association (“RCAAA”), a designation under the *Income Tax Act*, RSC 1985, c 1 (5th Supp).<sup>3</sup>

Hockey Canada is the national, self-governing body for amateur hockey, including men, women, and para hockey, across the country.<sup>4</sup> The not-for-profit corporation “oversees the management of programs in Canada from entry-level to high-performance teams and competitions, including world championships and the Olympic Winter Games.”<sup>5</sup> Hockey Canada also represents Canada internationally within the International Ice Hockey Federation (“IIHF”).<sup>6</sup>

Not-for-profit corporations like Hockey Canada have members, directors and officers. The various roles of these persons is discussed in more detail in Chapter VI. Hockey Canada has only one class of Members.<sup>7</sup> The Members of Hockey Canada are the different provincial, regional or territorial associations/federations who are “empowered to manage and foster amateur hockey within their geographic region and have the responsibility to represent their constituents.”<sup>8</sup> The Members of Hockey Canada are often referred to as “branches”. They are the following: BC Hockey, Hockey Alberta, Hockey Saskatchewan, Hockey Manitoba, Hockey Northwestern Ontario, Ontario Hockey Federation, Hockey Eastern Ontario, Hockey Québec, Hockey New Brunswick, Hockey PEI, Hockey Nova Scotia, Hockey Newfoundland and Labrador, and Hockey North.

Hockey Canada’s Board of Directors is composed of nine Directors, including the Chair of the Board, who are elected by the Members and up to one Director appointed by the elected Directors. Directors serve without remuneration.<sup>9</sup>

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<sup>3</sup> Hockey Canada’s status as an RCAAA will be further explained in Chapter V.

<sup>4</sup> “Hockey Canada 2020-21 Annual Report” (last visited 21 August 2022) at 5, online (pdf): *Hockey Canada* <<https://cdn.hockeycanada.ca/hockey-canada/Corporate/About/Downloads/2020-21-annual-report-e.pdf>>; “Hockey Canada By-Laws, Regulations and History” (May 2022), s 2.2, online (pdf): *Hockey Canada* <<https://cdn.hockeycanada.ca/hockey-canada/Corporate/About/Downloads/2022-23-bylaws-e.pdf>>.

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

<sup>6</sup> “Hockey Canada 2020-21 Annual Report” (last visited 21 August 2022) at 5, online (pdf): *Hockey Canada* <<https://cdn.hockeycanada.ca/hockey-canada/Corporate/About/Downloads/2020-21-annual-report-e.pdf>>; “Hockey Canada By-Laws, Regulations and History” (May 2022), s 2.3, online (pdf): *Hockey Canada* <<https://cdn.hockeycanada.ca/hockey-canada/Corporate/About/Downloads/2022-23-bylaws-e.pdf>>.

<sup>7</sup> “Hockey Canada By-Laws, Regulations and History” (May 2022), s 8.1, online (pdf): *Hockey Canada* <<https://cdn.hockeycanada.ca/hockey-canada/Corporate/About/Downloads/2022-23-bylaws-e.pdf>>.

<sup>8</sup> “Find contact information for your provincial or regional Member,” online: *Hockey Canada* <<https://www.hockeycanada.ca/en-ca/corporate/contact/branches>>.

<sup>9</sup> “Hockey Canada By-Laws, Regulations and History” (May 2022), s 39.1, online (pdf): *Hockey Canada* <<https://cdn.hockeycanada.ca/hockey-canada/Corporate/About/Downloads/2022-23-bylaws-e.pdf>>.

Finally, Hockey Canada’s Corporate Officers include the Chief Executive Officer (“CEO”), President and Chief Operating Officer (“COO”), Chief Financial Officer (“CFO”), and Chief Business Development Officer (“CBDO”). The by-laws also permit the CEO, with the approval of the Board, to appoint other Officers.<sup>10</sup>

## B. History

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

<b>1914</b>	On December 4, 1914, the Canadian Amateur Hockey Association (“CAHA”) was “formed to oversee the amateur [hockey] game at a national level.” <sup>11</sup> From 1914 through to 1997, local hockey associations became Members of CAHA. <sup>12</sup>
<b>1930</b>	The IIHF began sponsoring annual international hockey tournaments. <sup>13</sup>
<b>1950s</b>	Canada performed poorly at the 1954 World Hockey Championships and in the 1956 Olympics, with rising sentiment that Canada had been beaten at its “own game” by the Soviet Union. <sup>14</sup> Prior to the 1956 Olympic games, Canada had usually been the world champion in Hockey. <sup>15</sup>
<b>1960</b>	Canada suffered another disappointing loss at the 1960 Olympics in Squaw Valley.
<b>1961</b>	Parliament passed Bill C-131, an <i>Act to Encourage Fitness and Amateur Sport</i> , to “encourage, promote and develop fitness and amateur sport in Canada”, paving the way for the federal government to enter into cost-sharing arrangements with the provinces and territories and to provide funding to volunteer-driven national sports organizations. <sup>16</sup>

<sup>10</sup> “Hockey Canada By-Laws, Regulations and History” (May 2022), s 40.11, online (pdf): *Hockey Canada* <<https://cdn.hockeycanada.ca/hockey-canada/Corporate/About/Downloads/2022-23-bylaws-e.pdf>>.

<sup>11</sup> “Hockey Canada By-Laws, Regulations and History” (May 2022) at 177, online (pdf): *Hockey Canada* <<https://cdn.hockeycanada.ca/hockey-canada/Corporate/About/Downloads/2022-23-bylaws-e.pdf>>; “Learn about the history of Hockey Canada” (last visited 21 August 2022), online: *Hockey Canada* <[www.hockeycanada.ca/en-ca/corporate/history](http://www.hockeycanada.ca/en-ca/corporate/history)>.

<sup>12</sup> “Hockey Canada By-Laws, Regulations and History” (May 2022) at 180, online (pdf): *Hockey Canada* <<https://cdn.hockeycanada.ca/hockey-canada/Corporate/About/Downloads/2022-23-bylaws-e.pdf>>.

<sup>13</sup> House of Commons, Task Force on Sports for Canadians, *Report of the task force on sports for Canadians* (1969) at 29.

<sup>14</sup> House of Commons, Subcommittee on the Study of Sport in Canada of the Standing Committee on Canadian Heritage, *Sport in Canada: Leadership, Partnership and Accountability; Everybody’s Business*, 36th Parl, 1st Sess (December 1998) at Part II (Chair: Dennis Mills).

<sup>15</sup> House of Commons, Task Force on Sports for Canadians, *Report of the task force on sports for Canadians* (1969) at 29.

<sup>16</sup> Lucie Thibault & Jean Harvey, *Sport Policy in Canada* (Ottawa: University of Ottawa Press, 2013) at 13; House of Commons, Subcommittee on the Study of Sport in Canada of the Standing Committee on Canadian Heritage, *Sport in Canada: Leadership, Partnership and Accountability; Everybody’s Business*, 36th Parl, 1st Sess (December 1998) at Part II (Chair: Dennis Mills).

	Under the legislation, the Minister of National Health and Welfare was given the power to make grants to any agency, organization or institution carrying on activities in the field of fitness or amateur sport. <sup>17</sup> The Department of National Health and Welfare carried out these responsibilities through the new Fitness and Amateur Sport Program. <sup>18</sup>
<b>1961-1968</b>	<p>Pride in Canadian sport at the international level was low. Up until then, in the eyes of the IIHF, Canada was merely one member with two delegates, with the weight of membership strength in Europe.<sup>19</sup> There was increasing sentiment that Canada needed a strong, national team to represent the nation on the world stage.<sup>20</sup></p> <p>Financing a national team remained an obstacle. As a solution, the Hockey Foundation was created to raise funds through corporate donations, obtaining government grants via the CAHA, and from the revenues brought in by games in which the National Team took part.<sup>21</sup></p>
<b>1969</b>	<p>The <i>Report of the Task Force on Sports in Canada</i> (the “<b>Task Force Report</b>”) was tabled in the House of Commons, setting the course for the government’s emerging role in sport policy.</p> <p>The Task Force Report recommended the creation of a non-profit corporation to be known as Hockey Canada, for the purpose of managing and financing the National hockey teams of Canada, and thus to organize and develop Canada’s representation in international competition.<sup>22</sup></p> <p>The Task Force Report also recommended the creation of a non-profit corporation to be known as Sport Canada, to provide “a focus for the administration, support and growth of sport in Canada”.<sup>23</sup></p>

<sup>17</sup> Library of Parliament, Legal and Social Affairs Division, *Sport Canada and the Public Policy Framework for Participation and Excellence in Sport* (23 January 2020) at 1, online: *Parliament of Canada* <[https://lop.parl.ca/sites/PublicWebsite/default/en\\_CA/ResearchPublications/202012E](https://lop.parl.ca/sites/PublicWebsite/default/en_CA/ResearchPublications/202012E)>.

<sup>18</sup> Library of Parliament, Legal and Social Affairs Division, *Sport Canada and the Public Policy Framework for Participation and Excellence in Sport* (23 January 2020) at 1, online: *Parliament of Canada* <[https://lop.parl.ca/sites/PublicWebsite/default/en\\_CA/ResearchPublications/202012E](https://lop.parl.ca/sites/PublicWebsite/default/en_CA/ResearchPublications/202012E)>.

<sup>19</sup> House of Commons, Task Force on Sports for Canadians, *Report of the task force on sports for Canadians* (1969) at 29.

<sup>20</sup> House of Commons, Task Force on Sports for Canadians, *Report of the task force on sports for Canadians* (1969) at 30.

<sup>21</sup> House of Commons, Task Force on Sports for Canadians, *Report of the task force on sports for Canadians* (1969) at 30.

<sup>22</sup> House of Commons, Task Force on Sports for Canadians, *Report of the task force on sports for Canadians* (1969) at 30; John Barnes, *Sports and The Law in Canada*, 2nd ed (Toronto and Vancouver: Butterworths Canada Ltd, 1988) at 34.

<sup>23</sup> House of Commons, Task Force on Sports for Canadians, *Report of the task force on sports for Canadians* (1969) at 75.

<b>1971</b>	The Federal Government created two new directorates for its Fitness and Amateur Sport Program – Recreation Canada and Sport Canada – the latter tasked with developing competitive sport. <sup>24</sup>
<b>1981</b>	On May 1, 1981, an application to incorporate under the name Canadian Amateur Hockey Association was made under part 2 of the <i>Canada Corporations Act</i> . Letters Patent were accordingly issued. <sup>25</sup>
<b>1995</b>	On February 1, 1995, Supplementary Letters Patent were issued to the CAHA. This changed the organization’s name to Canadian Hockey Association. <sup>26</sup>
<b>1998</b>	In 1998, the CAHA and Hockey Canada merged into one organization, “bringing every aspect of Canadian hockey under one umbrella.” <sup>27</sup>
<b>2014</b>	On June 10, 2014 and further to the coming into force of the <i>Canada Not-for-profit Corporations Act</i> , Hockey Canada was continued under that Act, by way of Articles of Continuance. <sup>28</sup>

**C. Mission, vision and values**

Hockey Canada’s mission statement is to: “Lead, Develop and Promote Positive Hockey Experiences.”<sup>29</sup> Its vision is to be “World Sport Leaders”.<sup>30</sup> Hockey Canada’s values include “making hockey more than scoring goals and winning games.”<sup>31</sup> More specifically, Hockey Canada states that it believes in:

- A positive hockey experience for all participants, in a safe, sportsmanlike environment;
- The development of life skills which will benefit participants throughout their lives;
- The values of fair play and sportsmanship, including the development of respect for all people by all participants;

<sup>24</sup> Library of Parliament, Legal and Social Affairs Division, *Sport Canada and the Public Policy Framework for Participation and Excellence in Sport* (23 January 2020) at 1, online: *Parliament of Canada* <[https://lop.parl.ca/sites/PublicWebsite/default/en\\_CA/ResearchPublications/202012E](https://lop.parl.ca/sites/PublicWebsite/default/en_CA/ResearchPublications/202012E)>.

<sup>25</sup> Consumer and Corporate Affairs Canada, “Canadian Amateur Hockey Association Letters Patent” (1 May 1981).

<sup>26</sup> Industry Canada, “Canadian Amateur Hockey Association Supplementary Letters Patent” (1 February 1995).

<sup>27</sup> “Learn about the history of Hockey Canada” (last visited 21 August 2022), online: *Hockey Canada* <[www.hockeycanada.ca/en-ca/corporate/history](http://www.hockeycanada.ca/en-ca/corporate/history)>.

<sup>28</sup> Industry Canada, “Hockey Canada Association Articles of Continuance” (10 June 2014).

<sup>29</sup> “Mandate & Mission – Who is Hockey Canada?” (last visited 21 August 2022), online: *Hockey Canada* <[www.hockeycanada.ca/en-ca/corporate/about/mandate-mission](http://www.hockeycanada.ca/en-ca/corporate/about/mandate-mission)>.

<sup>30</sup> “Mandate & Mission – Who is Hockey Canada?” (last visited 21 August 2022), online: *Hockey Canada* <[www.hockeycanada.ca/en-ca/corporate/about/mandate-mission](http://www.hockeycanada.ca/en-ca/corporate/about/mandate-mission)>.

<sup>31</sup> “Hockey Canada 2020-21 Annual Report” (last visited 21 August 2022) at 8, online (pdf): *Hockey Canada* <<https://cdn.hockeycanada.ca/hockey-canada/Corporate/About/Downloads/2020-21-annual-report-e.pdf>>.

- Hockey opportunities for all people regardless of age, gender, colour, race, ethnic origin, religion, sexual orientation, or socio-economic status and in both official languages;
- The importance for participants to develop dignity and self-esteem;
- Instilling the values of honesty and integrity in participants at all times;
- The promotion of teamwork, and the belief that what groups and society can achieve as a whole is greater than that which can be achieved by individuals;
- The country of Canada, its tradition in the game of hockey, and the proud and successful representation of this tradition around the world;
- The value of hard work, determination, the pursuit of excellence and success in all activities; and
- The benefits of personal and physical well-being.<sup>32</sup>

#### **D. Purposes**

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

- (a) Regulate amateur hockey in Canada and establish uniform playing rules;
- (b) Promote the sport of amateur hockey in Canada, on a nationwide basis;
- (c) Oversee a structure of Branches [a term often used to describe Hockey Canada’s Members], Clubs, Associations, Leagues and Teams involved in amateur hockey;
- (d) Deliver a training program that brings promising athletes from the grassroots level to national and international levels through various qualifying competitions;
- (e) Manage national teams to participate in international competitions;
- (f) Stage and sanction regional, national, and international competitions and sanction local and Member competitions;
- (g) Act as Canadian representative on the IIHF;
- (h) Provide a training and certification program for coaches and officials, and provide training programs for other hockey development programs; and

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<sup>32</sup> “Mandate & Mission – Who is Hockey Canada?” (last visited 21 August 2022), online: *Hockey Canada* <[www.hockeycanada.ca/en-ca/corporate/about/mandate-mission](http://www.hockeycanada.ca/en-ca/corporate/about/mandate-mission)>.

- (i) Carry out fundraising activities and redistribute funds for local Clubs and Member organizations.<sup>33</sup>

## **E. Main operations and business**

Hockey Canada’s operations essentially deal with all aspects of “organized hockey”.<sup>34</sup> Based on Hockey Canada’s mission, vision, values and purposes, its current by-laws, and its recent budget and annual reports, we understand Hockey Canada’s main operations and business lines to be composed of four categories: regulating amateur hockey in Canada, growing and developing the game, representing Canada on the world stage, and business development.

### *i. Regulating amateur hockey in Canada*

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

Hockey Canada’s role is to establish uniform playing rules and set standards for its Members and all stakeholders under its umbrella. Hockey Canada accomplishes this through the requirement in its by-laws that its Members must adhere to and observe Hockey Canada’s by-laws, regulations, playing rules, policies and related decisions. Failure to do so could result in termination of membership.<sup>35</sup> Hockey Canada also requires its Members to conduct and control hockey within their own geographical region in the same manner.<sup>36</sup> In addition, all registered Participants of Hockey Canada or any of its Members, which include but are not limited to any players, coaches, trainers, clubs, teams, associations, leagues and parents, must also adhere to and observe the playing rules and standards set by Hockey Canada and Hockey Canada’s Members.<sup>37</sup>

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

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<sup>33</sup> Industry Canada, “Hockey Canada Association Articles of Continuance” (10 June 2014); “Hockey Canada By-Laws, Regulations and History” (May 2022), s 4.1, online (pdf): *Hockey Canada* <<https://cdn.hockeycanada.ca/hockey-canada/Corporate/About/Downloads/2022-23-bylaws-e.pdf>>.

<sup>34</sup> “Hockey Canada 2020-21 Annual Report” (last visited 21 August 2022) at 3, online (pdf): *Hockey Canada* <<https://cdn.hockeycanada.ca/hockey-canada/Corporate/About/Downloads/2020-21-annual-report-e.pdf>>.

<sup>35</sup> “Hockey Canada By-Laws, Regulations and History” (May 2022), ss 7.1, 9.2, 18.1, online (pdf): *Hockey Canada* <<https://cdn.hockeycanada.ca/hockey-canada/Corporate/About/Downloads/2022-23-bylaws-e.pdf>>.

<sup>36</sup> “Hockey Canada By-Laws, Regulations and History” (May 2022), s 11.1, online (pdf): *Hockey Canada* <<https://cdn.hockeycanada.ca/hockey-canada/Corporate/About/Downloads/2022-23-bylaws-e.pdf>>.

<sup>37</sup> “Hockey Canada By-Laws, Regulations and History” (May 2022), ss 14.1, 14.2, online (pdf): *Hockey Canada* <<https://cdn.hockeycanada.ca/hockey-canada/Corporate/About/Downloads/2022-23-bylaws-e.pdf>>.

These issues are creating inconsistencies across the country in the way the game of hockey is delivered.

*ii. Growing and developing the game*

Hockey Canada coordinates a vast array of development programs, aimed at recruiting and retaining new players, shaping the next generation, and developing talent.

Hockey Canada offers programs, camps and resources in relation to kids and youth hockey, female hockey, men and women's para hockey,<sup>38</sup> coaching, and officiating. It also offers mentorship, school and safety programs, as well as adult recreational hockey. More specifically, Hockey Canada coordinates players' skills camps, player development and regional centres, the National Coach Certification Program, the Hockey Canada Officiating Program, the Hockey Canada Safety Program, Hockey University, Dreams Come True, Esso Fun Days and The First Shift, which all "serve as a catalyst for growing the game."<sup>39</sup>

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

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

*iii. Representing Canada on the world stage*

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

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<sup>38</sup> Hockey Canada indicated that support is provided to the Women's para hockey in the form of a grant from the Hockey Canada Foundation, though we understand that some stakeholders have expressed concerns over the program: Karissa Donkin, "Equity on ice" (25 October 2022), online: [CBC <https://www.cbc.ca/newsinteractives/features/equity-on-ice>](https://www.cbc.ca/newsinteractives/features/equity-on-ice).

<sup>39</sup> "Hockey Canada 2020-21 Annual Report" (last visited 21 August 2022) at 21, online (pdf): [Hockey Canada <https://cdn.hockeycanada.ca/hockey-canada/Corporate/About/Downloads/2020-21-annual-report-e.pdf>](https://cdn.hockeycanada.ca/hockey-canada/Corporate/About/Downloads/2020-21-annual-report-e.pdf).

iv. *Business development*

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

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

Hockey Canada's marketing efforts are also focused on recruitment and retention of players: campaigns are created with the aim of bringing kids into the game of hockey, as well as inspiring young players by creating the feeling that they are "part of something bigger."<sup>40</sup>

Hockey Canada operates hand-in-hand with the Hockey Canada Foundation, a registered charity, "to provide secure, sustainable, long-term funding to support the future development of the game."<sup>41</sup> This review will not address the role or operation of the Hockey Canada Foundation.

For the year ending on June 30, 2021, Hockey Canada had total revenues of \$61.902 million dollars, with operating revenues of \$33.669 million. These operating revenues derive mainly from marketing (\$20.138 million), government grants (\$5.653 million) and revenue from national events and camps and national teams (\$3.4 million). Hockey Canada receives \$23.80 per player from its Members: \$3 is a registration fee which is allocated exclusively to Hockey Canada's general operations (programming, facilities and staff) and \$20.80 is an insurance fee which we discuss further below. As a result of the pandemic, the registration fee was reduced to \$1.50 during the 2020-2021 season and to \$0 during the 2021-2022 season.

As a result of recent events, several of Hockey Canada's sponsors and corporate partners – including Bauer, Nike, Canadian Tire, Tim Hortons, Scotiabank, Telus, Chevrolet Canada, Sobeys and Esso – have paused or reduced sponsorship funding, with some completely severing ties with Hockey Canada.<sup>42</sup>

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<sup>40</sup>Interview of Dana Gladstone (7 September 2022); Interview of Brian Cairo (30 August 2022).

<sup>41</sup> "Hockey Canada 2020-21 Annual Report" (last visited 21 August 2022) at 26, online (pdf): *Hockey Canada* <<https://cdn.hockeycanada.ca/hockey-canada/Corporate/About/Downloads/2020-21-annual-report-e.pdf>>.

<sup>42</sup> Graeme Bruce, "Tracking the fallout of the Hockey Canada scandal" (7 October 2022), online: *CBC* <<https://www.cbc.ca/news/canada/hockey-canada-leadership-change-pressure-1.6608506>>; "Canadian Tire ends Hockey Canada partnership; PM Justin Trudeau suggests starting a new federation" (6 October 2022), online: *The Athletic* <<https://theathletic.com/3664547/2022/10/06/canadian-tire-hockey-canada-sponsorship/>>; "Which corporate sponsors have paused or pulled their support for Hockey Canada?" (updated 12 October 2022), online: *CTV News*

Hockey Canada operates a number of segregated funds, including the National Equity Fund, the Health and Benefit Trust and the various Pillar funds. The total value of these funds as of June 30, 2021 was \$119.120 million. These are discussed in more detail below.

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

v. *Sources of funding, revenue and expenses*

As the NSO for the sport of hockey in Canada, Hockey Canada receives funding from a variety of sources. From 2017 to 2021, the most significant sources of revenue were the following:

- Marketing revenues, including sponsorship revenue, video content sales, championship photo sales, broadcast rights, licensing rights, merchandising revenue and hangtag sales represented 21% to 36% of annual revenues;
- When Canada hosted international hockey events (ex: the Women’s World Championships, the revenues from hosting these international events generally represented 3% to 37% of annual revenues);<sup>43</sup>
- Insurance premiums for Participants collected from Members (that is, \$20.80 per Participant) represented 10 to 23% of annual revenues, although these are largely “flow through” revenue because the money collected is used mainly to pay annual premiums for the insurance coverage;<sup>44</sup> and
- Funding revenues include federal government grants from Sport Canada and Own the Podium, as well as other non-governmental funding agencies. In addition, these revenues are comprised of grants from the Hockey Canada Foundation. Altogether, funding revenue represented between 7 to 12% of annual revenues.

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<https://www.ctvnews.ca/sports/which-corporate-sponsors-have-paused-or-pulled-their-support-for-hockey-canada-1.6098822>>; “Nike suspending sponsorship relationship with Hockey Canada” (7 October 2022), online: *Sportsnet* <<https://www.sportsnet.ca/hockey/article/nike-suspending-sponsorship-relationship-with-hockey-canada/>>; “A list of the Hockey Canada sponsors pulling their support” (updated 11 October 2022), online: *The Globe and Mail* <<https://www.theglobeandmail.com/canada/article-hockey-canada-sponsors/>>; Bianca Bharti, “Canadian Tire permanently cuts ties with Hockey Canada over sexual assault allegations,” (6 October 2022), online: *Financial Post* <<https://financialpost.com/news/retail-marketing/canadian-tire-cuts-ties-hockey-canada>>.

<sup>43</sup> In 2020, the percentage was only 3%.

<sup>44</sup> In the past, the amounts collected from Members for insurance premiums were greater than the actual premiums paid annually. This was done to build a buffer against potential rate increases. Over the last 5 years, the annual premiums have increased significantly, even surpassing the annual levies collected from Members. Thus, while these premium levies from Members represented up to 24% of revenues from 2017 to 2021, they largely consisted of flow-through revenues, leaving Hockey Canada to subsidize the cost of insurance for its Members.

For the same period of 2017 to 2021, the most significant categories of expenses for the organization were the following:

- Administration, comprised primarily of salaries, benefits and human resources related costs, represented 23% to 39% of annual expenses;
- Hosting international events and tournaments represented 5% to 29% of annual expenses;
- National Teams (formerly represented in reports/financial statements as “High Performance”), which included the cost of managing and transporting the various national hockey teams to international tournaments, represented 11% to 27% of annual expenses; and
- Insurance premiums paid to Hockey Canada’s insurer represented 9% to 17% of annual expenses, being the tail end of “flow through” revenue used mainly to pay annual insurance premiums for the insurance coverage.

As the figures above show, certain sources that generated a significant amount of revenue for Hockey Canada had correspondingly significant levels of expenditures. Taking this into account, the main contributors for 2017 to 2021 were marketing (21 to 36% of gross annual revenues<sup>45</sup>), levies for insurance premiums\*<sup>46</sup> (10% to 23% of gross annual revenues), investment income (4% to 18% of gross annual revenues), funding revenue (7% to 12% of gross annual revenues). In 2017 and 2019, international event hosting brought in significant net revenues (30% and 37% of gross annual revenues, respectively).

*vi. Member funding*

The funding received by Members generally comes from the following sources: Hockey Canada, provincial government support grants<sup>47</sup>, registration/assessment fees, sponsorships and annual distributions from the CAHA Participants Legacy Trust (“**Legacy Trust**” – described later in this report).

A large portion of Members’ funding comes from registration and assessment fees (upwards of 70%) and development programming (e.g., player camps, coaching clinics, high performance camps), while Hockey Canada revenue, provincial government funding and distributions from the Legacy Trust generally make up less than a quarter of their annual funding combined. Nevertheless, smaller Members have indicated that Hockey Canada revenue can make up a significant part of their annual operations budgets (similar to the Legacy Trust Distributions for certain Members discussed below). Many of these smaller Members indicate that Hockey Canada

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<sup>45</sup> It was impossible to indicate what proportion of net revenues these line items represented, as Hockey Canada’s financial statements featured net operating losses in one or more year examined.

<sup>46</sup> In 2021, the cost of insurance premiums exceeded the amounts collected from Member, resulting in a net loss.

<sup>47</sup> According to Members, generally this funding comes with conditions. For example, provincial governments might require that Members provide them with minutes from annual general meetings, a copy of the most recent By-laws, a copy of the audited financial statements, their corporate structure, and proof that certain initiatives/policies be put in place).

revenue goes to fund grassroots hockey and development programs. Members receive funding from Hockey Canada in two ways. This funding does not come with conditions.

First, through its Branch Support Pillar Fund, Hockey Canada distributes to each Member an equal share of the realized income from the investments of this Fund, on an annual basis. This first category of funding is strategic. However, as the distributions will vary depending on the earnings generated from the Fund each year, Hockey Canada advises Members not to account for this distribution in its operations moving forward. For example, the total Branch Support Pillar Fund payments reached \$1,001,505 (or \$77,038.87 for each Member) in 2017-2018, and \$1,428,578 in 2020-2021 (or \$109,890.60 for each Member). However, these distributions only reached \$485,579 in 2018-2019 and \$618,019 in 2019-2020, or \$37,352.25 and \$47,539.94 per Member, respectively. Most Members have advised that the average annual distributions fall within \$50,000 to \$100,000.

Second, Members receive from Hockey Canada shares from the proceeds of events hosted in Canada (such as the Women's World Championship and the World Junior Championship ("WJC")). The revenues generated from these are split among the IIHF, the Canadian Hockey League ("CHL") (whose players participate), Hockey Canada, and Members. The Member hosting the event – i.e., the Member governing the geographic region where the event takes place – will receive a larger share of the event revenues, while all other Members receive an equal share. For certain Members, funding received for hosted events represent a significant portion of their annual funding. For example, the 2019 WJC generated \$17,725,571 in profit. Both the IIHF and participating national teams earned 15% shares of the revenues over \$15,000,000, such that the IIHF received \$408,836, and \$408,386 was split between the participating national teams. The remaining \$16,907,900 was split as follows. Approximately \$4,200,000 was moved to Hockey Canada's International Pillar Fund (to pay required annual rights fees to the IIHF, which are due even in non-hosting years), leaving \$12,707,900 to be split among Hockey Canada (50% – \$6,353,950), the CHL (35% – 4,447,765) and the Members (15% – \$1,906,185). From the Members' 15% share, \$200,000 was provided to the Member hosting the event, leaving \$1,706,185 to be split among all Members. The Host member received 25% of that amount (\$426,546, or \$626,546 total) (in addition to the \$200,000 noted above) and the rest was divided evenly among the remaining Members (\$106,637 for each). From each of the Member's share, each Member deducted \$17,751.48 to transfer to the Technology Pillar Fund (\$230,769 in total) and \$33,502.27 to help fund the Member Engagement Department (\$435,530 in total). Thus, the Host Member received \$575,292.48, while the other Members each received \$55,382.81. Hockey Canada advised that the share percentage of the WJC revenues generally remains the same from year to year.

Members also receive a number of indirect financial benefits subsidized or paid for by Hockey Canada. For example, Hockey Canada organizes coaching certification courses to help train and certify coaching staff for Members. Hockey Canada also hosts Spring Programming, which covers the cost of organizing and running various national hockey championships in which Members send teams to play. In the 2022-2023 budget, Hockey Canada allocated approximately \$4,547,000 for Member Support, including nearly \$1,486,000 for events such as the Telus, Centennial, Alan and Esso Cups, \$2,322,000 for Member engagement activities such as coach training and certification, officiating, recruitment, and the Skills Academy. While Participants from various Members play in these tournaments and attend these events, Members themselves do not fund them.

Occasionally, Hockey Canada will also provide Members with financial support related to various ongoing initiatives. For example, Hockey Canada provided \$193,200 in 2019-2020 to Members who were “early adopters” of the half-visor/facemask initiative for players. Similarly, Hockey Canada provided grants totalling \$540,000 in each of 2016-2017, 2017-2018 and 2018-2019 to Members for the U7 Cross-Ice/Initiation Program.

Despite Hockey Canada’s position that it advises Members not to budget for Branch Support Pillar Fund payments to cover operations, many Members advised that they budget all funds (or revenue) from Hockey Canada to operations, with some adding that any such unused funds are rolled into a restricted use fund to offer growth and development programs at the Member-level. Certain larger Members advised that funds received from Hockey Canada are internally restricted to strategic initiatives, and as such do not fund operations. Members confirmed that the funding they receive from Hockey Canada is not tied to any particular conditions, and that Members have no influence as to the amounts they will receive in a given year (though, Members have, at times, agreed to use the funds from Hockey Canada for specific projects or initiatives). Certain Members indicated during our interviews that they would welcome conditions tied to funding, for example, requiring the implementation of certain safe sport initiatives. Still, they acknowledged that certain members might have more difficulty meeting the conditions of funding, depending on the specific conditions required in a given year.

Finally, an additional source of funding for Members is the annual distributions from the income earned on the principal balance of the Legacy Trust. As we describe below in Chapter VIII, the Legacy Trust was settled in 1999 for the benefit of Members who had contributed to Hockey Canada’s former self-funded insurance program from 1986 to 1995<sup>48</sup>. These annual distributions do not relate to funding potential or actual liabilities nor risk management, though the Trust instrument does permit trustees to transfer a certain amount of funds to deal with late-reported claims relating to events that occurred from 1986 to 1995. While certain officers within Hockey Canada serve as its trustees, the Legacy Trust does not belong to Hockey Canada. Accordingly, Legacy Trust distributions do not feature on Hockey Canada’s financial statements. Members receive annual distributions from the trust proportionate to their contributions levels to the former Self-Insurance Program. For example, the earnings distributed to the beneficiaries from the Legacy Trust in 2019 totalled \$318,931. From that amount, the OHF had the highest share, at 20.76% (\$66,210), followed by Hockey Alberta at 17.39% (\$55,462) and BC Hockey at 16.27% (\$51,890). The Members who received the lowest number of distributions were Hockey Québec (0.56% – \$1,786), Hockey PEI (1.21% – \$3,859) and HNO (1.53% – \$4,879). A third party trust firm, who manages the trust fund investments, makes these distributions.

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<sup>48</sup> The Members that contributed to the self-insurance program were the British Columbia Amateur Hockey Association, the Alberta Amateur Hockey Association (now Hockey Alberta), the Saskatchewan Amateur Hockey Association (now Saskatchewan Hockey), the Manitoba Amateur Hockey Association (now Hockey Manitoba), the Thunder Bay Amateur Hockey Association (now Hockey Northwestern Ontario), the Ontario Hockey Federation, the Ottawa and District Hockey Association (now Hockey Eastern Ontario), the Prince Edward Island Hockey Association (now Hockey PEI), the New Brunswick Amateur Hockey Association (now Hockey New Brunswick), the Nova Scotia Hockey Association (now Hockey Nova Scotia), the Newfoundland and Labrador Hockey Association (now Hockey Newfoundland and Labrador), the Fédération Québécoise de Hockey sur Glace (now Hockey Québec) and the Canadian Hockey League; see Canada Hockey Association, “Trust Agreement” (1 June 1999) at s 1.1(b).

## **F. The organization of hockey in Canada**

As will be discussed in Chapter V, the regulation of sport and physical activity falls under the shared jurisdiction of the federal and provincial governments. The federal jurisdiction generally concerns matters of national and international affairs, such as national and international level sport. The provinces and territories have exclusive jurisdiction within their territory over significant aspects of sport, and each of them has the power to adopt its own policies and programs as it sees fit, as long as it does not infringe on the exclusive jurisdiction of the federal government.<sup>49</sup>

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

In addition to Hockey Canada and the 13 P/TSOs (or Members), thousands of Minor Hockey Associations (“**MHA**”) have been created from coast to coast.<sup>50</sup> These associations are composed of various teams, which teams are themselves composed of players, coaches, and support staff. Hockey in Canada is also divided into various levels, including Junior hockey, Minor hockey and Senior hockey. Junior Hockey is itself divided into four tiers: Major Junior, which is governed by the CHL, Junior A, Junior B and Junior C. Minor hockey is divided into age categories, going from U7 to U21.

The following statistics highlight the number of stakeholders involved under the Hockey Canada umbrella.<sup>51</sup> For the 2020-2021 season, there were 1,645 MHAs across the country (which include Minor Hockey Associations, Female Hockey Associations, and Para Hockey organizations), for a total of 413,891 players. For the same year, for all the other categories that are not considered “associations” from an organization standpoint (e.g. Major Junior, Junior A, Senior Hockey, etc.) there were 1,217 teams and clubs for a total of 105,354 players. In addition, there are thousands of other Participants, including coaches, trainers, officials and other volunteers.

This myriad of organizations, associations, leagues, teams, and Participants, of varying sizes, with different resources and in different regions, results in a variety of ways of operating, but it also means that the responsibility for developing the sport of hockey in accordance with good

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<sup>49</sup> Lucie Thibault & Jean Harvey, *Sport Policy in Canada* (University of Ottawa Press, 2013) at 46.

<sup>50</sup> “Hockey Canada 2020-21 Annual Report” (last visited 25 August 2022) at 19, online (pdf): *Hockey Canada* <<https://cdn.hockeycanada.ca/hockey-canada/Corporate/About/Downloads/2020-21-annual-report-e.pdf>>.

<sup>51</sup> These statistics were provided by Hockey Canada on August 31, 2022 and were generated by the Hockey Canada registration platform. However, it was mentioned that “the quality of HCR data is not yet perfect and there are inconsistencies with data provided by [the] Members across Canada.” It should also be mentioned that these statistics were affected by the COVID-19 pandemic, and that while the number of MHAs has not changed materially, the number of Participants was higher for the 2018-2019 season.

governance principles lies with multiple parties. Moreover, a lack of clarity around organizational structure and authority can result in uncertainty.

## V. HOCKEY CANADA'S REGULATORY FRAMEWORK

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

### A. The legal framework from a governance perspective

#### i. *Introduction*

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

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

Hockey Canada is an RCAAA. An RCAAA is a “Canadian amateur athletic association” that has applied to the Canadian Revenue Agency for registration, has been registered and whose registration has not been revoked.<sup>52</sup> Under the *Income Tax Act*, RSC 1985, c 1 (5th Supp), a “Canadian amateur athletic association” is defined as an association that:

- (a) was created under any law in force in Canada;
- (b) is resident in Canada;
- (c) has no part of its income payable to, or otherwise available for the personal benefit of, any proprietor, member or shareholder of the association unless the proprietor, member or shareholder was a club, society or association the primary purpose and primary function of which was the promotion of amateur athletics in Canada;
- (d) has the promotion of amateur athletics in Canada on a nationwide basis as its exclusive purpose and exclusive function; and
- (e) devotes all of its resources to that purpose and function.<sup>53</sup>

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

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<sup>52</sup> *Income Tax Act*, RSC 1985, c 1 (5th Supp), s 248(1) “registered Canadian amateur athletic association.”

<sup>53</sup> *Income Tax Act*, RSC 1985, c 1 (5th Supp), s 149.1(1) “Canadian athletic amateur association.”

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

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

The *Canada Not-for-profit Corporations Act*, SC 2009, c 23 (“CNCA”) provides the foundation of the legal framework for Hockey Canada’s governance. Among other things it establishes key duties for directors. The CNCA provides that directors are to “manage or supervise the management of the activities and affairs” of the corporation.<sup>54</sup> The CNCA also sets out the duties and rights of members. All of these duties and rights are discussed further in Chapter VI.

Hockey Canada is also a soliciting corporation within the meaning of the CNCA. In brief, a corporation is designated as a soliciting corporation when it has received more than \$10,000 in income from public sources in a single financial year.<sup>55</sup> Since soliciting corporations receive public funds, they must meet additional CNCA requirements to ensure sufficient transparency and accountability for that income, such as complying with specific requirements for public accountants and financial review, and sending financial statements and the report of the public accountant to the Director appointed by the Minister of Innovation, Science and Industry in accordance with the CNCA.<sup>56</sup>

**B. Specific legal and policy framework for National Sport Organizations**

*i. Introduction*

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

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

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<sup>54</sup> *Canada Not-for-profit Corporations Act*, SC 2009, c 23, s 124.

<sup>55</sup> *Canada Not-for-profit Corporations Act*, SC 2009, c 23, s 2(5.1); [Canada Not-for-profit Corporations Regulations, SOR/2011-223](#), s 16(d).

<sup>56</sup> See e.g. *Canada Not-for-profit Corporations Act*, SC 2009, c 23, ss 172(1), 176(1); “Requirements for soliciting corporations under the *Canada Not-for-profit Corporations Act* (NFP Act)” (last visited 13 September 2022), online: [Government of Canada <https://www.ic.gc.ca/eic/site/cd-dgc.nsf/eng/cs05011.html>](https://www.ic.gc.ca/eic/site/cd-dgc.nsf/eng/cs05011.html).

- proposing and supporting bids for international competitions in Canada.”<sup>57</sup>

An NSO has no particular status unless it is recognized by Sport Canada<sup>58</sup> under a contribution agreement.<sup>59</sup> To be eligible to apply for such a contribution agreement, an organization must first meet certain criteria, such as being a federally or provincially incorporated not-for-profit organization and in good standing, and being affiliated with the International Federation (“**IF**”) for its sport and recognized by the IF as the governing body for the sport or discipline in Canada.<sup>60</sup> This means that Sport Canada will only enter into a contribution agreement with one NSO per sport. Details of funding under the contribution agreement with Hockey Canada are discussed below.

As Marianne Saroli and Patrice Brunet have said in their book, *Le Droit du Sport au Québec et au Canada*, as there is only one NSO per sport, it is particularly important that the by-laws provide for an open democratic process that allows for a smooth and transparent exchange of ideas and change of directors.<sup>61</sup> In addition, because of the exclusive role that the NSO has within its sport, it plays a significant role in the lives of the athletes, who will be impacted by the decisions the NSO makes. Good governance practices thus become especially important.<sup>62</sup>

## ii. Legislation

Although Canada is constituted as a confederation that divides lawmaking power between the provincial legislatures and the federal Parliament, the *Constitution Act, 1867*<sup>63</sup> does not specifically refer to sports. This has led each level of government to enact legislation reflective of its constitutional authority.<sup>64</sup> Primary responsibility for the development and participatory aspects of sport are governed by private and community agencies which fall under the jurisdiction of the provinces under sections 92 (property and civil rights) and 93 (education) of the *Constitution Act, 1867*.<sup>65</sup> Provincial legislation may fund sports programs and projects from the general tax base or through revenues generated from approved lotteries and similar gambling operations.<sup>66</sup> The federal Parliament may supplement this support, provided that it does not interfere with matters under

<sup>57</sup> “National Sport Organizations” (last visited 13 September 2022), online: *Government of Canada* <<https://www.canada.ca/en/canadian-heritage/services/sport-organizations/national.html>>.

<sup>58</sup> Sport Canada, a branch in the federal Department of Canadian Heritage (“**PCH**”), is the agency through which the Government of Canada is involved in high-performance sport.

<sup>59</sup> Marianne Saroli & Patrice Brunet, *Le Droit du Sport au Québec et au Canada* (Montréal: Éditions Yvon Blais, 2018) at 30.

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

<sup>61</sup> Marianne Saroli & Patrice Brunet, *Le Droit du Sport au Québec et au Canada* (Montréal: Éditions Yvon Blais, 2018) at 31.

<sup>62</sup> Marianne Saroli & Patrice Brunet, *Le Droit du Sport au Québec et au Canada* (Montréal: Éditions Yvon Blais, 2018) at 31.

<sup>63</sup> *Constitution Act, 1867* (UK), 30 & 31 Vict, c 3, s 91, reprinted in RSC 1985, Appendix II, No 5.

<sup>64</sup> John Barnes, *The Law of Hockey* (Markham: LexisNexis Canada Inc, 2010) at 24.

<sup>65</sup> John Barnes, *The Law of Hockey* (Markham: LexisNexis Canada Inc, 2010) at 24.

<sup>66</sup> John Barnes, *The Law of Hockey* (Markham: LexisNexis Canada Inc, 2010) at 30.

provincial jurisdiction. More generally, whenever a matter has the potential to be of national or international interest, such as national sport programs, federal authorities may claim jurisdiction.<sup>67</sup>

The sporting objectives of the Government of Canada are declared in the *Physical Activity and Sport Act*, RSC 2003, c 2 (“**PASA**”). This legislation also established the Sport Dispute Resolution Centre of Canada (“**SDRCC**”), whose mission is to provide the Canadian sport community with information, expertise and assistance regarding the prevention and resolution of sports-related disputes. The purpose of PASA is “to modernize the legislative framework that supports [sports] programs and to give formal expression to general policies adopted in 2002.”<sup>68</sup>

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

- (a) to increase participation in the practice of sport and support the pursuit of excellence in sport; and
- (b) to build capacity in the Canadian sport system.<sup>69</sup>

The role of Sport Canada is based on these two objectives.<sup>70</sup>

*iii. Applicable policies*

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

1. The Canadian Sport Policy

The Government of Canada, through Sport Canada, created the Canadian Sport Policy, which was initially developed in 2002, and renewed/expanded in 2012 (the “**CSP 2012**”). This CSP 2012 was officially endorsed by federal, provincial and territorial ministers responsible for sport, physical activity and recreation on June 27, 2012.<sup>71</sup> The CSP 2012 set direction for the period of 2012-2022 and is presently set to be renewed in February 2023.<sup>72</sup>

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<sup>67</sup> John Barnes, *The Law of Hockey* (Markham: LexisNexis Canada Inc, 2010) at 25, citing the *Constitution Act, 1867* (UK), 30 & 31 Vict, c 3, reprinted in RSC 1985, Appendix II, No 5, s 91.

<sup>68</sup> John Barnes, *The Law of Hockey* (Markham: LexisNexis Canada Inc, 2010) at 23.

<sup>69</sup> *Physical Activity and Sport Act*, RSC 2003, c 2, s 4(2); see also John Barnes, *The Law of Hockey* (Markham: LexisNexis Canada Inc, 2010) at 23.

<sup>70</sup> Interview with Sport Canada (15 September 2022).

<sup>71</sup> “Canadian Sport Policy 2012” (27 June 2012), online (pdf): *Sport Information Resource Centre* <[https://sirc.ca/wp-content/uploads/files/content/docs/Document/csp2012\\_en.pdf](https://sirc.ca/wp-content/uploads/files/content/docs/Document/csp2012_en.pdf)>.

<sup>72</sup> “Canadian Sport Policy Renewal (2023-2033),” online: *Sport Information Resource Centre* <<https://sirc.ca/canadian-sport-policies/>>.

As briefly mentioned above, because of the multi-level governance in sport, the CSP 2012 was designed to provide a framework for intergovernmental cooperation in sport in Canada.<sup>73</sup> More specifically, the CSP 2012 is a “roadmap that gives general direction to the major stakeholders in the Canadian sport system while providing the necessary flexibility for governments and non-governmental organizations to fulfill their individual mandates and responsibilities”.<sup>74</sup>

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

- All participants in Canadian competitive sport adhere to a code of ethics and code of conduct; and
- Key stakeholders have the organizational capacity, i.e. governance, human and financial resources, to achieve system objectives.<sup>75</sup>

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

## 2. The Sport Funding and Accountability Framework

Sport Canada has established several funding programs as part of its mission.<sup>76</sup> One of these programs is the Sport Support Program (“SSP”), which “distributes funding to national sport organizations [such as Hockey Canada], national multisport service organizations [such as Own the Podium and the Canadian Olympic Committee], Canadian sport centres and other non-governmental organizations that provide direct services and programs for athletes, coaches and other sport participants”.<sup>77</sup>

The tool used to identify which organizations are eligible to receive Sport Canada contributions under the SSP is the Sport Funding and Accountability Framework (“SFAF”). The SFAF is used by the federal government to allocate funding to “organizations that have demonstrated through specific program objectives that they are contributing to the federal government’s policy

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<sup>73</sup> Library of Parliament, Legal and Social Affairs Division, *Sport Canada and the Public Policy Framework for Participation and Excellence in Sport* (23 January 2020) at 2, online: *Parliament of Canada* <[https://lop.parl.ca/sites/PublicWebsite/default/en\\_CA/ResearchPublications/202012E](https://lop.parl.ca/sites/PublicWebsite/default/en_CA/ResearchPublications/202012E)>.

<sup>74</sup> Library of Parliament, Legal and Social Affairs Division, *Sport Canada and the Public Policy Framework for Participation and Excellence in Sport* (23 January 2020) at 2, online: *Parliament of Canada* <[https://lop.parl.ca/sites/PublicWebsite/default/en\\_CA/ResearchPublications/202012E](https://lop.parl.ca/sites/PublicWebsite/default/en_CA/ResearchPublications/202012E)>.

<sup>75</sup> “Canadian Sport Policy 2012” (27 June 2012) at 11-13, online (pdf): *Sport Information Resource Centre* <[https://sirc.ca/wp-content/uploads/files/content/docs/Document/csp2012\\_en.pdf](https://sirc.ca/wp-content/uploads/files/content/docs/Document/csp2012_en.pdf)>.

<sup>76</sup> They are the Athlete Assistance Program, the Hosting Program and the Sport Support Program.

<sup>77</sup> Library of Parliament, Legal and Social Affairs Division, *Sport Canada and the Public Policy Framework for Participation and Excellence in Sport* (23 January 2020) at 5, online: *Parliament of Canada* <[https://lop.parl.ca/sites/PublicWebsite/default/en\\_CA/ResearchPublications/202012E](https://lop.parl.ca/sites/PublicWebsite/default/en_CA/ResearchPublications/202012E)>.

priorities”.<sup>78</sup> In other words, it is through the SFAF that the federal government is aiming to steer organizations towards achieving its policy priorities, such as the ones established in the CSP 2012.

Prior to being considered for funding through the SSP, organizations must proceed through the SFAF process. As part of this process, NSOs are asked to develop a multi-year needs-based funding application according to the Contribution Guidelines for National Sport Organizations.<sup>79</sup>

Sport Canada assesses the data collected to ensure the funding model can be applied fairly and consistently across all eligible organizations. Different factors are used to differentiate organizations for the purposes of allocation funding, such as the complexity and scope of the sport. After completing this funding application and the assessment stage, organizations are provided with their assessment score, which determines their Reference-Level.<sup>80</sup>

Before an NSO starts receiving funding from Sport Canada, it is required to sign a contribution agreement which defines the roles and responsibilities of each party. Once an NSO is able to receive funding, it remains accountable to Sport Canada and must abide by its standards on governance, safety in sport and other areas. This is supervised by Sport Canada through a monitoring process, which includes the Sport Canada Governance Report Card system, described below.<sup>81</sup> We understand that this monitoring process is currently being modernized, with the intent of having a continuous, proactive and systematic approach to managing risk from a Sport Canada perspective.<sup>82</sup> We welcome this modernizing as NSOs are more likely to comply with conditions in their contribution agreement if the monitoring process is more robust.

Pending these changes, it is interesting to note the conclusions in the article “*An Assessment of Sport Canada’s Sport Funding and Accountability Framework, 1995–2004*” referred to by the authors Lucie Thibault and Jean Harvey in their book, *Sport Policy in Canada*, where it was suggested that there were no consequences or penalties for not meeting accountability standards. As well, they found that, if NSOs did not meet the standards, Sport Canada would provide additional funding to assist them in achieving their goal.<sup>83</sup>

In addition, during the Canadian Heritage Standing Committee on July 26, 2022, it was highlighted that Sport Canada does not currently have a process that allows it to verify if the NSOs abide by the obligations set out in their contribution agreement. In fact, as Mr. Peter Julian, member of the Standing Committee, pointed out, “[as] long as an organization says that it did everything it was supposed to, it gets the funding”. He continued by saying that “Sport Canada doesn’t have a

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<sup>78</sup> Lucie Thibault & Jean Harvey, *Sport Policy in Canada* (Ottawa: University of Ottawa Press, 2013) at 109.

<sup>79</sup> “Sport Funding Framework” (last modified 14 July 2022), online: *Government of Canada* <<https://www.canada.ca/en/canadian-heritage/services/funding/sport-support/accountability-framework.html>>.

<sup>80</sup> “Sport Funding Framework” (last modified 14 July 2022), online: *Government of Canada* <<https://www.canada.ca/en/canadian-heritage/services/funding/sport-support/accountability-framework.html>>.

<sup>81</sup> Sport Canada’s Governance Report Card is a tool that Sport Canada developed to monitor how sport organizations contribute to key Sport Canada and Government of Canada priorities.

<sup>82</sup> “Sport Funding Framework” (last modified 14 July 2022), online: *Government of Canada* <<https://www.canada.ca/en/canadian-heritage/services/funding/sport-support/accountability-framework.html>>.

<sup>83</sup> Lucie Thibault & Jean Harvey, *Sport Policy in Canada* (Ottawa: University of Ottawa Press, 2013) at 114.

verification process”, to which Michel Ruest, senior director in charge of programs at Sport Canada, answered: “That’s what we are in the process of setting up.”<sup>84</sup>

### 3. Sport Canada Governance Report Card

The Governance Report Card (the “**Report Card**”) is another tool that Sport Canada developed to monitor how funded national organizations, including NSOs, contribute to key Sport Canada and Government of Canada priorities. The Report Card was intended to evaluate collective progress of sport organizations to help them “grow and improve together [...] towards the creation of an optimal sport environment for all”.<sup>85</sup> It is comprised of two phases:

The **first phase** of the Report Card, issued in 2019, evaluated progress on measures to promote sport integrity, diversity and inclusion, and communication and engagement. The goal was to offer insight on how sport organizations operate, while providing sport organizations with a clear set of expectations and guidance on how to grow and take action to meet them.

The **second phase** of the Report Card, released in 2021, focuses on good governance principles. This evaluation of governance focuses on how decision-making is conducted and how internal systems of checks and balances are upheld.<sup>86</sup>

The Phase 2 evaluation centred on nine elements:

1. Board Structure
2. Board Role and Responsibility
3. Board Composition
4. Board Development
5. Conflict of Interest
6. Dispute Resolution
7. Financial Strategy and Control
8. Strategic Planning
9. Risk Management

The development of the criteria associated with each element came from a review of governance standards at the domestic level (SFAF, NSF Enhancement Initiative Deloitte Assessment Tool, *Canada Not-for-profit Corporations Act*, etc.) and at the international level (England, Ireland, Australia, European Union), as well as from consultation with internal staff, clients, and experts.<sup>87</sup>

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<sup>84</sup> House of Commons, Standing Committee on Canadian Heritage, *Minutes of Proceedings*, 44th Parl, 1st Sess, No 40 (26 July 2022) at 17 (Peter Julian & Michel Ruest).

<sup>85</sup> Government of Canada, Canadian Heritage, “Report Card Phase II Information Session: Webinar for Sports Organizations,” PowerPoint Presentation(10 November 2020) at 4.

<sup>86</sup> Government of Canada, Sport Canada, “2022 Sport Canada Report Card – Phase 2 Open Intake Results” (June 2022) at 3.

<sup>87</sup> Government of Canada, Canadian Heritage, “Report Card Phase II Information Session: Webinar for Sports Organizations,” PowerPoint Presentation, Government of Canada (10 November 2020) at 9.

As part of the evaluation process, sport organizations were asked to provide evidence for each of these nine elements. Organizations then received a numeric score with a score summary statement of their level of progress.

Organizations are encouraged to use the results of the Report Card to prepare upcoming funding applications to Sport Canada. Although the results do not affect the amount of Reference-Level funding an organization receives, the results may lead to the redirection of resources to identified gaps. In other words, it could influence how funding is to be used by a recipient organization.

Generally, the Report Card provides a solid basis upon which NSOs can strive to implement best practices in the area of governance. We note, however, that the context of our governance review and the methodology we adopted differ from those relating to the Report Card evaluations. In addition to the documents and information received by Hockey Canada on all the elements of the review’s terms of reference, we considered information provided to us by other stakeholders and conducted interviews with those stakeholders (including current and former Members of Hockey Canada’s Board of Directors and committees, current and former Hockey Canada employees, representatives of the Members of Hockey Canada and experts as described above in the introduction). These all informed the recommendations and opinions expressed in this report.

#### 4. Contribution agreement

The contribution agreement (or funding agreement) is the contract entered into between Sport Canada and the funded NSO that specifies the terms and conditions pursuant to which the NSO receives funding from the government of Canada, which terms and conditions are linked to the goals of the CSP 2012. The contribution agreements are used by Sport Canada to ensure that organizations are attuned to the expectations of society and the government of Canada.<sup>88</sup>

This agreement (which can include various amendments) also lays out the different sources of funding received by an NSO. In fact, the Reference-Level funding allocated through the SFAF is not the only source of funding an NSO can receive from the Government of Canada. Other sources of funding include the Enhanced Excellence and Next Gen funding (which are based on recommendations received from Own the Podium, as detailed below), the funding to support gender equity and safety in sport initiatives, the hosting of international tournaments, etc.

For the 2020-2021 season, Hockey Canada received the following funding from the Government of Canada:<sup>89</sup>

PCH Funding - Reference-Level	\$1,831,100
PCH Funding - Enhanced Excellence (Own the Podium)	\$1,911,000
PCH Funding - Next Generation Initiative (50%)	\$275,000

<sup>88</sup> Interview with Sport Canada (15 September 2022).

<sup>89</sup> Hockey Canada, “Amendment to the Contribution Agreement” (5 August 2020); Hockey Canada, “Amendment to the Contribution Agreement,” (25 March 2021); and Hockey Canada, “Contribution Agreement” (26 November 2019).

PCH-Funding - Gender Equity and Safety in Sport	\$143,000
PCH Funding - COVID-19 Emergency Support Fund	\$993,541
Canadian Heritage (Hosting Program) (IIHF Women’s World Championship 2021)	\$500,000
Canadian Heritage (Hosting Program) (2021 IIHF Ice Hockey U20 World Championship)	\$200,000

It is understood that, although the level of funding received by each NSO differs according to a variety of factors (such as the number of participants in the sport), the core requirements in the contribution agreement are the same for all NSOs,<sup>90</sup> including:

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

This last requirement, which has applied to every NSO since 2018,<sup>91</sup> has two purposes: first, to ensure that the NSO has established and enforces policies on maltreatment and, second, to verify that the complainants have access to an independent third party to review complaints and conduct investigations or that they are directed to the competent authorities.<sup>92</sup>

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

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

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<sup>90</sup> House of Commons, Standing Committee on Canadian Heritage, *Minutes of Proceedings*, 44th Parl, 1st Sess, No 38, No 38 (20 June 2022) at 26-27 (Hon Pascale St-Onge); Interview with Sport Canada (15 September 2022).

<sup>91</sup> Janyce McGregor, “Hockey Canada clarifies incidents reported to Sport Canada after discrepancy at committee” (8 August 2022), online: *CBC* <<https://www.cbc.ca/news/politics/hockey-canada-reported-incidents-discrepancy-1.6544543>>.

<sup>92</sup> House of Commons, Standing Committee on Canadian Heritage, *Minutes of Proceedings*, 44th Parl, 1st Sess, No 38, No 38 (20 June 2022) at 22 (Hon Pascale St-Onge).

- A **final report** is submitted at the end of the project and provides the results of the activities the NSO has undertaken for the duration of the project.<sup>93</sup>

According to recent announcements made by the Minister of Sport, Sport Canada will make changes to contribution agreements with organizations that will meet the new eligibility requirements of the SFAF by April 1, 2023. The goal of this modernization is to ensure that sport organizations receiving federal funding meet specific governance, accountability and safe sport standards.<sup>94</sup>

More specifically, during her appearance before the Canadian Heritage Standing Committee on June 20, 2022, the Minister of Sport mentioned that she intends to make sure that all sport organizations become signatories of the Office of the Sport Integrity Commissioner (“**OSIC**”), which is the new independent safe sport mechanism which is responsible for administering the UCCMS, as described below.<sup>95</sup> As we discuss further below, on October 27, 2022, Hockey Canada advised that it had become a full signatory to the OSIC mechanism.

If NSOs do not meet the requirements set out in the contribution agreement, Sport Canada may provide enhanced monitoring or, in certain circumstances, freeze the funding until the conditions imposed have been met.<sup>96</sup> Sport Canada has done so a number of times in the past, including for Hockey Canada in June 2022.

On June 16, 2022, Hockey Canada was advised by Sport Canada that the Department of Canadian Heritage would initiate a recipient compliance audit to confirm that no public funds were used in any part of the proceedings related to the alleged incident involving the 2018 Canadian men’s junior hockey team, and more specifically, to the settlement paid. Sport Canada also mentioned that all funding decisions would be held until Hockey Canada discloses the recommendations of improvement provided by a third-party law firm hired to investigate the alleged incident in 2018. Furthermore, decisions for certain categories of funding related to the Men’s National Team (which does not include the Reference-Level funding) would be held until the reception of the compliance audit results.<sup>97</sup>

Finally, on June 22, 2022, two days after Hockey Canada appeared before the Canadian Heritage Standing Committee, it was announced that the Minister of Sport decided to freeze all federal funding until the organization was able to meet two conditions: not only would Hockey Canada

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<sup>93</sup> “Application Guidelines – National Sport Organization” (last modified 12 July 2022), online: *Government of Canada* <<https://www.canada.ca/en/canadian-heritage/services/funding/sport-support/national-organization/application-guidelines.html>>; see also Hockey Canada, “Reporting Requirements” in “Contribution Agreement” (30 March 2020) at Annex D.

<sup>94</sup> Canadian Heritage, News Release, “Government of Canada provides update and announces action on safe sport” (12 June 2022), online: *Government of Canada* <<https://www.canada.ca/en/canadian-heritage/news/2022/06/government-of-canada-provides-update-and-announces-action-on-safe-sport.html>>.

<sup>95</sup> House of Commons, Standing Committee on Canadian Heritage, *Minutes of Proceedings*, 44th Parl, 1st Sess, No 38, No 38 (20 June 2022) at 24 (Hon Pascale St-Onge).

<sup>96</sup> Sport Canada, Written Response to Interview Questions (16 September 2022).

<sup>97</sup> Letter from Vicky Walker (Director General, Sport Canada) to Tom Renney (Chief Executive Officer, Hockey Canada) (16 June 2022).

have to disclose the recommendations of improvement as mentioned above, they would also have to become signatories to the OSIC.<sup>98</sup>

## 5. The Canadian Sport Governance Code

In 2019, the Canadian High Performance Sport Strategy identified the importance of a governance code for the sports system.<sup>99</sup> For this reason, the Canadian Olympic Committee (“COC”) convened a working group with the sport community to support and accelerate the development of this fundamental part of the Canadian sport system.<sup>100</sup>

The Canadian Sport Governance Code (the “COC Code”) was introduced to the national community in November 2020 with consultation taking part through the first half of 2021. It is intended for all NSOs representing sports on the Olympic Program. Its purpose is to “improve organizational performance by encouraging NSOs to upgrade governance practices through the adoption of revisions to by-laws and other structural mechanisms.”<sup>101</sup> These governance best practices pertain notably to board composition (including athlete representation), independence of directors, proper orientation for board members, committees, risk management and transparency.

Section G of the COC Code (Implementation) provides that “to make this a success for the sport system, each NSO will be encouraged and supported if needed to make necessary changes to its by-laws and take such other steps as may be required so that the NSO is in compliance with the [COC Code] on or before December 31, 2022”.<sup>102</sup>

Despite this language, we have been advised by Hockey Canada and COC representatives that the COC Code is not intended to be mandatory, but is rather a guide concerning best governance practices for NSOs.<sup>103</sup> This clarification was communicated to the NSOs during two calls that the COC hosted in December 2020 and January 2021. However, the COC also advised the NSOs that they were encouraged to adopt it nonetheless, as compliance could eventually become mandatory.

Hockey Canada’s position regarding the implementation of the COC Code within their organization is that, while having some changes imposed on them may be convenient, they favoured a more organic approach in order to achieve the underlying objectives of the COC Code without being mandated by by-laws (for example, as it relates to equal gender representation on the Board). It also took issue with matters related to the election of the Chair of the Board as well

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<sup>98</sup> Rick Westhead, “Federal government freezing Hockey Canada’s funding” (22 June 2022), online: *TSN* <<https://www.tsn.ca/federal-government-freezing-hockey-canada-s-funding-1.1816169>>.

<sup>99</sup> “2019 Canadian High Performance Sport Strategy” (last modified 27 May 2019) at 18, online (pdf): *Government of Canada* <<https://www.canada.ca/content/dam/pch/documents/services/sport-policies-acts-regulations/HighPerSportStrat-eng.pdf>>.

<sup>100</sup> “Canadian Sport Governance Code” (April 2021), online: *Canadian Olympic Committee – NSO Sharing Centre* <<https://nso.olympic.ca/canadian-sport-governance-code/>>.

<sup>101</sup> “Canadian Sport Governance Code” (April 2021) at 1, online: *Canadian Olympic Committee – NSO Sharing Centre* <[https://nso.olympic.ca/wp-content/uploads/2021/09/Canadian\\_Sports\\_Governance\\_Code.pdf](https://nso.olympic.ca/wp-content/uploads/2021/09/Canadian_Sports_Governance_Code.pdf)>.

<sup>102</sup> “Canadian Sport Governance Code” (April 2021) at 9, section G.2, online: *Canadian Olympic Committee – NSO Sharing Centre* <[https://nso.olympic.ca/wp-content/uploads/2021/09/Canadian\\_Sports\\_Governance\\_Code.pdf](https://nso.olympic.ca/wp-content/uploads/2021/09/Canadian_Sports_Governance_Code.pdf)>.

<sup>103</sup> Hockey Canada, Board of Directors, *Minutes of Meeting* (held on 25-27 March 2021); see also Hockey Canada, Board of Directors, *Minutes of Meeting* (held on 4 May 2021).

as athlete representation on the Board. Further, Hockey Canada expressed that some other changes were just not well suited for their organization, such as making the financial statements and minutes of Member meetings available to the public. Although Hockey Canada has achieved considerable financial success over the years, Hockey Canada is concerned that being seen as an organization with “deep pockets” could create some negative implications. For example, this could have an effect on their bargaining power with respect to the settlement of lawsuits, and this could also influence the amount of money that sponsors would be willing to offer in the future. This is not to mention the fact that the media could use this information to depict a negative image of the organization. According to Hockey Canada, providing minutes of Member meetings to the general public potentially raises similar concerns. We do note, however, that three of the four Comparator Associations discussed further below in this report<sup>104</sup>, namely Canada Basketball, Curling Canada and Canada Soccer, publish their financial statements on their website. This is also true for the COC.

We note further that, as discussed above, Hockey Canada is a soliciting corporation under the CNCA and is thus required to send financial statements and the report of the public accountant to the Director appointed by the Minister of Innovation, Science and Industry in accordance with the CNCA. We inquired of Hockey Canada if these filings had been made. We understand that Hockey Canada recently filed the financial statements for the years ending June 30, 2014 to June 30, 2021 inclusive.

The COC also prepared the Good Governance Framework, which links the principles outlined in the COC Code to the Sport Canada Governance Report Card Matrix.<sup>105</sup> This Framework serves as a complement to the COC Code, developed to support the latter’s implementation, and provides additional context and understanding of good governance practices and the provisions of the COC Code.<sup>106</sup>

We note that other jurisdictions have adopted a more stringent approach to ensure that organizations meet established standards, such as the United Kingdom (UK), as well as the province of Quebec:

- The *Code for Sports Governance*, launched in 2016, sets out the levels of transparency, diversity and inclusion, accountability and integrity that are required from those organizations who seek – and are in receipt of – UK Government and National Lottery

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<sup>104</sup> The Comparator Associations are the NSOs that were selected by Hockey Canada because they have a mandate and membership structure that are comparable to that of Hockey Canada.

<sup>105</sup> “Canadian Sport Governance Code” (April 2021), online: *Canadian Olympic Committee – NSO Sharing Centre* <<https://nso.olympic.ca/canadian-sport-governance-code/>>; see also “Good Governance Framework: a Guide for Implementing the Canadian Code of Governance” (23 September 2021), online: *Canadian Olympic Committee* <<https://nso.olympic.ca/wp-content/uploads/2021/10/Good-Governance-Framework-Sept-2021-1.pdf>>.

<sup>106</sup> “Good Governance Framework: a Guide for Implementing the Canadian Code of Governance” (23 September 2021), online: *Canadian Olympic Committee* <<https://nso.olympic.ca/wp-content/uploads/2021/10/Good-Governance-Framework-Sept-2021-1.pdf>>.

funding from UK Sport and/or Sport England. The Code achieves flexibility by adopting a tiered approach to requirements;<sup>107</sup>

- The *Code of Governance for Québec Sport and Recreation Non-Profit Organizations (NPOs)* is one of the requirements of the financial assistance programs and agreements of the ministère de l'Éducation sport and recreation sector. Organizations are classified by levels of requirements (minimum, medium, high) based on the funding they receive from the government and their annual budget.<sup>108</sup>

## 6. The Universal Code of Conduct to Prevent and Address Maltreatment in Sport

The UCCMS, which was developed by the Canadian Centre for Ethics in Sport in consultation with Sport Canada in 2019, is “the core document that sets harmonized rules to be adopted by sport organizations that receive funding from the Government of Canada to advance a respectful sport culture that delivers quality, inclusive, accessible, welcoming and safe sport experiences”.<sup>109</sup> In fact, Sport Canada has made the inclusion of the UCCMS into organizational policies and procedures of federally funded sport organizations by April 1, 2021, a condition of funding.

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

Following a review process led by the SDRCC, version 6.0 of the UCCMS was published by the SDRCC on May 31, 2022 and is effective no later than November 30, 2022.<sup>110</sup> On September 28, 2022, the Hockey Canada Board has approved the *Policy regarding the Adoption of the Universal Code of Conduct to Prevent and Address Maltreatment in Sport*, which confirms that, as of October 1, 2022, Hockey Canada has adopted the UCCMS as a standalone policy.

The UCCMS applies to all *participants* as determined by the *adopting organization*.<sup>111</sup> The UCCMS defines “adopting organization” as an organization that has adopted the current version of the UCCMS, as amended.<sup>112</sup> This means that it is the responsibility of the organization to determine which participants are covered by the UCCMS. These “participants” can include,

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<sup>107</sup> “A Code for Sports Governance,” online: *UK Sport* <<https://www.uk sport.gov.uk/resources/a-code-for-sports-governance>>.

<sup>108</sup> *Code of Governance for Québec Sport and Recreation Non-Profit Organizations (NPOs)* (May 2021) online: *Gouvernement du Québec* <[http://www.education.gouv.qc.ca/fileadmin/site\\_web/documents/loisir-sport/Code\\_gouvernance\\_OBNL\\_ANG.pdf](http://www.education.gouv.qc.ca/fileadmin/site_web/documents/loisir-sport/Code_gouvernance_OBNL_ANG.pdf)>.

<sup>109</sup> “The UCCMS,” online: *Office of the Sport Integrity Commissioner* <<https://sportintegritycommissioner.ca/uccms>>.

<sup>110</sup> “The UCCMS,” online: *Office of the Sport Integrity Commissioner* <<https://sportintegritycommissioner.ca/uccms>>.

<sup>111</sup> “Universal Code of Conduct to Prevent and Address Maltreatment in Sport, Version 2022 (6.0)” (31 May 2022) at s 4.1, online (pdf): *Office of the Sport Integrity Commissioner* <<https://sportintegritycommissioner.ca/files/UCCMS-v6.0-20220531.pdf>>.

<sup>112</sup> “Universal Code of Conduct to Prevent and Address Maltreatment in Sport, Version 2022 (6.0)” (31 May 2022) at Appendix I, online (pdf): *Office of the Sport Integrity Commissioner* <<https://sportintegritycommissioner.ca/files/UCCMS-v6.0-20220531.pdf>>.

without limitation, athletes, coaches, officials, volunteers, administrators, directors, employees, trainers, parents/guardians, etc., according to the policies of the adopting organization.<sup>113</sup>

The UCCMS applies to any of the prohibited behaviours listed in the document,<sup>114</sup> including psychological, physical and sexual maltreatment, neglect, grooming, boundary transgressions, discrimination, subjecting a participant to the risk of maltreatment, and aiding and abetting. Moreover, these prohibited behaviours must have occurred in situations that are covered by the UCCMS – for example, within an adopting organization’s environment and/or when the participant alleged to have committed a prohibited behaviour was engaging in an adopting organization’s activities.<sup>115</sup>

Much of the UCCMS is directed at the protection of participants in a sport and does not deal with governance or requirements for sports organizations themselves. In addition to providing a list of prohibited behaviours, it offers a framework for determining appropriate sanctions against such prohibited behaviour.

The UCCMS also provides for various reporting obligations depending on the particular circumstances of the situation. For example, an adult participant who knew or ought to have known of a participant’s prohibited behaviour toward another person must report such conduct; however, a participant is not obligated to report an instance of prohibited behaviour to which they were personally subject.<sup>116</sup> “Reporting” is defined in the UCCMS as “the provision of information by a participant or by any person to an independent authority designated by the adopting organization to receive reports regarding prohibited behaviour. [...]”<sup>117</sup> If the NSO has become a Program Signatory, as defined below, this “independent authority” would be the OSIC.

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

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

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<sup>113</sup> “Universal Code of Conduct to Prevent and Address Maltreatment in Sport, Version 2022 (6.0)” (31 May 2022) at Appendix I, online (pdf): *Office of the Sport Integrity Commissioner* <<https://sportintegritycommissioner.ca/files/UCCMS-v6.0-20220531.pdf>>.

<sup>114</sup> “Universal Code of Conduct to Prevent and Address Maltreatment in Sport, Version 2022 (6.0)” (31 May 2022) at section 4.3, online (pdf): *Office of the Sport Integrity Commissioner* <<https://sportintegritycommissioner.ca/files/UCCMS-v6.0-20220531.pdf>>.

<sup>115</sup> “Universal Code of Conduct to Prevent and Address Maltreatment in Sport, Version 2022 (6.0)” (31 May 2022) at section 4.3 and section 5, online (pdf): *Office of the Sport Integrity Commissioner* <<https://sportintegritycommissioner.ca/files/UCCMS-v6.0-20220531.pdf>>.

<sup>116</sup> “Universal Code of Conduct to Prevent and Address Maltreatment in Sport, Version 2022 (6.0)” (31 May 2022) at section 5.11.1 a), online (pdf): *Office of the Sport Integrity Commissioner* <<https://sportintegritycommissioner.ca/files/UCCMS-v6.0-20220531.pdf>>.

<sup>117</sup> “Universal Code of Conduct to Prevent and Address Maltreatment in Sport, Version 2022 (6.0)” (31 May 2022) at Appendix I (Definitions), (q), online (pdf): *Office of the Sport Integrity Commissioner* <<https://sportintegritycommissioner.ca/files/UCCMS-v6.0-20220531.pdf>>.

*Organizations* are responsible for collaborating with one or more organizations maintaining such a registry.

- 8.2 Further details of the results of a UCCMS enforcement process, for example a summary or redacted decision or summary or redacted investigation report, may also be publicized in a manner consistent with the purpose and principles of the UCCMS, as well as applicable law.

## 7. Office of the Sport Integrity Commissioner

On July 6, 2021, the SDRCC was mandated by the Government of Canada to establish and deliver an independent safe sport mechanism, for which the main objective was to implement the UCCMS for federally funded sport organizations.<sup>118</sup> This led to the creation of the OSIC.

Prior to the creation of the OSIC, each NSO established its own process for dealing with complaints of abuse. For the signatories, the new national organization is meant to provide greater consistency across sports when it comes to investigations, sanctions, policies and education.<sup>119</sup>

### 7.1 OSIC complaint process

The OSIC's main responsibilities include overseeing a complaint intake process and conducting preliminary assessments and investigations.<sup>120</sup> More specifically, the OSIC is responsible for receiving and addressing complaints submitted through its online intake form. When it receives a complaint, the OSIC proceeds with an initial review and preliminary assessment of the complaint to ensure it is complete and to determine how it should move through the process (such as determining if provisional measures are warranted).

Then, the OSIC determines how to proceed with the complaint (such as referring it to an independent investigation or, if the parties agree, move to mediation). If a complaint proceeds to an investigation, the independent investigator produces a report and determines whether a violation of the UCCMS took place.

After reviewing the report, the Sport Integrity Commissioner makes a recommendation regarding its contents and recommends a sanction if warranted. Those recommendations are transferred to the Director of Sanctions and Outcomes (“**DSO**”), who considers the Commissioner's recommendation and makes a decision, which could include imposing a sanction.<sup>121</sup>

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<sup>118</sup> Government of Canada, Canadian Heritage, News release, “Minister Guilbeault Announces New Independent Safe Sport Mechanism,” (6 July 2021) online: <<https://www.canada.ca/en/canadian-heritage/news/2021/07/minister-guilbeault-announces-new-independent-safe-sport-mechanism.html>>.

<sup>119</sup> The OSIC serves as the central hub within Abuse-Free Sport. It operates independently to receive complaints about alleged violations of the UCCMS. See “Home,” online: *Abuse-Free Sport* <<https://abuse-free-sport.ca/>>.

<sup>120</sup> “Home,” online: *Office of the Sport Integrity Commissioner* <<https://sportintegritycommissioner.ca/>>.

<sup>121</sup> “Process Overview,” online: *Office of the Sport Integrity Commissioner* <<https://sportintegritycommissioner.ca/process/overview>>.

## 7.2 Service agreement

To be able to retain the services of the OSIC, organizations (NSOs, multi-sport organizations or other sport organizations) must become “Program Signatories” and sign a service agreement with the SDRCC.

Under version 17.1 of the service agreement, Program Signatories have various obligations, such as (i) adopting the UCCMS on a standalone basis,<sup>122</sup> (ii) ensuring that complaint management, reporting, investigation and adjudication of matters under UCCMS are directed to the OSIC (or the DSO, as applicable),<sup>123</sup> (iii) obtaining each UCCMS participant’s consent for being subject to the UCCMS,<sup>124</sup> and (iv) fully cooperating in good faith as part of all applicable procedures related to the administration and enforcement of the UCCMS.<sup>125</sup>

It should be noted that the service agreement currently does not impose on the OSIC an obligation to notify the NSO when a participant files a complaint. The NSO will only be notified on a need-to-know basis, for example if provisional measures, such as an interim suspension, must be undertaken. Therefore, a NSO may never be aware that one of its participants has filed a complaint.

### *iv. Own the Podium*

Own the Podium (“**OTP**”) was originally created in 2010 to prepare Canadian athletes to reach medal finishes at the 2010 Olympic Winter Games in Vancouver. Its purpose is not to develop governance-related policies, but rather to provide “the technical analysis required to determine Canadian podium targets for Olympic and Paralympic Games and for making investment recommendations for the allocation of excellence dollars provided by the national funding parties.”<sup>126</sup> In other words, OTP provides expert recommendations to Sport Canada<sup>127</sup> and other system funders, to support the needs of sport programs and athletes demonstrating podium potential at Olympic and Paralympic Games.<sup>128</sup>

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

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<sup>122</sup> Office of the Sport Integrity Commissioner Service Agreement, section 5 a).

<sup>123</sup> Office of the Sport Integrity Commissioner Service Agreement, section 5 b).

<sup>124</sup> Office of the Sport Integrity Commissioner Service Agreement, section 5 c).

<sup>125</sup> Office of the Sport Integrity Commissioner Service Agreement, section 5 i).

<sup>126</sup> “Funding,” online: *Own the Podium* <<https://www.ownthepodium.org/en-CA/Funding>>.

<sup>127</sup> In the contribution agreements between NSOs and Sport Canada, the funding resulting from the OTP recommendation is called “Enhanced Excellence.”

<sup>128</sup> “Advancing the Sport System” (last modified 20 April 2021), online: *Government of Canada* <<https://www.canada.ca/en/canadian-heritage/services/role-sport-canada/advancing-sport-system.html>>.

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

## VI. THE GOVERNANCE OF NOT FOR PROFIT CORPORATIONS

### A. What is “governance”?

The term “governance” has many definitions. The word generally describes the practices and procedures used by the leaders of an organization to allocate authority and oversight responsibility for decision-making and operational activities.<sup>129</sup> A number of factors, such as the organization’s mission and purposes, applicable legislative and regulatory requirements, and industry-wide policies and standards, influence the organization’s governance practices and structure.

The board of directors of a not-for-profit corporation is ultimately and legally responsible for governing the corporation. The board’s duty to govern is described generally in the *Canada Not-for-profit Corporations Act*, SC 2009, c 23 (“**CNCA**”) as the duty to “manage or supervise the management of the activities and affairs of a corporation.”<sup>130</sup> A board of directors who understands that duty (as well as the functions and responsibilities that flow from it) and ensures that the board and corporation have the tools and resources necessary to effectively carry it out, will usually be said to exercise good governance. “Good governance is also about achieving desired results in a manner consistent with organizational values and accepted social norms.”<sup>131</sup> In the context of a national sport community, those values and norms are intrinsically linked to the people who form that community. “Sport governance must meld the passion and dedication of volunteers into a focused governance team, operating with integrity and striving to enhance the experiences of the participants, and the performance and reputation of the sport.”<sup>132</sup>

### B. A framework for good governance

Although not-for-profit organizations are subject to different legislative and regulatory requirements that affect the manner in which they are governed, the general governance principles that apply from one sector to another are fundamentally the same. The paragraphs that follow discuss three key principles of a solid framework for good governance that the board of directors of every not-for-profit organization should ensure are entrenched in their governance practices and procedures. Those principles are the following:<sup>133</sup>

- (i) **Board’s role**: the organization clearly defines and communicates what the board’s role, duties and functions are as the governing body;<sup>134</sup>
- (ii) **Board quality**: the organization has a robust recruitment, nominations and elections process for director candidates that includes selection criteria based on skills, experience, diversity and qualities, and offers board

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<sup>129</sup> C Sorokin et al, *Nonprofit Governance and Management*, 3rd ed (Chicago: American Bar Association, 2011).

<sup>130</sup> *Canada Not-for-profit Corporations Act*, SC 2009, c 23, s 124.

<sup>131</sup> Sport Canada, *Pursuing Effective Governance in Canada’s National Sport Organizations* (November 2011) at 1.

<sup>132</sup> Sport Canada, *Pursuing Effective Governance in Canada’s National Sport Organizations* (November 2011) at 1.

<sup>133</sup> Anne Corbett & James M Mackay, *Guide to Good Governance: Not-for-Profit and Charitable Organizations*, 2nd ed (September 2013) at 2-3.

<sup>134</sup> Anne Corbett & James M Mackay, *Guide to Good Governance: Not-for-Profit and Charitable Organizations*, 2nd ed (September 2013) at 2-3.

orientation and continuing education programs to enhance the board's collective knowledge and effectiveness;<sup>135</sup> and

- (iii) **Board structure and processes**: the organization has well-established structures and processes that inform how the organization expects the board to conduct its work, including the role of officers, the role of committees, and processes for calling and holding meetings.<sup>136</sup>

- i. Principle 1 – Board role, duties and functions*

The directors will not properly exercise their governance role and duties unless they know what the board's role is as the governing body of the organization and understand what their individual duties are as a director serving on the board. In addition, the directors must understand how their role differs from the role of the CEO and other management staff. Certain of these roles are explored within the paragraphs that follow. The roles relating to the board's oversight of senior management – an issue outlined expressly in our Terms of Reference – will be discussed in Chapter IX.

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

Pursuant to section 124 of the CNCA, the directors of a not-for-profit corporation shall “manage or supervise the management of the activities and affairs” of the corporation. The term “activities” includes “any conduct of a corporation to further its purpose and any business carried on by a body corporate”, and affairs “means the relationships among a corporation, its affiliates and the directors, officers, shareholders or members of those bodies corporate.”<sup>137</sup> This duty will be explored in detail in Chapter IX.

- 2. **Board takes responsibility for its own governance**

The board must determine how it will govern the organization, and how it will supervise or manage the organization's senior management. These obligations flow from the board's underlying governance purpose is to “guide the corporation in meeting its objects.”<sup>138</sup>

Chapter IX will expand on these crucial elements, and will describe examples of the various governance styles a board can adopt.

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<sup>135</sup> Anne Corbett & James M Mackay, *Guide to Good Governance: Not-for-Profit and Charitable Organizations*, 2nd ed (September 2013) at 2-3.

<sup>136</sup> Anne Corbett & James M Mackay, *Guide to Good Governance: Not-for-Profit and Charitable Organizations*, 2nd ed (September 2013) at 2-3.

<sup>137</sup> [Canada Not-for-profit Corporations Act](#), SC 2009, c 23, s 2(1).

<sup>138</sup> Anne Corbett & James M Mackay, *Guide to Good Governance: Not-for-Profit and Charitable Organizations*, 2nd ed (September 2013) at 70.

### 3. Board responsibilities and functions

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

As Chapter IX details below, these responsibilities include:

- Approving a strategic plan;
- Overseeing operational performance;
- Overseeing financial assets and resources;
- Establishing the organization's tolerance for risk and supervising the risk management process; and
- Hiring and overseeing the performance of the CEO.

### 4. Fiduciary and other duties of individual directors

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

#### *Fiduciary duty*

It is entrenched in common law principles that directors stand in a fiduciary relationship to the corporation they serve.<sup>139</sup> As such, directors are ultimately responsible for the operations of the corporation. As mentioned above, the directors' primary duty is to manage or supervise the management of the activities and affairs of the corporation, which is now codified in most modern not-for-profit legislation, including the CNCA. A fiduciary duty requires that the fiduciary (in this instance, the director) act with absolute loyalty toward the other party (in this instance, the corporation) in managing the latter's affairs. That duty encompasses not only a wide range of board responsibilities and functions, but also a number of directors' individual duties.

#### *Standard of care*

Pursuant to paragraph 148(1)(b) of the CNCA, in exercising their powers and discharging their duties, a director shall "exercise the care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances." This standard of care is an objective one,<sup>140</sup> which results in the same exposure to liability for the same actions, despite different levels of knowledge and experience. If a director or officer does not meet the appropriate standard of care when

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<sup>139</sup> *Canadian Aero Service Ltd. v. O'Malley*, [1974] S.C.R. 592; *London Humane Society (Re)*, 2010 ONSC 5775.

<sup>140</sup> Burke-Robertson, Carter & Man, *Corporate and Practice Manual for Charities and Not-for-Profit Corporations* (Toronto: Thomson Reuters Canada, 2022) at § 9:3 (Proview).

exercising their legal duties, then they are exposed to personal liability. The diligence requirement of directors requires them to take the time to be “familiar with all aspects of the corporation’s operations through attending board meetings and reviewing the minutes of missed board meetings.”<sup>141</sup>

On a related note, the business judgment rule was developed in the context of for-profit corporations, but it has been applied in the context of not-for-profit corporations.<sup>142</sup> “The ‘business judgment rule’ has been developed as a type of lens by which the applicable standard of care will be examined by courts”.<sup>143</sup> In brief, “the business judgment rule states that a director will not be held liable for mistakes made after an honest and good faith evaluation of the decision.”<sup>144</sup> A director’s evaluation may include reliance on financial statements of the corporation or a report of a person whose profession lends credibility to a statement made by that person.<sup>145</sup> The Supreme Court of Canada commented as follows: “Directors may find themselves in a situation where it is impossible to please all stakeholders. [...] There is no principle that one set of interests – for example the interests of shareholders – should prevail over another set of interests. Everything depends on the particular situation faced by the directors and whether, having regard to that situation, they exercised business judgment in a responsible way.”<sup>146</sup>

### *Duty to avoid conflicts of interest*

The general legal duty to avoid conflicts of interest is reflected in the statute’s provisions setting a high bar for directors with respect to avoidance of and disclosure of conflicts of interest. Directors are required to avoid situations where their private interests conflict with those of the corporation,<sup>147</sup> except where the corporation has knowledge of this conflict of interest and has provided their consent to allow this conflict of interest, pursuant to section 141 of the CNCA.<sup>148</sup>

The Sport Canada Report Card sets out a number of recommended practices that should be followed to obtain an “excellent” grade in relation to conflicts of interest.<sup>149</sup> First, the Board should revisit its independence at every meeting. The organization should have a conflict of interest policy, available in both official languages, which includes a process for managing Board involvement in any decisions in which there exists a real, potential or perceived conflict. Such

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<sup>141</sup> Burke-Robertson, Carter & Man, *Corporate and Practice Manual for Charities and Not-for-Profit Corporations* (Toronto: Thomson Reuters Canada, 2022) at § 9:15 (Proview).

<sup>142</sup> Burke-Robertson, Carter & Man, *Corporate and Practice Manual for Charities and Not-for-Profit Corporations* (Toronto: Thomson Reuters Canada, 2022) at § 9:9 (Proview); *Goertz v Condominium Plan No. 98SA12401*, 2018 SKCA 41 at paras 57-58; *Ottawa Humane Society v Ontario Society for the Prevention of Cruelty to Animals*, 2017 ONSC 5409 at paras 6, 37-39.

<sup>143</sup> Burke-Robertson, Carter & Man, *Corporate and Practice Manual for Charities and Not-for-Profit Corporations* (Toronto: Thomson Reuters Canada, 2022) at § 9:9 (Proview).

<sup>144</sup> Burke-Robertson, Carter & Man, *Corporate and Practice Manual for Charities and Not-for-Profit Corporations* (Toronto: Thomson Reuters Canada, 2022) at § 9:9 (Proview).

<sup>145</sup> *Canada Not-for-profit Corporations Act*, SC 2009, c 23, s 149(1).

<sup>146</sup> *BCE Inc v 1976 Debentureholders*, 2008 SCC 69 at paras 83—84.

<sup>147</sup> *London Humane Society (Re)*, 2010 ONSC 5775 at para 20.

<sup>148</sup> Burke-Robertson, Carter & Man, *Corporate and Practice Manual for Charities and Not-for-Profit Corporations* (Toronto: Thomson Reuters Canada, 2022) at § 9:10 (Proview).

<sup>149</sup> Sport Canada, *Report Card Phase 2 Matrices and Glossary*, Government of Canada (undated), at 2.4.1.

conflicts should be regularly noted on a register, and the organization should establish whistleblower protections to prevent retaliatory behaviour. Moreover, there should be a clear commitment to ongoing external consultation at regular intervals in regards to managing conflicts of interest.<sup>150</sup>

### ***Duty to act honestly and in good faith***

Directors must act in good faith at all times.<sup>151</sup> To ensure honest dealings with the corporation, “a director must disclose to the corporation the entire truth in his or her dealings as a director.”<sup>152</sup> The duty to act in good faith also “requires that the directors consider the best interests of the corporation as a whole rather than allowing one sectional interest of the corporation to prevail over others”<sup>153</sup>, “and, in doing so, must take into account all relevant factors.”<sup>154</sup>

### ***Duty to act in the best interests of the corporation***

The “best interests in a not-for-profit corporation are linked to the mission, vision, values and accountabilities of the corporation. Therefore, acting in the best interests of a mission-based not-for-profit corporation, means fulfilling the mission, moving towards the vision, adhering to core values, and discharging accountabilities.”<sup>155</sup>

Although the members elect the directors of a not-for-profit organization, the directors must act primarily in the best interests of the corporation as a whole. The organization exists for its purposes, mission and vision and occasionally that may mean that “the best interests of the corporation will not always be consistent with the best interests of the members.”<sup>156</sup> Similarly, the interests of the members may also differ from the interests of other stakeholders and the public. As an example, there may be circumstances where a corporation requires that additional funds be collected from members in order to pursue the corporation’s purpose. Evidently, members may not wish to pay additional membership fees to the corporation because this reduces their own financial resources. “The challenge for the board is to resolve conflicts in a manner that reflects the best interests of the corporation and at the same time maintains the support of the [stakeholders]”, which must be done in a way that “each party can be said to have been fairly treated. [...] A decision on how to achieve this balance is made on a case-by-case basis as current

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<sup>150</sup> Sport Canada, *Report Card Phase 2 Matrices and Glossary*, Government of Canada (undated), at 2.4.1.

<sup>151</sup> *London Humane Society (Re)*, 2010 ONSC 5775 at para 18.

<sup>152</sup> Burke-Robertson, Carter & Man, *Corporate and Practice Manual for Charities and Not-for-Profit Corporations* (Toronto: Thomson Reuters Canada, 2022) at § 9:13 (Proview).

<sup>153</sup> Burke-Robertson, Carter & Man, *Corporate and Practice Manual for Charities and Not-for-Profit Corporations* (Toronto: Thomson Reuters Canada, 2022) at § 9:13 (Proview).

<sup>154</sup> Anne Corbett & James M Mackay, *Guide to Good Governance: Not-for-Profit and Charitable Organizations*, 2nd ed (September 2013) at 91.

<sup>155</sup> Anne Corbett & James M Mackay, *Guide to Good Governance: Not-for-Profit and Charitable Organizations*, 2nd ed (September 2013) at 10.

<sup>156</sup> Anne Corbett & James M Mackay, *Guide to Good Governance: Not-for-Profit and Charitable Organizations*, 2nd ed (September 2013) at 10; see also Peter Dey & Sarah Kaplan, “360° Governance: Where are the Directors in a World in Crisis?” (2021) at 30, online (pdf): *Rotman School of Management University of Toronto* <<https://www.rotman.utoronto.ca/FacultyAndResearch/ResearchCentres/LeeChinInstitute/Sustainability-Research-Resources/360-Governance-Report>>.

circumstances and exigencies require but should always be done in the best interests of the organisation over the longer term.”<sup>157</sup>

Case law confirms that in considering what is in the best interests of the corporation, directors may (and should) “look to the interests of, inter alia, shareholders, employees, creditors, consumers, governments and the environment to inform their decisions.”<sup>158</sup> Fostering healthy and trustworthy relationships with stakeholders is arguably in the best interests of a corporation.<sup>159</sup>

That said, directors do have “a responsibility to ensure that the corporation fulfills its [...] purposes and, in this regard, [have] a responsibility to ensure that the membership does not impose its own priorities over the stated purposes of the corporation or restrict the provision of services to a narrow segment of the community served by the corporation.”<sup>160</sup>

### ***Duty of confidentiality***

The general rule of confidentiality means “all matters and discussions in a boardroom are confidential.”<sup>161</sup> Some not-for-profit corporations, primarily those that are publicly funded, operate in an open and transparent manner. In this case, directors “must respect the confidentiality of matters that are not, or will not be, disclosed to the public.”<sup>162</sup>

### ***Duty of obedience and solidarity***

Under subsection 148(2) of the CNCA, a director has a duty to comply with all applicable acts and regulations, and the corporation’s governing documents such as articles and by-laws. A director must also assist in implementing valid corporate decisions.<sup>163</sup> Furthermore, subsection 148(3) of the CNCA states that directors of not-for-profit corporations must verify the lawfulness of the articles and the purpose of the corporation.

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<sup>157</sup> Peter Dey & Sarah Kaplan, “360° Governance: Where are the Directors in a World in Crisis?” (2021) at 30, online (pdf): *Rotman School of Management University of Toronto* <<https://www.rotman.utoronto.ca/FacultyAndResearch/ResearchCentres/LeeChinInstitute/Sustainability-Research-Resources/360-Governance-Report>>; see also *BCE Inc v 1976 Debentureholders*, 2008 SCC 69 at para 84.

<sup>158</sup> *BCE Inc v 1976 Debentureholders*, 2008 SCC 69 at para 40; also cited in *Pruner v Ottawa Hunt and Golf Club, Limited*, 2014 ONSC 6272 at para 40.

<sup>159</sup> See e.g. Peter Dey & Sarah Kaplan, “360° Governance: Where are the Directors in a World in Crisis?” (2021) at 11, online (pdf): *Rotman School of Management University of Toronto* <<https://www.rotman.utoronto.ca/FacultyAndResearch/ResearchCentres/LeeChinInstitute/Sustainability-Research-Resources/360-Governance-Report>>.

<sup>160</sup> *The Campaign for the Inclusion of People who are Deaf and Hard of Hearing v Canadian Hearing Society*, 2018 ONSC 5445 at para 34.

<sup>161</sup> Anne Corbett & James M Mackay, *Guide to Good Governance: Not-for-Profit and Charitable Organizations*, 2nd ed (September 2013) at 91.

<sup>162</sup> Anne Corbett & James M Mackay, *Guide to Good Governance: Not-for-Profit and Charitable Organizations*, 2nd ed (September 2013) at 91.

<sup>163</sup> Burke-Robertson, Carter & Man, *Corporate and Practice Manual for Charities and Not-for-Profit Corporations* (Toronto: Thomson Reuters Canada, 2022) at § 9:16 (Proview).

The duty of obedience also includes the duty of solidarity. A director “who is opposed to a decision of the Corporation that has been validly taken has a duty to respect and adhere to that decision.”<sup>164</sup> Directors who speak publicly against a decision validly taken by the board are, in effect, violating their fiduciary duty to the corporation.

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

As mentioned above, the standard of care applicable to the actions of directors is one of reasonable diligence. A director will be considered to have acted with reasonable diligence if they rely on “financial statements of the corporation represented to the director by an officer of the corporation or in a written report of the public accountant of the corporation fairly to reflect the financial condition of the corporation” or “a report of a person whose profession lends credibility to a statement made by that person.”<sup>165</sup> The reliance on these resources must be done in good faith.<sup>166</sup> In other words, directors “are entitled to assume that those on whom they rely, particularly officers and senior management, have performed their duties honestly.”<sup>167</sup>

6. The respective roles of the board and management

Regardless of how a board chooses to govern, a board should ensure that it “draw[s] the line between the board’s role and management’s role”<sup>168</sup>. The board and management should both have clear knowledge of their roles, as well as the governance structures and processes in place.<sup>169</sup> This topic is discussed further below in Chapter IX.

7. The respective roles of the board and members

Members may play a more limited role<sup>170</sup> than directors and officers within a not-for-profit corporation, but their role is nevertheless meaningful and powerful.<sup>171</sup> For example, subsections 128(3) and 130(1) of the CNCA provide that members elect and may remove the directors of a not-for-profit corporation. Pursuant to subsection 197(1), members approve any fundamental change to the corporation. Similarly, section 152 provides that members are responsible for confirming, amending or rejecting any proposal by directors to make, amend, or repeal any by-law

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<sup>164</sup> Anne Corbett & James M Mackay, *Guide to Good Governance: Not-for-Profit and Charitable Organizations*, 2nd ed (September 2013) at 92.

<sup>165</sup> [Canada Not-for-profit Corporations Act](#), SC 2009, c 23, s 149(1).

<sup>166</sup> [Canada Not-for-profit Corporations Act](#), SC 2009, c 23, s 149(2).

<sup>167</sup> Anne Corbett & James M Mackay, *Guide to Good Governance: Not-for-Profit and Charitable Organizations*, 2nd ed (September 2013) at 93.

<sup>168</sup> Anne Corbett & James M Mackay, *Guide to Good Governance: Not-for-Profit and Charitable Organizations*, 2nd ed (September 2013) at 34.

<sup>169</sup> Anne Corbett & James M Mackay, *Guide to Good Governance: Not-for-Profit and Charitable Organizations*, 2nd ed (September 2013) at 70.

<sup>170</sup> [The Campaign for the Inclusion of People who are Deaf and Hard of Hearing v Canadian Hearing Society](#), 2018 ONSC 5445 at para 34: “the role of a member of a not-for-profit corporation is limited to approving the annual financial statements and the auditor”.

<sup>171</sup> Anne Corbett & James M Mackay, *Guide to Good Governance: Not-for-Profit and Charitable Organizations*, 2nd ed (September 2013) at 10.

that regulates the activities or affairs of the corporation. Members are also entitled to receive the annual financial statements pursuant to subsection 172(1) of the CNCA and appoint the public accountant pursuant to subsection 181(1).

Although members have important duties, they “do not have a formal consultative function or authority in relation to proposed policies of the corporation. Any consultative role depends entirely on a discretionary decision of the board of directors of the corporation to invite such consultation.”<sup>172</sup>

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

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

More generally, practitioners in the field of not-for-profit corporations have commented that “one of the most fundamental rights of members is their right to rely on the integrity of the by-laws and charter or articles of the corporation and to expect that the corporation and its directors will similarly respect the requirements of those documents.”<sup>173</sup> This stems from the fact that the relationship between the directors of a not-for-profit corporation and its members is “contractual in nature.”<sup>174</sup> The contractual relationship is established and governed by the corporation’s constating documents.<sup>175</sup> As such, the terms of the contract will vary from one corporation to another. At a minimum, the contractual relationship between the corporation and the members places an obligation on directors and members to “comply with the terms of the contract,”<sup>176</sup> in other words, to comply with all incorporation documents and by-laws.<sup>177</sup>

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<sup>172</sup> [The Campaign for the Inclusion of People who are Deaf and Hard of Hearing v Canadian Hearing Society](#), 2018 ONSC 5445 at para 35.

<sup>173</sup> Burke-Robertson, Carter & Man, [Corporate and Practice Manual for Charities and Not-for-Profit Corporations](#) (Toronto: Thomson Reuters Canada, 2022) at § 7:16 (Proview).

<sup>174</sup> Donald J Bourgeois, [The Law of Charitable and Not-for-Profit Organizations](#), 5th ed (Toronto: LexisNexis Canada, 2016) at 232; [Senez v Montreal Real Estate Board](#), [1980] 2 SCR 555 at 566.

<sup>175</sup> Donald J Bourgeois, [The Law of Charitable and Not-for-Profit Organizations](#), 5th ed (Toronto: LexisNexis Canada, 2016) at 234.

<sup>176</sup> Donald J Bourgeois, [The Law of Charitable and Not-for-Profit Organizations](#), 5th ed (Toronto: LexisNexis Canada, 2016) at 251.

<sup>177</sup> [Canada Not-for-profit Corporations Act](#), SC 2009, c 23, s 148(2).

ii. *Principle 2 – Board quality*

1. Board size

The appropriate size for a board of directors depends on a number of factors, such as the amount of work to be done, which varies according to the projects in progress and issues facing the organization. Similarly, the need to have directors who possess specific skills and expertise can also affect the number of directors required. The CNCA requires that a corporation have at least one director, while soliciting corporations (such as Hockey Canada) must have a minimum of three, at least two of whom are not officers or employees of the corporation or its affiliates.<sup>178</sup> However, the board should be sufficiently large to enable the directors to get the work done well, but not so large that meaningful discussion becomes difficult.<sup>179</sup>

While organizations must determine the board size that best suits their particular needs, the effectiveness of a board is not a function of its size. Much more crucial to board success are the dedication and skill of its individual members.<sup>180</sup>

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

Directors have both a duty to manage the organization and a duty to operate it by ensuring that it has activities that carry out its objects.<sup>181</sup> Inherently, one of the critical functions of the board of directors is to ensure that it works in an effective and efficient manner while recognizing and accounting for different backgrounds, cultural and personal experiences, interests and personalities.<sup>182</sup>

Certain fundamental skills, such as financial literacy, legal and governance experience, are vital to a board of directors.<sup>183</sup> Other skills may become relevant, or even required, depending on the particular situation unique to each entity.

Specialized skills are not the only way boards can acquire desired or required qualities; experience and knowledge in which the board requires assistance or performs a governance role are equally important.<sup>184</sup>

Further, boards should comprise individuals who possess qualities desirable from board members. At a minimum, a director's fiduciary duties require them to show integrity, loyalty, honesty and

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<sup>178</sup> [Canada Not-for-profit Corporations Act](#), SC 2009, c 23, s 125.

<sup>179</sup> Anne Corbett & James M Mackay, *Guide to Good Governance: Not-for-Profit and Charitable Organizations*, 2nd ed (September 2013) at 118.

<sup>180</sup> Burke-Robertson, Carter & Man, [Corporate and Practice Manual for Charities and Not-for-Profit Corporations](#), (Toronto: Thomson Reuters Canada, 2022) at § 8:13 (Proview).

<sup>181</sup> Donald J Bourgeois, [The Law of Charitable and Not-for-Profit Organizations](#), 5th ed (Toronto: LexisNexis Canada, 2016) at 163.

<sup>182</sup> Donald J Bourgeois, [The Law of Charitable and Not-for-Profit Organizations](#), 5th ed (Toronto: LexisNexis Canada, 2016) at 163.

<sup>183</sup> Anne Corbett & James M Mackay, [Guide to Good Governance](#), 3rd ed (OHA) at 137.

<sup>184</sup> Anne Corbett & James M Mackay, [Guide to Good Governance](#), 3rd ed (OHA) at 137.

good faith.<sup>185</sup> Still, other qualities may also be desirable for an efficient and effective board of directors; these may include:

- The ability to work in a team;
- A commitment to the workload required;
- The absence of apparent conflicts;
- Leadership potential; and
- The ability to think strategically and communicate effectively.<sup>186</sup>

In the recent past, much emphasis has been placed on ensuring the board reflects the diversity of the community it serves, including demographic, cultural, linguistic, economic, geographic, gender, and ethnic factors.<sup>187</sup> Research “often shows that more diversity on boards brings value to firms by increasing the diversity of experience and improving board monitoring.”<sup>188</sup> Moreover, it is beneficial for a board to consider both social and professional diversity, which can involve looking beyond the typical CEO or CFO pool for board candidates.<sup>189</sup> Equally important to the notion of diversity is cognitive diversity, which refers to the differences in individuals’ “knowledge, views, and perspectives, as well as in how they approach problems and perceive, process, and interpret information”.<sup>190</sup> Yet, diversity alone is no guarantee of board success; board culture is the key factor that can compliment diversity to help the board meet its objectives.<sup>191</sup>

### 3. Recruitment, nominations and election processes

Board success begins with its recruitment and nominations. These processes are the means by which the organization identifies individuals that can best complement the required skills, qualities

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<sup>185</sup> Anne Corbett & James M Mackay, *Guide to Good Governance*, 3rd ed (OHA) at 137.

<sup>186</sup> Anne Corbett & James M Mackay, *Guide to Good Governance*, 3rd ed (OHA) at 137.

<sup>187</sup> Anne Corbett & James M Mackay, *Guide to Good Governance*, 3rd ed (OHA) at 137.

<sup>188</sup> Peter Dey & Sarah Kaplan, “360° Governance: Where are the Directors in a World in Crisis?” (2021) at 35, online (pdf): *Rotman School of Management University of Toronto* <<https://www.rotman.utoronto.ca/FacultyAndResearch/ResearchCentres/LeeChinInstitute/Sustainability-Research-Resources/360-Governance-Report>>.

<sup>189</sup> Stephanie J Creary, et al, “When and Why Diversity Improves Your Board’s Performance” (27 March 2019), online: *Harvard Business Review* <<https://hbr.org/2019/03/when-and-why-diversity-improves-your-boards-performance>>.

<sup>190</sup> Jared Landaw, “Maximizing the Benefits of Board Diversity: Lessons Learned From Activist Investing” (2020): online: *Harvard Law School Forum on Corporate Governance* <<https://corpgov.law.harvard.edu/2020/07/14/maximizing-the-benefits-of-board-diversity-lessons-learned-from-activist-investing/>>.

<sup>191</sup> Stephanie J Creary, et al, “When and Why Diversity Improves Your Board’s Performance” (27 March 2019), online: *Harvard Business Review* <<https://hbr.org/2019/03/when-and-why-diversity-improves-your-boards-performance>>; Jared Landaw, “Maximizing the Benefits of Board Diversity: Lessons Learned From Activist Investing” (2020): online: *Harvard Law School Forum on Corporate Governance* <<https://corpgov.law.harvard.edu/2020/07/14/maximizing-the-benefits-of-board-diversity-lessons-learned-from-activist-investing/>>.

and traits of its leading figures. Indeed, recruitment, nomination and election best practices for directors should be consistent with recruiting a skilled, independent and qualified board.<sup>192</sup>

Every organization must determine the method to appoint or elect its directors. Typically, members will elect new directors at the annual general meeting, and incumbent directors retire at the meeting where the election takes place.<sup>193</sup> As the rules can vary from one statute to another, it is important to be familiar with the rules of the incorporating legislation to ensure that the desired method of election and/or appointment of directors complies with the law.<sup>194</sup> For example, the CNCA requires that members elect directors by ordinary resolution.<sup>195</sup> Additionally, an organization's articles may permit its directors to appoint one or more additional directors until the close of the next annual general meeting, so long as the total number of directors so appointed does not exceed one third of the number of directors elected at the previous annual general meeting.<sup>196</sup> Moreover, a director cannot hold office unless they were present at the meeting when the election or appointment took place and did not refuse the position, or they consented to hold office as director in writing before the election or within the prescribed time or has acted as director since the election or appointment.<sup>197</sup>

Whatever the electoral or appointment process the organization chooses for its board members, it should outline the process clearly in its by-laws and board policies. The court may order a new election of the directors where the election process is not followed. This new election would proceed unless it was shown that doing so would cause irreparable harm.<sup>198</sup>

Given the importance of skills and qualities of a board, best practices for board recruitment require that the board play an appropriate role in its succession and the director recruitment process.<sup>199</sup> The board must understand its responsibility in assuring the quality of board succession, and should establish a committee to oversee the process on its behalf.<sup>200</sup> Moreover, establishing eligibility criteria and developing a matrix of skills/experience/diversity with reference to board needs and stakeholder accountability should remain a priority. To do so, key steps would include maintaining an inventory of current board members' skills and experience, surveying current members' intentions with respect to term renewals, and considering board and individual director evaluation results.<sup>201</sup>

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<sup>192</sup> Anne Corbett & James M Mackay, *Guide to Good Governance*, 3rd ed (OHA) at 140.

<sup>193</sup> Burke-Robertson, Carter & Man, *Corporate and Practice Manual for Charities and Not-for-Profit Corporations* (Toronto: Thomson Reuters Canada, 2022) at § 8:16 (Proview).

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

<sup>195</sup> *Canada Not-for-profit Corporations Act*, SC 2009, c 23, s 128(3).

<sup>196</sup> *Canada Not-for-profit Corporations Act*, SC 2009, c 23, s 128(8).

<sup>197</sup> *Canada Not-for-profit Corporations Act*, SC 2009, c 23, s 128(9).

<sup>198</sup> Burke-Robertson, Carter & Man, *Corporate and Practice Manual for Charities and Not-for-Profit Corporations* (Toronto: Thomson Reuters Canada, 2022) at § 8:16 (Proview); see e.g. *Bose v. Bangiya Parishad Toronto*, 2019 ONSC 5625.

<sup>199</sup> Anne Corbett & James M Mackay, *Guide to Good Governance*, 3rd ed (OHA) at 140-141.

<sup>200</sup> Anne Corbett & James M Mackay, *Guide to Good Governance*, 3rd ed (OHA) at 141.

<sup>201</sup> Anne Corbett & James M Mackay, *Guide to Good Governance*, 3rd ed (OHA) at 141.

Other steps may include: determining an appropriate recruitment strategy and considering a variety of means to identify board candidates; requiring prospective candidates to complete an application form; conducting personal background and criminal reference checks; ensuring candidates know what is expected of a director; ensuring that only board-recommended candidates are presented at the annual general meeting for election (subject to members' statutory rights); disclosing candidate information to members in advance of the annual meeting; and disclosing the recruitment, nomination and election process to members.<sup>202</sup>

Organizations should also ensure that the minimum statutory qualifications for directors set out in the applicable legislation are met.<sup>203</sup> Under the CNCA, directors must be individuals who are not less than 18 years of age, have not been found unable to manage their property or declared incapable by a court in Canada or in another country, and are not undischarged bankrupts.<sup>204</sup>

#### 4. Director term, renewal and limits

The CNCA provides that a director may hold office for a term of not more than four years,<sup>205</sup> but it does not prescribe any limit on the number of terms that a director may serve, either consecutively or otherwise. Nevertheless, an organization's by-laws and policies should include Board renewal strategies, such as limits on the number of terms that a Director can serve on the Board, which ensures that fresh perspectives and different ideas are considered and debated.<sup>206</sup> At the same time, the organization must plan carefully and stagger the directors' terms to ensure that the term of all the directors will not all end at the same time. Such a practice, along with other continuity strategies are vital to sustaining organizational memory and stability.<sup>207</sup>

#### 5. Board education

The quality of a board depends in part on the orientation processes in place for new directors as well as ongoing education for the full board.<sup>208</sup> Directors must not only know the affairs of the organization they serve; they must also know the board's governance processes and their individual rights, duties and obligations as board members.<sup>209</sup> Boards must conduct mandatory orientation sessions and provide their directors with access to continuous education, which may include encouraging directors to attend education programs relevant to their roles.<sup>210</sup> Attendance and participation in education sessions should form part of director evaluations and consideration with respect to term renewal. To obtain an "excellent" grade on the Sport Canada Report Card for board orientation and development, organizations should clearly outline the Board orientation

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<sup>202</sup> Anne Corbett & James M Mackay, *Guide to Good Governance*, 3rd ed (OHA) at 141.

<sup>203</sup> Burke-Robertson, Carter & Man, *Corporate and Practice Manual for Charities and Not-for-Profit Corporations* (Toronto: Thomson Reuters Canada, 2022) at § 8:8 (Proview).

<sup>204</sup> *Canada Not-for-profit Corporations Act*, SC 2009, c 23, s 126(1).

<sup>205</sup> *Canada Not-for-profit Corporations Act*, SC 2009, c 23, s 128(3); *Canada Not-for-profit Corporations Regulations* SOR/2011-223, s 28(1).

<sup>206</sup> Sport Canada, *Pursuing Effective Governance in Canada's National Sport Organizations* (November 2011) at 10.

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

<sup>208</sup> Anne Corbett & James M Mackay, *Guide to Good Governance*, 3rd ed (OHA) at 142.

<sup>209</sup> Anne Corbett & James M Mackay, *Guide to Good Governance*, 3rd ed (OHA) at 142.

<sup>210</sup> Anne Corbett & James M Mackay, *Guide to Good Governance*, 3rd ed (OHA) at 142.

process and ensure that Board development initiatives are comprehensive. Doing so helps the organization maintain specific knowledge, skills and abilities.<sup>211</sup> These development initiatives and activities should be organized so as to raise the Board's performance level.<sup>212</sup>

## 6. Board evaluation

Evaluations form an important part of continuous maintenance and improvement of the governance process, and as such, should be undertaken at a point in the board's year at which the information distilled from the evaluation may be acted upon.<sup>213</sup> Boards should first determine which areas would be subject to evaluation, such as individual director performance, collective board performance, chair performance and committee evaluations. In doing so, it should consider the purpose of the evaluation, who completes the evaluation, whether the process is anonymous, how results will be shared and what processes exist to ensure the results can be acted upon.<sup>214</sup>

### iii. *Principle 3 – Board structure and processes*

#### 1. Board leadership/Officers

The officers of a not-for-profit corporation form its leadership. The CNCA gives directors broad power “to designate the offices of the corporation, appoint officers, specify duties and delegate to them powers to manage the activities and affairs of the corporation” (with certain exceptions).<sup>215</sup> In order to ensure effective board leadership, a board should put in place a “process for determining board officer recruitment and selection, terms of office and succession planning.”<sup>216</sup>

It is also important to ensure a separation between the role of the CEO and the role of the chair of the board.<sup>217</sup> The board's chair is responsible for the board's governance, represents the board within the organization and is the public spokesperson for the board.<sup>218</sup> The chair's role and the qualities required of the board chair should be clearly described, and their term renewals should not be automatic.<sup>219</sup>

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<sup>211</sup> Sport Canada, Report Card Phase 2 Matrices and Glossary, Government of Canada (undated), at 2.3.4.

<sup>212</sup> Sport Canada, Report Card Phase 2 Matrices and Glossary, Government of Canada (undated), at 2.3.4.

<sup>213</sup> Anne Corbett & James M Mackay, *Guide to Good Governance*, 3rd ed (OHA) at 144.

<sup>214</sup> Anne Corbett & James M Mackay, *Guide to Good Governance*, 3rd ed (OHA) at 144.

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

<sup>216</sup> Anne Corbett & James M Mackay, *Guide to Good Governance: Not-for-Profit and Charitable Organizations*, 2nd ed (September 2013) at 156.

<sup>217</sup> Anne Corbett & James M Mackay, *Guide to Good Governance: Not-for-Profit and Charitable Organizations*, 2nd ed (September 2013) at 157.

<sup>218</sup> Anne Corbett & James M Mackay, *Guide to Good Governance: Not-for-Profit and Charitable Organizations*, 2nd ed (September 2013) at 158.

<sup>219</sup> Anne Corbett & James M Mackay, *Guide to Good Governance: Not-for-Profit and Charitable Organizations*, 2nd ed (September 2013) at 157.

## 2. Board committees

Board committees are typically established to provide assistance to the board and to help the board “in the fulfillment of its governance role”. In other words, “committees support and supplement the board, but do not supplant the work of the board.” Committees are particularly helpful because they allow for “greater discussion and more in-depth analysis than would be allowed during a board meeting.”<sup>220</sup>

With the exception of audit committees,<sup>221</sup> the CNCA does not set out any requirements with respect to committees. Accordingly, the number of committees, their terms of reference and their mandates depend on the discretion of the board.<sup>222</sup> However, there are some exceptions to the duties that the board can delegate to a committee. For instance, a board cannot ask a committee to submit to the members any question or matter requiring the approval of the members, to approve financial statements, nor to adopt, amend or repeal by-laws.<sup>223</sup>

## 3. Board meeting processes and procedures

The “frequency of [board] meetings, process to establish agendas, order in which matters are dealt with on agendas, availability of supporting materials, quality of minutes, conduct of the meeting by the board chair and processes for open and *in camera* meetings” are all elements that can promote effective governance.<sup>224</sup> Accordingly, they should all be clearly established and understood. Additional elements that contribute to an effective meeting, and thus the discharge of the board’s governance role, include the board’s clear understanding of its governance role and appropriate behaviour in the boardroom.<sup>225</sup>

Leading Canadian and American authorities have suggested that the average number of meetings held by volunteer not-for-profit boards will range from seven to ten meetings a year.<sup>226</sup> The frequency of meetings will ultimately depend on a number of organization specific factors.

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<sup>220</sup> Anne Corbett & James M Mackay, *Guide to Good Governance: Not-for-Profit and Charitable Organizations*, 2nd ed (September 2013) at 161; see also Business Roundtable, “Principles of Corporate Governance” (8 September 2016), online: *Harvard Law School Forum on Corporate Governance* <<https://corpgov.law.harvard.edu/2016/09/08/principles-of-corporate-governance/>>.

<sup>221</sup> *Canada Not-for-profit Corporations Act*, SC 2009, c 23, s 194.

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

<sup>223</sup> Anne Corbett & James M Mackay, *Guide to Good Governance: Not-for-Profit and Charitable Organizations*, 2nd ed (September 2013) at 160.

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

<sup>225</sup> Anne Corbett & James M Mackay, *Guide to Good Governance: Not-for-Profit and Charitable Organizations*, 2nd ed (September 2013) at 162.

<sup>226</sup> Grace Bugg & Sue Dallhoff, “National Study of Board Governance Practices in the Non-Profit and Voluntary Sector in Canada” (2006) at 29, online (pdf): *Strategic Leverage Partners Inc., & Centre for Voluntary Sector Research and Development* <[http://www.strategicleveragepartners.com/bhg768kjmhgxxxxzwq/National\\_Study\\_of\\_Board\\_Governance\\_Practices\\_in\\_the\\_Non-Profit\\_and\\_Voluntary\\_Sector\\_in\\_Canada.PDF](http://www.strategicleveragepartners.com/bhg768kjmhgxxxxzwq/National_Study_of_Board_Governance_Practices_in_the_Non-Profit_and_Voluntary_Sector_in_Canada.PDF)>; “Leading with Intent: BoardSource Index of Nonprofit Board Practices” (2021) at 33, online (pdf): *BoardSource* <<https://leadingwithintent.org/wp->

## C. Relationships and accountabilities

### i. *Sources of accountability and transparency*

While the CNCA does not expressly use the terms “accountable” and “transparent”, when considering generally the legislation and commentary on not-for-profit corporations, it is apparent that a not-for-profit corporation should strive to attain a high degree of transparency and accountability to its members and other stakeholders. In fact, when Minister Ablonczy introduced the CNCA to the House of Commons at second reading, she explained that the CNCA “would ensure that federally incorporated not-for-profit enterprises are governed by an up-to-date legislative framework that is flexible enough to meet the needs of both small and large organizations while providing the accountability and transparency necessary to meet the expectations of the Canadian public.”<sup>227</sup> At the time, she recognized that the need for not-for-profit corporations to be transparent and financially accountable had increased “because they must establish and maintain a high level of public confidence in order to succeed.”<sup>228</sup> The Minister added that “Canadians expect that corporations that benefit from government grants or public generosity should be more transparent.”<sup>229</sup>

References to accountability and transparency within the CNCA include members’ right to approve any by-law changes, to elect directors, and to receive the annual financial statements. Fundamental changes cannot be made without member approval.<sup>230</sup> The CNCA also provides for oppression remedies<sup>231</sup> and derivative actions.<sup>232</sup> If directors were exempt from being accountable to members and were free to act as they see fit, these member rights would not exist. Similarly, the value of transparency is highlighted in the CNCA by members’ right to abundant information, such as copies of financial statements, access to the corporate records, and copies of the articles, by-laws and any amendments. As noted above in Chapter V, the CNCA also imposes additional requirements on soliciting corporations to ensure sufficient transparency and accountability for that income.<sup>233</sup>

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[content/uploads/2021/06/2021-Leading-with-Intent-Report.pdf?hsCtaTracking=60281ff7-cadf-4b2f-b5a0-94ebff5a2c25%7C428c6485-37ba-40f0-a939-aeda82c02f38](http://content/uploads/2021/06/2021-Leading-with-Intent-Report.pdf?hsCtaTracking=60281ff7-cadf-4b2f-b5a0-94ebff5a2c25%7C428c6485-37ba-40f0-a939-aeda82c02f38)>; Bohse & Associates Inc, “Bohse Tips: Board of Directors Series: Non-Profit Board Statistics” (2007) at 1, online (pdf): *Bohse & Associates Inc* <[http://bohse.com/images/file/Board\\_of\\_Director\\_Series/Non-Profit\\_Board\\_Statistics.pdf](http://bohse.com/images/file/Board_of_Director_Series/Non-Profit_Board_Statistics.pdf)>.

<sup>227</sup> “Bill C-4, An Act respecting not-for-profit corporations and certain other corporations”, 2nd reading, *House of Commons Debates*, 40-2, No 8 (4 February 2009) at 1810 (Hon Diane Ablonczy).

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

<sup>229</sup> “Bill C-4, An Act respecting not-for-profit corporations and certain other corporations”, 2nd reading, *House of Commons Debates*, 40-2, No 8 (4 February 2009) at 1815 (Hon Diane Ablonczy).

<sup>230</sup> The CNCA deals with Fundamental Changes in Part 13. Pursuant to section 197(1), Fundamental Changes include matters such as changing the name of the corporation, amending articles and by-laws, alternating the corporation’s activities, or changing its statement of purpose, changing conditions of membership, or the rights of any class or group of members, and changing the means of giving notice of a members’ meeting to voting members.

<sup>231</sup> *Canada Not-for-profit Corporations Act*, SC 2009, c 23, s 253(1).

<sup>232</sup> *Canada Not-for-profit Corporations Act*, SC 2009, c 23, s 251(1).

<sup>233</sup> See e.g. *Canada Not-for-profit Corporations Act*, SC 2009, c 23, ss 125, 170(1), 176(1), 179;

Furthermore, members are responsible for appointing the public accountant. Section 180 of the CNCA prescribes the qualifications for a public accountant. In addition to these qualifications, the individual must be independent.<sup>234</sup> The public accountant also has many participation rights at meetings of members. Our legislators drafted the CNCA in that manner because it is “necessary to ensure that the public accountant has the ability to carry out his or her duties and to meet the requirements under the [CNCA] – all of which are essential for financial accountability and transparency that underlie governance in the 21st century.”<sup>235</sup>

Many leaders in the not-for-profit sector have acknowledged and commented on the importance of accountability and transparency of not-for-profit corporations. Authors have said that “[c]orporations may be accountable to a number of stakeholders depending on the purposes or objects of the corporation. Each stakeholder relationship has the potential to give rise to some measure of accountability on behalf of the corporation.”<sup>236</sup> In the 21<sup>st</sup> century, there have been “[g]reater demands for accountability by governments, funders and the general public. Accountability is defined not only in terms of proper use of funds but in the effectiveness and efficiency of the organization and in meeting the needs of the community.”<sup>237</sup> In addition, mission and strategic planning (which involves the definition of the fundamental goals and strategy of the organization) is one of the most important tasks for a board “because it establishe[s] the basis for accountability – the basis on which to determine the appropriateness of the board’s actions”, performance and success.<sup>238</sup> Among other principles, openness and accountability from directors is often perceived as one of the main principles in providing good governance and leadership.<sup>239</sup>

## ii. *Importance of healthy relationships*

Relationships with members, stakeholders and the public are very important to the viability and the sustainability of a not-for-profit corporation. A board of directors should ensure that the

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“Requirements for soliciting corporations under the Canada Not-for-profit Corporations Act (NFP Act)” (8 November 2012), online: *Government of Canada* <[www.ic.gc.ca/eic/site/cd-dgc.nsf/eng/cs05011.html](http://www.ic.gc.ca/eic/site/cd-dgc.nsf/eng/cs05011.html)>.

<sup>234</sup> Donald J Bourgeois, *The Law of Charitable and Not-for-Profit Organizations*, 5th ed (Toronto: LexisNexis Canada, 2016) at 41.

<sup>235</sup> Donald J Bourgeois, *The Law of Charitable and Not-for-Profit Organizations*, 5th ed (Toronto: LexisNexis Canada, 2016) at 41.

<sup>236</sup> Anne Corbett & James M Mackay, *Guide to Good Governance: Not-for-Profit and Charitable Organizations*, 2nd ed (September 2013) at 10; see also Keith Steel, *Management of Nonprofit and Charitable Organizations in Canada*, 4th ed (Toronto: LexisNexis Canada, 2018) at p 689.

<sup>237</sup> Donald J Bourgeois, *The Law of Charitable and Not-for-Profit Organizations*, 5th ed (Toronto: LexisNexis Canada, 2016) at 152; see also Peter Dey & Sarah Kaplan, “360° Governance: Where are the Directors in a World in Crisis?” (2021) at 21, online (pdf): *Rotman School of Management University of Toronto* <<https://www.rotman.utoronto.ca/FacultyAndResearch/ResearchCentres/LeeChinInstitute/Sustainability-Research-Resources/360-Governance-Report>>; see also Keith Steel, *Management of Nonprofit and Charitable Organizations in Canada*, 4th ed (Toronto: LexisNexis Canada, 2018) at p 688-89.

<sup>238</sup> Donald J Bourgeois, *The Law of Charitable and Not-for-Profit Organizations*, 5th ed (Toronto: LexisNexis Canada, 2016) at 157.

<sup>239</sup> Donald J Bourgeois, *The Law of Charitable and Not-for-Profit Organizations*, 5th ed (Toronto: LexisNexis Canada, 2016) at 162; see also “Good Governance: A Code for the Voluntary and Community Sector” (October 2010) at 22, online (pdf): *Leading Governance* <<https://leadinggovernance.com/wp-content/uploads/2020/08/Code-of-Governance-Full1.pdf>>.

corporation develops effective relationships so that it has support for its objectives.<sup>240</sup> Members, stakeholders and the public have “the potential to positively or negatively influence the corporation’s well-being.”<sup>241</sup> In fact, a not-for-profit’s risk management often includes stakeholder relations as they affect reputational risks.<sup>242</sup>

“In considering the quality of stakeholder relations, boards need to consider the concepts of accountability, transparency and engagement that provide a foundation for this function.”<sup>243</sup> An effective way of fostering healthy relationships is indeed to be accountable, transparent, open and engaged.

Good and successful relationships mean that members, stakeholders and/or the public “understand the goals of the corporation and appreciate the rationale the board used in making a contentious decision.”<sup>244</sup>

The board is responsible for maintaining and overseeing relationships with members, stakeholders and the public, in addition to ensuring proper accountability and transparency. To do so, boards should identify a list of actors relevant to the organization, examine why and for what purpose the corporation is relating with each actor, and define principles of how the organization should relate with them.<sup>245</sup> Some basic requirements for managing relations include developing a framework and a plan, using multiple tools.<sup>246</sup> In other words, a board “needs to approve an overall policy direction for discharging its accountability, engagement and communications efforts.”<sup>247</sup> The board should consider multiple ways of connecting with members, stakeholders and the public depending on the audience and the objective of the relationship.<sup>248</sup> Finally, a board should monitor the status of its relationships, perhaps through reports from staff.

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

<sup>241</sup> Anne Corbett & James M Mackay, *Guide to Good Governance: Not-for-Profit and Charitable Organizations*, 2nd ed (September 2013) at 67.

<sup>242</sup> Anne Corbett & James M Mackay, *Guide to Good Governance: Not-for-Profit and Charitable Organizations*, 2nd ed (September 2013) at 58.

<sup>243</sup> Anne Corbett & James M Mackay, *Guide to Good Governance: Not-for-Profit and Charitable Organizations*, 2nd ed (September 2013) at 67.

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

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

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

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

<sup>248</sup> Anne Corbett & James M Mackay, *Guide to Good Governance: Not-for-Profit and Charitable Organizations*, 2nd ed (September 2013) at 68.

## VII. GOVERNANCE IN THE WORLD OF SPORT AND HOCKEY CANADA

### A. Defining “best practices” for National Sport Organizations

In accordance with the Terms of Reference, the general objective of this exercise is to review Hockey Canada’s governance structure, systems, personnel, and processes, including the extent to which they meet contemporary best practices for national sport organizations of similar size in Canada.<sup>249</sup> To inform our analysis of whether Hockey Canada’s governance, systems, personnel and processes meet contemporary best practices for national sport organizations of similar size in Canada we compared Hockey Canada with:

- (i) Sport Canada’s Governance Principles for Sport Organizations;<sup>250</sup>
- (ii) Sport Canada’s Report Card Matrix;
- (iii) the Canadian Sport Governance Code and accompanying Good Governance Framework; and
- (iv) the governance structure of select comparable NSOs.

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

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

In 2011, Sport Canada published a resource entitled “Pursuing Effective Governance in Canada’s National Sport Organizations” (the “**2011 Governance Tool**”) intended for funded sport organizations.<sup>251</sup> The document sets out a number of principles and practical tips in relation to achieving “effective governance” in the national sport context.

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

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

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<sup>249</sup> Hockey Canada Governance Review, “Terms of Reference” (4 August 2022) <<https://www.hockeycanada.ca/en-ca/news/thomas-cromwell-to-lead-hockey-canada-governance-review-corp-2022>>.

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

<sup>251</sup> Sport Canada, *Pursuing Effective Governance in Canada’s National Sport Organizations* (November 2011).

For each principle, the document includes definitions and ideas on how to implement it in the national sport context. Central to those governance principles is the expectation that directors will model the highest standards of ethical behaviour, acting honestly and in good faith, and in the best interests of their organization.<sup>252</sup>

ii. *The COC Canadian Sport Governance Code*

As described in Chapter V, in November 2020, the COC [Canadian Olympic Committee] introduced the COC Code [Canadian Sport Governance Code] to the Canadian sport community. It is intended for all NSOs representing sports on the Olympic Program.<sup>253</sup>

The COC Code's purpose is to "improve organizational performance by encouraging NSOs to upgrade governance practices through the adoption of revisions to by-laws and other structural mechanisms".<sup>254</sup> The "Purpose" section of the COC Code provides as follows:

[...] The Code articulates best practices to be met, thereby providing an objective standard that funding sources and other stakeholders can measure against. It is anticipated that various funders wishing to protect and maximize their investment in sport will expect that any NSO who seeks funding will be required to confirm it is in compliance with the Code.<sup>255</sup>

The COC has also developed a number of supporting governance resources and templates (such as template by-law provisions, board mandate, diversity policy, board skills matrix, committee terms of reference, etc.) to accompany the COC Code and to assist NSOs with their initiatives to comply with the COC Code.<sup>256</sup> In addition, the COC published the *Good Governance Framework – A Guide for Implementing the Canadian Code of Governance* (the "**Framework**") to supplement and support the implementation of the COC Code. The document provides commentary to enhance "understanding of good governance practices," offers additional context to the COC Code's provisions and is "intended to illustrate how implementation will lead to improved organization decision making."<sup>257</sup>

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

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<sup>252</sup> Sport Canada, *Pursuing Effective Governance in Canada's National Sport Organizations* (November 2011).

<sup>253</sup> Sport Canada, *Pursuing Effective Governance in Canada's National Sport Organizations* (November 2011).

<sup>254</sup> "Canadian Sport Governance Code" (April 2021), at 1, online: *Canadian Olympic Committee – NSO Sharing Centre* <[https://nso.olympic.ca/wp-content/uploads/2021/10/Canadian\\_Sports\\_Governance\\_Code.pdf](https://nso.olympic.ca/wp-content/uploads/2021/10/Canadian_Sports_Governance_Code.pdf)>.

<sup>255</sup> "Canadian Sport Governance Code" (April 2021), at 1-2, online: *Canadian Olympic Committee – NSO Sharing Centre* <[https://nso.olympic.ca/wp-content/uploads/2021/10/Canadian\\_Sports\\_Governance\\_Code.pdf](https://nso.olympic.ca/wp-content/uploads/2021/10/Canadian_Sports_Governance_Code.pdf)>.

<sup>256</sup> "Canadian Sport Governance Code: Supporting Resources" (27 April 2021), online: *Canadian Olympic Committee – NSO Sharing Centre* <[https://nso.olympic.ca/wp-content/uploads/2021/10/GOODMANS-7073296-v12-Canadian\\_Sport\\_Governance\\_Code\\_-\\_Combined\\_Templates.docx](https://nso.olympic.ca/wp-content/uploads/2021/10/GOODMANS-7073296-v12-Canadian_Sport_Governance_Code_-_Combined_Templates.docx)>.

<sup>257</sup> "Good Governance Framework: A Guide for Implementing the Canadian Code of Governance" (23 September 2021) at 1, online (pdf): *Canadian Olympic Committee* <<https://nso.olympic.ca/wp-content/uploads/2021/10/Good-Governance-Framework-Sept-2021-1.pdf>>.

compliance with the COC Code may not be possible or desirable for all NSOs. They are also of the view that the COC Code and supporting resources<sup>258</sup> that accompany it are “living” documents that will and should evolve over time and be adapted to the specific needs and organizational structure of each NSO. Two of the five comparable NSOs that we interviewed adapted their governance models to generally align with the COC Code. A representative of one of the associations we interviewed indicated that they consider the COC Code to be mandatory.

As noted in Chapter V, the COC created the Good Governance Framework to link the principles in the COC Code with those in the Report Card Matrix.

*iii. Comparator Associations*

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

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

We understand that Hockey Canada selected the Comparator Associations because they have a mandate and membership structure that are comparable to that of Hockey Canada. We recognize that consideration of other sport organizations and associations could inform a review of this nature. In Canada, there are over 60 NSOs<sup>259</sup> and, internationally, there are several other international sports organizations. Given our tight timelines and the terms of our mandate that required us to consider “national sport organizations of similar size in Canada,” we limited the scope of the points of reference considered to those mentioned above. We also point out that our

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<sup>258</sup> “Canadian Sport Governance Code: Supporting Resources” (27 April 2021) at 62-67, online: *Canadian Olympic Committee – NSO Sharing Centre* <[https://nso.olympic.ca/wp-content/uploads/2021/10/GOODMANS-7073296-v12-Canadian\\_Sport\\_Governance\\_Code\\_-\\_Combined\\_Templates.docx](https://nso.olympic.ca/wp-content/uploads/2021/10/GOODMANS-7073296-v12-Canadian_Sport_Governance_Code_-_Combined_Templates.docx)>.

<sup>259</sup> “National Sport Organizations” (last visited 13 September 2022), online: Government of Canada <<https://www.canada.ca/en/canadian-heritage/services/sport-organizations/national.html>>.

consideration of the Comparator Associations enabled us to establish a threshold for those governance practices of Hockey Canada that we were asked to examine.

We reviewed publicly available information regarding the history, mission, membership base and organizational and governance structure of each Comparator Association. We also reviewed the articles and by-laws, board and committee mandates, and policies and annual reports of the Comparator Associations to the extent such information was publicly available and/or provided to us by the Comparator Associations. In addition, we conducted interviews with representatives from the COC and the five Comparator Associations. We also refer to some of the key criteria from phase two of the Sport Canada Report Card Matrix on good governance.<sup>260</sup>

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

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

1. Why diversity matters

The key functions of a board of directors are to articulate and ensure adherence to the vision, mission and values of the corporation, to approve a strategic plan, to oversee operational performance, to oversee financial assets and resources, to identify and manage risk, and to hire and provide appropriate oversight of the CEO. The board of directors must be comprised of a diverse group of individuals who collectively have the knowledge, skills, experience and capacity to allow it to carry out these key functions effectively. In addition to the required range of skills and expertise, the board ought to reflect the “demographic characteristics that exist across Canadian society including, but not limited to, sex, gender identity, race, ethnicity, sexual orientation, class, economic means, ability, age, official language of Canada spoken, religion and education.”<sup>261</sup> Several studies conclude that diversity on boards is associated with better decision-making and governance because “diversity - whether through representation of different strengths, consideration of different concerns, or questions based on varying life experiences - will counteract groupthink.”<sup>262</sup> Put another way, diversity in the boardroom enhances decision-making because the directors will deliberate from a range of perspectives, each with varying insight.<sup>263</sup>

Thus, having the right mix of people around the board table will enable the directors to accomplish their supervisory functions more effectively. To that end, an organization must recruit and select director candidates thoughtfully to ensure that the board’s composition is appropriate having regard to its current environment and anticipated circumstances. Indeed, to obtain an “excellent” grade for diversity and representation on Sport Canada’s Report Card, an organization’s Board of

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<sup>260</sup> Sport Canada, Report Card Phase 2 Matrices and Glossary, Government of Canada (undated).

<sup>261</sup> “Canadian Sport Governance Code” (April 2021) at 4, section B.5, online: Canadian Olympic Committee – NSO Sharing Centre <[https://nso.olympic.ca/wp-content/uploads/2021/10/Canadian\\_Sports\\_Governance\\_Code.pdf](https://nso.olympic.ca/wp-content/uploads/2021/10/Canadian_Sports_Governance_Code.pdf)>.

<sup>262</sup> Yaron Nili, “Beyond the Numbers: Substantive Gender Diversity in Boardrooms” (2019) 94 Ind LJ 145 at 162-3.

<sup>263</sup> “Good Governance Framework: A Guide for Implementing the Canadian Code of Governance” (23 September 2021) at 3, online (pdf): Canadian Olympic Committee <<https://nso.olympic.ca/wp-content/uploads/2021/10/Good-Governance-Framework-Sept-2021-1.pdf>>.

directors must “reflec[t] the diversity of thought, backgrounds, skills, experiences and expertise”.<sup>264</sup> Moreover, the Report Card Matrix recommends that the Board be “competency based, relevant to the areas addressed by the skills matrix”.<sup>265</sup>

Also key to obtaining an “excellent” grade for Diversity and Inclusion from the Report Card are ensuring that the Board’s composition reflects gender balance, that – the Board be committed to monitoring issues related to equity, access, diversity and inclusion, and that it has taken “demonstrable steps” to recruit members from under-represented groups.<sup>266</sup>

The Articles and By-laws of Hockey Canada set out some basic requirements in respect of the Board’s composition. The Articles provide that there shall be a minimum of five and a maximum of nine Directors on the Board.<sup>267</sup> The By-Laws stipulate that the Board is composed of nine Directors who are elected by the Members, of whom at least two must be male and two female, and up to one Director appointed by the elected Directors.<sup>268</sup> As at the date of this report, the Board was comprised of seven elected Directors. Two elected Director positions were vacant (further to Michael Brind’Amour’s resignation as Chair on August 6, 2022 and Andrea Skinner’s resignation as Interim Chair on October 8, 2022)<sup>269</sup> and no appointed Director was serving on the Board.

## 2. Hockey Canada Board size

For the purpose of assessing the composition of Hockey Canada’s Board, we considered the Board’s size. As mentioned in the previous chapter of this report, the appropriate size for a board of directors depends on a number of factors, such as the amount of work to be done, which varies according to the projects in progress and issues facing the organization. However, the board should be sufficiently large to enable the directors to get the work done well, but not so large that meaningful discussion becomes difficult.<sup>270</sup>

When compared to the size of the board at the Comparator Associations, Hockey Canada’s Board falls within the ranges we observed and the best practices supported by the governance sources consulted for our review. The number of Directors on the Board is fixed by the By-laws at the

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<sup>264</sup> “Good Governance Framework: A Guide for Implementing the Canadian Code of Governance” (23 September 2021) at 4, online (pdf): *Canadian Olympic Committee* <<https://nso.olympic.ca/wp-content/uploads/2021/10/Good-Governance-Framework-Sept-2021-1.pdf>>; see also Sport Canada, *Report Card Phase 2 Matrices and Glossary*, Government of Canada (undated), at 2.3.3.

<sup>265</sup> “Good Governance Framework: A Guide for Implementing the Canadian Code of Governance” (23 September 2021) at 4, online (pdf): *Canadian Olympic Committee* <<https://nso.olympic.ca/wp-content/uploads/2021/10/Good-Governance-Framework-Sept-2021-1.pdf>>; see also Sport Canada, *Report Card Phase 2 Matrices and Glossary*, Government of Canada (undated), at 2.3.4.

<sup>266</sup> Sport Canada, *Report Card Phase 2 Matrices and Glossary*, Government of Canada (undated), at 2.3.3.

<sup>267</sup> Industry Canada, “Hockey Canada Association Articles of Continuance” (10 June 2014).

<sup>268</sup> “Hockey Canada By-Laws, Regulations and History” (May 2022), s 26.1, online (pdf): *Hockey Canada* <<https://cdn.hockeycanada.ca/hockey-canada/Corporate/About/Downloads/2022-23-bylaws-e.pdf>>.

<sup>269</sup> Note to reader: Our observations on the composition of the Hockey Canada Board are based on the complement of Directors who were on the Board as at October 7, 2022, prior to Ms. Andrea Skinner’s resignation as Interim Board Chair on October 8, 2022.

<sup>270</sup> Anne Corbett & James M Mackay, *Guide to Good Governance: Not-for-Profit and Charitable Organizations*, 2nd ed (September 2013) at 118.

maximum number permitted by the Articles, nine elected Directors, but provides for the option of an additional Board-appointed Director. Hockey Canada has informed us that the Board has never exercised its right to appoint an additional Director. The limitation in the Articles means that Hockey Canada cannot have nine elected Directors plus an additional appointed Director on the Board. Any increase to the number of Directors above nine would require Members' approval of an amendment to the Articles.

We observed that one other Comparator Association, Athletics Canada, has a similar range of number of Directors as Hockey Canada with a minimum of seven and maximum of nine. Canada Basketball's range is between six and eleven, and Curling Canada's is between eight and twelve. Canada Soccer and Tennis Canada have the largest boards of the Comparator Associations, with a fixed number of 14 and 13 Directors respectively. The COC Code states that "[b]oards should be functional in size with a minimum of five board members and a maximum of fifteen board members. It is expected that a typical board would have seven to eleven members."<sup>271</sup>

On the June 2022 Report Card Intake Results, Hockey Canada received an "excellent" grade for its Board structure, with the document noting that the Board size "is based on the nature of the complexity of the organization".<sup>272</sup> We acknowledge that Hockey Canada's Board size generally aligns with the COC Code and the Comparator Associations. However we are of the view that, given the scope and complexity of Hockey Canada's mandate, the size of its Board should be closer to the upper end of the ranges stipulated in those points of reference. The addition of some positions on the Board would create the opportunity to include Directors with a greater range of skills, experience and background. In addition, given the heavy workload of the Board and the number of standing committees that support it, an increase in the number of Directors would allow the Board to allocate tasks and committee work among a larger group of people. As articulated in the Report Card Matrix, an "excellent" Board size means having a number of directors "based on the nature, size and complexity of the organization as well as its stage of development".<sup>273</sup> Additionally, the Report Card recommends that the Board be "organized to respond to emerging issues and support the overall strategic plan of the organization".<sup>274</sup>

In light of these considerations, we recommend that Hockey Canada amend its Articles to increase the maximum number of Directors from 9 to 13 (we do not think it is necessary to amend the minimum number of Directors). We are also of the view that the By-laws should not prescribe a fixed number of Directors, but rather they should be amended to provide that the Board will consist of a number of Directors between the minimum and maximum number of Directors specified in the Articles. If the Articles allow for a range of Directors, and the Members have delegated to the Board the authority to fix the number of Directors, the Board can then easily adjust the number

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<sup>271</sup> Canadian Sport Governance Code" (April 2021) at 3, para 1, online: Canadian Olympic Committee – NSO Sharing Centre <[https://nso.olympic.ca/wp-content/uploads/2021/10/Canadian\\_Sports\\_Governance\\_Code.pdf](https://nso.olympic.ca/wp-content/uploads/2021/10/Canadian_Sports_Governance_Code.pdf)>.

<sup>272</sup> Government of Canada, Sport Canada, "2022 Sport Canada Report Card – Phase 2 Open Intake Results" (June 2022) at 9.

<sup>273</sup> "Good Governance Framework: A Guide for Implementing the Canadian Code of Governance" (23 September 2021) at 8, online (pdf): *Canadian Olympic Committee* <<https://nso.olympic.ca/wp-content/uploads/2021/10/Good-Governance-Framework-Sept-2021-1.pdf>>; see also Sport Canada, *Report Card Phase 2 Matrices and Glossary*, Government of Canada (undated), at 2.3.1.

<sup>274</sup> Sport Canada, *Report Card Phase 2 Matrices and Glossary*, Government of Canada (undated), at 2.3.1.

within that range by ordinary resolution of the Directors, with no need for further Member approval. Such a feature is attractive since it provides the Board with more governance flexibility by allowing it to periodically adjust the size of the Board as needed.

Having a larger Board could also provide the Directors with greater opportunity to use their authority to appoint additional Directors by fixing the number of elected Directors at a number below the allowed maximum (e.g. 13 directors), therefore leaving room for a Board appointed director. In that regard, we are of the view that Hockey Canada ought to amend its By-laws to provide that the Board may appoint additional Directors within the legal limits imposed by the *Canada Not-for-profit Corporations Act*, SC 2009, c 23 (“CNCA”), rather than limiting that right to only one additional Director. The limits imposed by the CNCA are such that the number of appointed directors on the board (if any) cannot ever exceed one third of the number of directors elected at the previous annual meeting of members.

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

### 3. Hockey Canada Board diversity

Our assessment of the Hockey Canada Board’s current composition also included an examination of the Directors’ skills, expertise, experience and other diversity elements. The presence of a suitable mix of skills, expertise and experience is vital to ensure that the Board as a collective is equipped to supervise the activities and affairs of the organization and carry out its strategic vision.<sup>275</sup> As mentioned above, diversity should include diversity of thought, as well as representation on the Board of demographic diversity characteristics such as gender, cultural, racial, sexual orientation, religion, disability and age.<sup>276</sup>

The COC Code provides some guidance for NSOs in respect of diversity standards: “Within an independent board staffed with directors who possess the necessary skills for the successful stewardship of the NSO and of whom not more than 60% of the directors are of the same gender, it is recognized that diverse perspectives, experiences and backgrounds provide for optimal board

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<sup>275</sup> Deloitte, “Diversity in the Boardroom, Practices and Perspectives” (2015) at 3, online: [Deloitte <https://www2.deloitte.com/za/en/pages/governance-risk-and-compliance/articles/diversity\\_in\\_the\\_boardroom.html>](https://www2.deloitte.com/za/en/pages/governance-risk-and-compliance/articles/diversity_in_the_boardroom.html).

<sup>276</sup> Yaron Nili, “Beyond the Numbers: Substantive Gender Diversity in Boardrooms” (2019) 94 Ind LJ 145 at 162-3.

performance.”<sup>277</sup> The COC Code goes on to say that NSOs should develop a policy for diversity at the board level. Diversity is defined as “the broad range of demographic characteristics that exists across Canadian society including, but not limited to, sex, gender identity, race, ethnicity, sexual orientation, class, economic means, ability, age, official language of Canada spoken, religion and education.”<sup>278</sup>

What follows is a summary of our observations on the make-up of the Hockey Canada Board as it existed on October 7, 2022 prior to the resignation of the Interim Chair (Andrea Skinner), but after the resignation of the Board Chair on August 6, 2022 (Michael Brind’Amour). Further to our review of the current Directors’ biographies, our interviews with each of them, and the Hockey Canada Board Matrix, we note that the following skills, experience, and diversity characteristics found on the current Board include the following:

- two (or 25%) of the current Directors are female, and six (or 75%) are male; in August 2022, immediately prior to the resignation of the former Board Chair Mr. Michael Brind’Amour (when all nine Board positions were filled), two (or 22.2%) of the Directors were female and seven (or 77.8%) were male;
- seven (or 87.5%) of the eight Directors are White;
- the age of the current Directors falls within the following age groups:
  - 35-44: 3
  - 45-54: 0
  - 55-64: 2
  - 65-74: 3
  - 75+: 0
- five (62.5%) of the eight Directors are 55 years of age or over;
- none of the eight Directors is fluently bilingual in English and French, although one Director is fluent in Punjabi and Hindi (we also note that the former Board Chair, Mr. Brind’Amour, was fluently bilingual in both English and French);
- one of the Directors identifies as a member of LGBTQ+ community;
- one of the Directors is of South Asian descent (2nd generation Canadian);

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<sup>277</sup> “Canadian Sport Governance Code” (April 2021) at 4, section B.5, online: *Canadian Olympic Committee – NSO Sharing Centre* <[https://nso.olympic.ca/wp-content/uploads/2021/10/Canadian\\_Sports\\_Governance\\_Code.pdf](https://nso.olympic.ca/wp-content/uploads/2021/10/Canadian_Sports_Governance_Code.pdf)>.

<sup>278</sup> “Canadian Sport Governance Code” (April 2021) at 4, section B.5, online: *Canadian Olympic Committee – NSO Sharing Centre* <[https://nso.olympic.ca/wp-content/uploads/2021/10/Canadian\\_Sports\\_Governance\\_Code.pdf](https://nso.olympic.ca/wp-content/uploads/2021/10/Canadian_Sports_Governance_Code.pdf)>.

- seven of the eight Directors have a significant hockey background, each serving in a variety of roles (including former players, coaches, referees, trainers, event volunteers, task team or committee members) and at various levels of hockey;
- four of the eight Directors have served on the Board of Directors or as chair/president of a Hockey Canada Member Association or a hockey league;
- three of the eight Directors have played hockey at the university level;
- two of the eight Directors are lawyers;
- two of the eight Directors have experience in municipal politics or employment experience within a municipality;
- one of the eight Directors is a former registered nurse;
- two of the eight Directors have backgrounds in business and/or economics;
- at least five of the eight Directors have not-for-profit volunteer experience (including board and governance experience); and
- at least two of the Directors have employment or volunteer experience developing, executing and/or managing diversity, inclusion and/or multicultural initiatives.

To further inform our assessment of the Board’s composition and diversity, we also reviewed a number of Hockey Canada’s governance documents, including the By-laws, the Policy on Equity, Diversity and Inclusion, and committee terms of reference. As previously mentioned, the Hockey Canada By-laws provide that the nine elected Directors shall include a minimum of two male and two female Directors. The By-laws also provide that the Nominating Committee is responsible for ensuring that the Board “is composed of qualified and skilled persons capable of, and committed to, providing effective governance leadership to Hockey Canada.”<sup>279</sup>

While the By-laws provide no other guidance or criteria in respect of board composition and diversity, Hockey Canada’s Equity, Diversity and Inclusion Policy provides that the Board shall have the following responsibilities in respect of the diversity of the Board:<sup>280</sup>

- The Board will strive for a governance structure that encourages and promotes full and equal participation by all individuals, including under-represented populations;
- The Board will encourage the removal of barriers to achieve balanced gender representation on its Board and on all committees;

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<sup>279</sup> “Hockey Canada By-Laws, Regulations and History” (May 2022), s 48.1, online (pdf): *Hockey Canada* <<https://cdn.hockeycanada.ca/hockey-canada/Corporate/About/Downloads/2022-23-bylaws-e.pdf>>.

<sup>280</sup> Hockey Canada, “Equity, Diversity and Inclusion Policy” (approved by Board May 2019) at 1.

- The Board will incorporate diversity and inclusion into their annual education/professional development plan; and
- The Board recognizes that diverse perspectives linked in common purpose contribute to innovation and growth for Hockey Canada. Accordingly the Board of Directors will review the skills, expertise, experience, independence and background of the Directors to identify the skills and competencies that could be targeted during the nomination process.

Furthermore, the Terms of Reference for the Nominating Committee of Hockey Canada set out some additional considerations. For example, the duties to be performed by the Nominating Committee include the obligations to:<sup>281</sup>

- Promote a regional balance in the composition of the Board by recruiting candidates from different regions of the country;
- Promote diversity of the Board in relation to gender, age, language, ethnicity, professional backgrounds and personal experiences; and
- Have regard to the specific and desired competencies required on the Board as a whole in soliciting nominations.

On the June 2022 Report Card, Hockey Canada obtained a “good” grade with respect to Board composition.<sup>282</sup> The document notes that diversity “is considered a key priority, reflected in recruitment and governance materials” of Hockey Canada.

The Governance Committee of Hockey Canada also has diversity-related duties, namely to “make recommendations to the Board to assist the Nominating Committee in identifying ideal candidate profile(s), skills matrix and diversity needs.”<sup>283</sup> We note that there is some overlap between or duplication of the duties of the Governance Committee and Nominating Committee, which will be addressed later in our report.

Our review of Hockey Canada’s governance documents, including the By-laws, the Policy on Equity, Diversity and Inclusion, and committee terms of reference shows that some proactive steps have been taken to include language and principles that promote equality, diversity and inclusion on the Hockey Canada Board; those have been noted above. In addition, we considered whether the composition of Hockey Canada’s Board (as it was constituted on October 7, 2022 prior to the resignation of Andrea Skinner as Interim Board Chair) reflects diversity of thought (skills, expertise and experience) and adequate representation of demographic diversity characteristics (such as gender, cultural, racial, sexual orientation, etc.). Although more limited, some positive Board features have been noted. For example, the Board includes a Director of South Asian descent and another who identifies as a member of LGBTQ+ community. In addition, the professional

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<sup>281</sup> “Hockey Canada Terms of Reference” (updated to 18 March 2022) at 35, s 5.4.

<sup>282</sup> Government of Canada, Sport Canada, “2022 Sport Canada Report Card – Phase 2 Open Intake Results” (June 2022) at 13.

<sup>283</sup> “Hockey Canada Terms of Reference” (updated to 18 March 2022) at 37, s 5.5.

backgrounds and knowledge of the Directors include legal training, business and/or economics, healthcare, municipal politics and equity, diversity and inclusion.

Notwithstanding the foregoing, the observations set out above regarding the most recent composition of the Hockey Canada Board illustrate that there is an obvious lack of diversity among the Directors serving on the Board of Hockey Canada. Identified issues include, for example, a noticeable disproportion of men to women Directors (this will be discussed further in the section below “Gender Identity”), a disproportion of White people, no Director fluently bilingual in French and English and a relatively high percentage of Directors over the age of 55. In addition, a high number of Directors (eight out of nine) have a significant hockey background, and four of those Directors (i.e. half of the Board) have served on the board of directors or as chair/president of a Hockey Canada Member or a hockey league. While there is value in having Directors on the Hockey Canada Board who understand hockey, the significant presence of hockey experience and lack of heterogeneity on the Board suggests that the network of people that are nominated as Director candidates by the Members and the Nominating Committee is relatively limited and homogenous, and a contributing factor to the lack of diversity on the Board.

As we mentioned in the Introduction section of our report, we are of the view that the current Director nomination process has not provided Hockey Canada with the wide range, depth and diversity of experience, both professional and personal, that the board collectively requires to govern this complex organization and to lead significant cultural change. The recommendations we make below in section B. iii. of this report are intended to remedy this, but implementing them will require strong support from and openness to change on the part of the Members.

4. Board skills and expertise matrix

In accordance with the policies referred to above, the Nominating Committee has developed a Board skills-expertise matrix (the “**Matrix**”).<sup>284</sup> The Matrix serves as an inventory of the skills, expertise and characteristics that are desired on the Board. As such, the Matrix should enable the Nominating Committee to identify, for each Director of the Board, which of the below-listed skills, expertise and characteristics the Director possesses, as well as any gaps in respect of them. Those skills, expertise and characteristics are as follows:

<b>Board skills-expertise matrix</b>	
<b>Core Board Competencies</b>	<b>Functional Expertise</b>
Enterprise Leadership	HR Transformation
Entrepreneurship	IT/Cyber/AI
Board Governance Experience	Government Relations

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<sup>284</sup> “Hockey Canada Board Matrix” provided by Michael Bruni, Chair of the Nominating Committee (18 August 2022).

<b>Board skills-expertise matrix</b>	
<b>Core Board Competencies</b>	<b>Functional Expertise</b>
Financial Acumen	Legal/Regulatory
Government Relations	M&A/Integration
Industry/Sector Experience	Marketing/Sales
Strategic Growth/Value Creation Capability	Operations
Risk Identification, Assessment and Management	Manufacturing
Stakeholder Management	Sustainability
<b>Behaviour Attributes</b>	<b>Other</b>
Capacity to Challenge	Appointed by:
Collaboration	Gender (Female)
Communication	Tenure
Independent Judgement	Diversity – Ethnicity
Influencing Skills	Geography
Innovative/Conceptual Thinking	Generation Representation <40
Integrity	Generation Representation >80
Organizational Commitment	Aging related illness
Willingness to Act	

In addition to the Matrix, Hockey Canada maintains a separate document (also referred to by Hockey Canada as a “Board matrix”), which sets out in the form of a chart more detailed information in respect of the Directors’ specific skills, competencies and diversity. We were informed by Hockey Canada’s General Counsel that such information is provided to Hockey

Canada by the Directors themselves. The version of the document we reviewed was dated August 4, 2022 (the “**Matrix Supplement**”).<sup>285</sup>

We note that the use of a matrix by Hockey Canada’s Nominating Committee is a practice that aligns with best practices, including the COC Code, which provides that each “NSO must maintain a skills matrix and board membership shall be competency-based ensuring that the board members possess as many of the skills necessary for optimal board functioning as possible.”<sup>286</sup> The Report Card Matrix also recognizes the use of a skills matrix for Board recruitment as best practice; to obtain a score of “excellent” under the Report Card Matrix, the skills matrix and professional development process of the organization must be “considered integral to the Board of Directors’ maturation and development.”<sup>287</sup> The Report Card Matrix also recommends under the “excellent” grade that the Board Chair assess Directors’ evaluations to help inform Board development and skills matrices.<sup>288</sup> On the June 2022 Report Card, Hockey Canada received a “good” grade in respect of Board composition, notably as the “skills matrix serves to guide the Board of Directors recruitment”. Four of the five Comparator Associations also have a formal skills Matrix. Tennis Canada uses an informal skills matrix for Director recruitment.<sup>289</sup>

When the Hockey Canada Matrix is compared to the matrix characteristics set out in the COC Code, we observe some minor differences. The COC Code expects that for most NSOs, a matrix’s skills would be “financial, governance, legal and sports” and for larger NSOs, the skills might also include “marketing, digital, HR, fundraising, sponsorship and international relations.”<sup>290</sup> We note that from these, very few are not included in the Hockey Canada Matrix: digital (although the Matrix does list IT/Cyber/AI), sponsorship (but see Marketing/Sales) and international relations. We also note that the Matrix Supplement sets out the language competencies for each Director and includes a space where the diversity elements that the Director possesses are described.

Although the 2022 Matrix does not have a regional breakdown for the desired geographical representation of Directors, the Board has, until the resignation of the former Board Chair, Mr. Michael Brind’Amour, included representation from the Maritimes, Québec, Ontario and the Western provinces since the By-laws were amended in 2014 to remove mandatory geographic representation on the Board.<sup>291</sup> This aligns with the Nominating Committee’s duty to “Promote a

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<sup>285</sup> “Hockey Canada Board Matrix” (last updated 4 August 2022).

<sup>286</sup> “Canadian Sport Governance Code” (April 2021) at 5, section B.7, online: Canadian Olympic Committee – NSO Sharing Centre <[https://nso.olympic.ca/wp-content/uploads/2021/10/Canadian\\_Sports\\_Governance\\_Code.pdf](https://nso.olympic.ca/wp-content/uploads/2021/10/Canadian_Sports_Governance_Code.pdf)>.

<sup>287</sup> Sport Canada, *Report Card Phase 2 Matrices and Glossary*, Government of Canada (undated), at 2.3.3.

<sup>288</sup> “Good Governance Framework: A Guide for Implementing the Canadian Code of Governance” (23 September 2021) at 21, online (pdf): *Canadian Olympic Committee* <<https://nso.olympic.ca/wp-content/uploads/2021/10/Good-Governance-Framework-Sept-2021-1.pdf>>; see also Sport Canada, *Report Card Phase 2 Matrices and Glossary*, Government of Canada (undated), at 2.3.2 .

<sup>289</sup> Interview with Tennis Canada (September 28, 2022).

<sup>290</sup> “Canadian Sport Governance Code” (April 2021) at 5, section B.7, online: Canadian Olympic Committee – NSO Sharing Centre <[https://nso.olympic.ca/wp-content/uploads/2021/10/Canadian\\_Sports\\_Governance\\_Code.pdf](https://nso.olympic.ca/wp-content/uploads/2021/10/Canadian_Sports_Governance_Code.pdf)>.

<sup>291</sup> Email to Victoria Prince from Sean Kelly (13 September 2022).

regional balance in the composition of the Board by recruiting candidates from different regions of the country.”<sup>292</sup>

To further inform our assessment of Hockey Canada’s current Board composition, we took a closer look at certain characteristics that are emphasized in the COC Code as best practice, such as gender identity and athlete representation. Approaches to these characteristics vary among the Comparator Associations.

## 5. Gender identity

The Hockey Canada By-laws provide that the nine elected Directors shall include a minimum of two male and two female Directors, meaning that no gender may represent more than 77.8% or less than 22.2% of Directors. We note that two other Comparator Associations have director gender requirements set out in their By-laws. Curling Canada’s By-laws provide “advancement for gender balance for women and men on the Board of Governors, while ensuring the prevailing criterion for election is eligibility, ability and professional performance,” no gender may represent more than 60% or less than 40% of governors.<sup>293</sup> Canada Soccer’s By-laws state that not more than 60% of the Directors shall be of the same gender,<sup>294</sup> meaning that with a board of 14 directors, no more than 8 of them can be of the same gender. Athletics Canada’s By-laws provide that its board shall include “three Athlete Directors, a minimum of one of each gender.”<sup>295</sup> Athletics Canada’s Diversity, Equity and Inclusion policy goes on to say that it “will work toward achieving gender parity on its Board of Directors”<sup>296</sup> and that “the athlete group who nominates the three Athlete Directors [must] nominate at least one athlete from each gender identity and at least one athlete who is a para-athlete.”<sup>297</sup>

While Canada Basketball does not have director gender requirements in its By-laws, it does have an organizational policy relating to diversity, equity and inclusion that contains aspirational statements regarding diversity objectives for its board. Notably, each of Canada Basketball’s policy and Athletics Canada’s policy provides that the NSO “will encourage balanced representation by Under-Represented Groups on its [Board] and on all committees.”<sup>298</sup> Each of them uses the same definition of “Under-Represented Group”: “Under-Represented Groups include women, children in low income families, Indigenous people, seniors, people with disabilities, newcomers to Canada, and members of the LGBTQ2 community.” As mentioned

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<sup>292</sup> “Hockey Canada Terms of Reference” (updated to 18 March 2022) at 35, s 5.4.

<sup>293</sup> Curling Canada, “By-laws of Canadian Curling Association” (5 December 2018) at Part VIII, s 3.

<sup>294</sup> “Canada Soccer By-laws” (May 2022), s 6.02(v) online (pdf): The Canada Soccer Association Incorporated <[https://www.canadasoccer.com/wp-content/uploads/2021/05/CSA-GC-By-laws-2022-EN\\_Final.pdf](https://www.canadasoccer.com/wp-content/uploads/2021/05/CSA-GC-By-laws-2022-EN_Final.pdf)>.

<sup>295</sup> “Athletics Canada Bylaws” (January 2022) at s 5.1(d), online (pdf): *Athletics Canada* <<https://athletics.ca/wp-content/uploads/2022/01/Athletics-Canada-Bylaws-January-2022.pdf>>.

<sup>296</sup> “Diversity, Equity and Inclusion Policy” (July 2020) at s 6, online (pdf): *Athletics Canada* <[Athletics-Canada-Diversity-Equity-and-Inclusion-Policy-July-2020.pdf](https://athletics.ca/wp-content/uploads/2020/07/Athletics-Canada-Diversity-Equity-and-Inclusion-Policy-July-2020.pdf)>.

<sup>297</sup> “Diversity, Equity and Inclusion Policy” (July 2020) at s 7, online (pdf): *Athletics Canada* <[Athletics-Canada-Diversity-Equity-and-Inclusion-Policy-July-2020.pdf](https://athletics.ca/wp-content/uploads/2020/07/Athletics-Canada-Diversity-Equity-and-Inclusion-Policy-July-2020.pdf)>.

<sup>298</sup> Canada Basketball, “Equity and Inclusion Policy” at s 4, online (pdf): <[https://assets.website-files.com/5d24fc966ad064837947a33b/5e25e16b0482df7fb643b522\\_Equity%20and%20Inclusion%20Policy.pdf](https://assets.website-files.com/5d24fc966ad064837947a33b/5e25e16b0482df7fb643b522_Equity%20and%20Inclusion%20Policy.pdf)>; “Diversity, Equity and Inclusion Policy” (July 2020) at s 5, online (pdf): *Athletics Canada* <[Athletics-Canada-Diversity-Equity-and-Inclusion-Policy-July-2020.pdf](https://athletics.ca/wp-content/uploads/2020/07/Athletics-Canada-Diversity-Equity-and-Inclusion-Policy-July-2020.pdf)>.

earlier in this section of our report, the COC Code also provides some guidance for NSOs in respect of gender representation on the board. Pursuant to the COC Code, not more than 60% of the directors can be of the same gender.<sup>299</sup> While Tennis Canada also has no director gender requirements set out in their By-laws, they advised during an interview that the organization has a policy relating to gender equity, which requires that at least 40% of the Board be comprised of women.<sup>300</sup>

When compared to the COC Code and the NSO Comparator Associations that have gender requirements in their By-laws (i.e. Curling Canada and Canada Soccer), Hockey Canada's minimum thresholds for representation of all genders are the lowest. Although Hockey Canada's Equity, Diversity and Inclusion Policy provides that the "Board will encourage the removal of barriers to achieve balanced gender representation on its Board,"<sup>301</sup> the current Board's composition has a noticeable disproportion of men to women Directors. In our view, Hockey Canada should take a more proactive approach to achieving balanced gender representation on its Board. To that end, we recommend that Hockey Canada amend its By-laws to increase its gender representation thresholds and to provide that no more than 60% of the Directors will be of the same gender, as per the COC Code.

It is worth noting that Hockey Canada's Female Hockey Policy Committee ("**FHP Committee**") made a similar recommendation to Hockey Canada's Board in September 2019. The FHP Committee is a committee established by the Board and responsible for monitoring the needs of females who play hockey and to make recommendations to the Board as it deems appropriate to meet those needs.<sup>302</sup> By way of a briefing note, the FHP Committee made a number of recommendations to the Board, including that Hockey Canada "adopt the CAAWS [Canadian Association for the Advancement of Women and Sport and Physical Activity] guidelines of achieving a 40-60% gender balance on the Hockey Canada Board of Directors over the next 6 years." That recommendation was not implemented.

## 6. Athlete representatives

The COC is of the view that it "is fundamental for athletes to have meaningful representation in the governance structure of the NSO and for athlete voices to be heard."<sup>303</sup> While the COC Code provides that each NSO should determine how it can best achieve that objective, athlete representation among the directors is "strongly encouraged" and each NSO must establish a process that allows the athlete representative to be selected with significant input from that sport's athletes.<sup>304</sup> The term "athlete" is defined as "a person currently on a national team or competing at

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<sup>299</sup> Canadian Sport Governance Code" (April 2021) at 4, section B.5, online: *Canadian Olympic Committee – NSO Sharing Centre* <[https://nso.olympic.ca/wp-content/uploads/2021/10/Canadian\\_Sports\\_Governance\\_Code.pdf](https://nso.olympic.ca/wp-content/uploads/2021/10/Canadian_Sports_Governance_Code.pdf)>.

<sup>300</sup> Interview with Tennis Canada (September 28, 2022).

<sup>301</sup> Hockey Canada, "Equity, Diversity and Inclusion Policy" (approved by Board May 2019) at 1.

<sup>302</sup> "Hockey Canada Terms of Reference" (updated to 18 March 2022) at 60.

<sup>303</sup> "Canadian Sport Governance Code" (April 2021) at 4, section B.6, online: *Canadian Olympic Committee – NSO Sharing Centre* <[https://nso.olympic.ca/wp-content/uploads/2021/10/Canadian\\_Sports\\_Governance\\_Code.pdf](https://nso.olympic.ca/wp-content/uploads/2021/10/Canadian_Sports_Governance_Code.pdf)>.

<sup>304</sup> "Canadian Sport Governance Code" (April 2021) at 4, section B.6, online: *Canadian Olympic Committee – NSO Sharing Centre* <[https://nso.olympic.ca/wp-content/uploads/2021/10/Canadian\\_Sports\\_Governance\\_Code.pdf](https://nso.olympic.ca/wp-content/uploads/2021/10/Canadian_Sports_Governance_Code.pdf)>.

the international level or a person who is retired and was a member of a national team or competed at the international level, not more than eight years previously.”<sup>305</sup>

Hockey Canada’s By-laws do not have express requirements for athlete representation on the Board, although “Athlete Representatives” are identified in the By-laws as one of Hockey Canada’s stakeholder groups that “contribute[s] to the success of Hockey Canada.”<sup>306</sup> Section 15.1 of the By-laws provides: “The Board shall appoint an athlete from each of Hockey Canada’s Male, Female and Para hockey programs to represent that program’s interests.” Athlete representatives have such rights and privileges as the Board may from time to time determine, but are not entitled to vote, other than in the committees or Task Teams to which they may be assigned, and are not deemed to be Members of Hockey Canada.<sup>307</sup> Hockey Canada’s Matrix and the Matrix Supplement list “Industry/Sector Experience” and “player” experience, respectively, as one of the types of experience tracked, but that does not provide any certainty that an athlete representative will be elected to the Board. While we observed that three of the current Directors of Hockey Canada are former hockey players who have competed at the university level, albeit more than eight years ago, no Director is either currently or formerly on a national team or other team competing at the international level. Among the Comparator Associations, at least two of them have national team athlete representation on their boards entrenched in their By-laws. Canada Soccer’s By-laws provide that its board shall include “one (1) former Athlete (member of one of the National Teams; e.g., Senior, Youth, Para, Beach and/or Futsal).”<sup>308</sup> Athletics Canada’s By-laws state that its board shall include three “Athlete Directors,” who will consist of at least “one para-athlete and one able-bodied athlete who are a member of and nominated by the group of athletes who are 18 years of age or older and who have been nominated or selected by [Athletics Canada] to a National Team in any discipline in the previous four years.”<sup>309</sup>

We agree with the COC that it is critical for athletes to have “meaningful representation in the governance structure of the NSO and for athlete voices to be heard.”<sup>310</sup> In our view, allowing an athlete representative to serve on the board of directors of an NSO is one of the most impactful ways to achieve that objective. Allowing athlete representation on the Board of Hockey Canada would be especially beneficial given the current challenges facing the organization and in particular the broader societal discussion around cultural change in the sport of hockey. As the persons having the most experience playing the sport of hockey and living the hockey culture both on and off the ice, the players’ voice and perspective is critical and ought to be given more prominence by formally giving players the right to be represented on the Hockey Canada Board.

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<sup>305</sup> “Canadian Sport Governance Code” (April 2021) at 4, section B.6, online: *Canadian Olympic Committee – NSO Sharing Centre* <[https://nso.olympic.ca/wp-content/uploads/2021/10/Canadian\\_Sports\\_Governance\\_Code.pdf](https://nso.olympic.ca/wp-content/uploads/2021/10/Canadian_Sports_Governance_Code.pdf)>.

<sup>306</sup> “Hockey Canada By-Laws, Regulations and History” (May 2022), s 13.1, online (pdf): *Hockey Canada* <<https://cdn.hockeycanada.ca/hockey-canada/Corporate/About/Downloads/2022-23-bylaws-e.pdf>>.

<sup>307</sup> “Hockey Canada By-Laws, Regulations and History” (May 2022), s 15.4, online (pdf): *Hockey Canada* <<https://cdn.hockeycanada.ca/hockey-canada/Corporate/About/Downloads/2022-23-bylaws-e.pdf>>.

<sup>308</sup> “Canada Soccer By-laws” (May 2022), s 6.02(iv) online (pdf): *The Canada Soccer Association Incorporated* <[https://www.canadasoccer.com/wp-content/uploads/2021/05/CSA-GC-By-laws-2022-EN\\_Final.pdf](https://www.canadasoccer.com/wp-content/uploads/2021/05/CSA-GC-By-laws-2022-EN_Final.pdf)>.

<sup>309</sup> “Athletics Canada Bylaws” (January 2022) at s 5.1(d), online (pdf): *Athletics Canada* <<https://athletics.ca/wp-content/uploads/2022/01/Athletics-Canada-Bylaws-January-2022.pdf>>.

<sup>310</sup> “Canadian Sport Governance Code” (April 2021) at 4, section B.6, online: *Canadian Olympic Committee – NSO Sharing Centre* <[https://nso.olympic.ca/wp-content/uploads/2021/10/Canadian\\_Sports\\_Governance\\_Code.pdf](https://nso.olympic.ca/wp-content/uploads/2021/10/Canadian_Sports_Governance_Code.pdf)>.

To that end, we recommend that the By-laws be amended to provide that the Board will include at least one athlete representative, who will be nominated by the Nominating Committee with significant input from hockey players.

## 7. Independent directors

It is not uncommon for national member-based not-for-profit organizations to have independent directors on their boards of directors. The inclusion of independent directors seeks to promote impartiality on a board and to cultivate a wide range of perspectives by engaging an external group of individuals who originate from a wide range of community circles.<sup>311</sup> As the COC Code recognizes, “diverse perspectives, experiences and backgrounds provide for optimal board performance.”<sup>312</sup> In addition, director independence increases effective governance by encouraging “objective independent judgment.”<sup>313</sup> Independence on a board is particularly important for corporations, such as Hockey Canada, in which “the organization has multiple accountabilities or provides services to the public with government money”<sup>314</sup> because it increases the confidence in the board by reducing the perception that the board is an “insider-only” board.

The COC Code recommends that “[n]ot less than 40% of the directors should be [i]ndependent.”<sup>315</sup> It defines “independent” as meaning “that a director has no fiduciary obligation to any body for the subject sport at the national or provincial level, receives no direct or indirect material benefit from any such party, and is free of any conflict of interest of a financial, personal or representational nature (provided that participating in the NSO’s sport does not alone cause a person not to be [i]ndependent).”<sup>316</sup> We observed that at least one of the Comparator Associations, Canada Soccer, has a similar requirement; six of its 14 directors must be independent. Although Hockey Canada’s By-laws do not expressly provide that Directors must be “independent,” they do provide that all Directors must, within 30 days of taking office, “divest themselves of any active executive position within a Member organization including, without limitation, a position on the board of directors of that Member, or any executive position within a Club, league or team.”<sup>317</sup> To strengthen the principle of independence in Hockey Canada’s By-laws, we suggest that people should meet the “independent” criteria at the time of their election, rather than be given an opportunity, after their election, to divest themselves of any interest that could be seen as fettering their independence.

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<sup>311</sup> Ellen Hirzy, ed, *Nonprofit Board Committees* (Washington, DC: BoardSource, 2018), at 37.

<sup>312</sup> “Canadian Sport Governance Code” (April 2021) at 3, section B.5, online: *Canadian Olympic Committee – NSO Sharing Centre* <[https://nso.olympic.ca/wp-content/uploads/2021/10/Canadian\\_Sports\\_Governance\\_Code.pdf](https://nso.olympic.ca/wp-content/uploads/2021/10/Canadian_Sports_Governance_Code.pdf)>.

<sup>313</sup> “Principles of Corporate Governance” (2016) Harvard Law School Forum on Corporate Governance at 6.6.

<sup>314</sup> Anne Corbett & James M Mackay, *Guide to Good Governance: Not-for-Profit and Charitable Organizations*, 2nd ed (September 2013) at 122.

<sup>315</sup> “Canadian Sport Governance Code” (April 2021) at 3, section B.2, online: *Canadian Olympic Committee – NSO Sharing Centre* <[https://nso.olympic.ca/wp-content/uploads/2021/10/Canadian\\_Sports\\_Governance\\_Code.pdf](https://nso.olympic.ca/wp-content/uploads/2021/10/Canadian_Sports_Governance_Code.pdf)>.

<sup>316</sup> “Canadian Sport Governance Code” (April 2021) at 3, section B.2, online: *Canadian Olympic Committee – NSO Sharing Centre* <[https://nso.olympic.ca/wp-content/uploads/2021/10/Canadian\\_Sports\\_Governance\\_Code.pdf](https://nso.olympic.ca/wp-content/uploads/2021/10/Canadian_Sports_Governance_Code.pdf)>.

<sup>317</sup> “Hockey Canada By-Laws, Regulations and History” (May 2022), s 26.2, online (pdf): *Hockey Canada* <<https://cdn.hockeycanada.ca/hockey-canada/Corporate/About/Downloads/2022-23-bylaws-e.pdf>>.

In our view, enhanced language in the By-laws that reinforces the principle of independence and the presence of Independent Directors on the Board would further demonstrate Hockey Canada’s commitment to building a diverse and impartial Board committed to serving the best interests of Hockey Canada. That in turn, may be of assistance to rebuilding confidence in Hockey Canada and expanding and improving Hockey Canada’s relationships with Members and other stakeholders. For those reasons, we recommend that at least a majority of the Directors on the Hockey Canada Board be persons who, at the time of their election, are independent of Hockey Canada. By “independent” we mean a person who at the time of their election as a Director is not:

- a) an employee of Hockey Canada;
- b) an officer, director or employee of any Member of Hockey Canada (a “HC Member”);
- c) an officer, director or employee of an organization that is a member of a HC Member (including without limitation a local Minor Hockey Association); or
- d) an officer, director or employee of any other hockey club, league or team.

The independence of a Director or a prospective Director should be determined by the Nominating Committee.<sup>318</sup>

ii. *Term and term limits of Hockey Canada’s Directors and observations about their alignment with best practices*

1. Director terms

1.1 Elected Directors

As part of our review, we have been asked if the current terms and term limits of the Hockey Canada Directors align with best practices. The elected Directors of Hockey Canada serve on the Board for a term of two years.<sup>319</sup> The term commences on the date of the Director’s election and ends at the second annual meeting of Members that follows. As Hockey Canada holds an election of Directors only in even-numbered years,<sup>320</sup> the terms of all the elected Directors expire at the same time and are not staggered.

The CNCA and the *Canada Not-for-Profit Corporations Regulations*, SOR/2011-223 set a limit of four years for any one term for an elected director.<sup>321</sup> The CNCA does not require that a

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<sup>318</sup> “Canadian Sport Governance Code” (April 2021) at 3, section B.2, online: *Canadian Olympic Committee – NSO Sharing Centre* <[https://nso.olympic.ca/wp-content/uploads/2021/10/Canadian\\_Sports\\_Governance\\_Code.pdf](https://nso.olympic.ca/wp-content/uploads/2021/10/Canadian_Sports_Governance_Code.pdf)>.

<sup>319</sup> “Hockey Canada By-Laws, Regulations and History” (May 2022), s 30.1, online (pdf): *Hockey Canada* <<https://cdn.hockeycanada.ca/hockey-canada/Corporate/About/Downloads/2022-23-bylaws-e.pdf>>.

<sup>320</sup> “Hockey Canada By-Laws, Regulations and History” (May 2022), s 28.1, online (pdf): *Hockey Canada* <<https://cdn.hockeycanada.ca/hockey-canada/Corporate/About/Downloads/2022-23-bylaws-e.pdf>>.

<sup>321</sup> *Canada Not-for-profit Corporations Act*, SC 2009, c 23, s 128(3); *Canada Not-for-Profit Corporations Regulations*, SOR/2011-223, s 28(1).

corporation hold an election of directors annually, but rather “at each annual meeting at which an election of directors is required.”<sup>322</sup>

Hockey Canada’s current Director term of two years is compliant with law and generally consistent with the practices of the Comparator Associations. For example, Athletics Canada, Canada Basketball and Tennis Canada prescribe a two-year term for their elected directors. Pursuant to their respective By-laws, the elected directors of Curling Canada serve for a term of four years<sup>323</sup> and the directors of Canada Soccer for a term of three years.<sup>324</sup> In addition, the COC Code provides that a single term for a director of an NSO should be “not longer than four years.”<sup>325</sup>

With respect to standards in the broader not-for-profit sector, a 2021 study conducted by BoardSource (a leading organization focused on strengthening and supporting non-profit board leadership) found 54% of American non-profit boards have both prescribed term lengths and term limits.<sup>326</sup> The most common board member term structure was a three-year term, with a two-term maximum.<sup>327</sup> In Canada, an older study from 2006 found that three to four years was the most common term length for boards in the not-for-profit and voluntary sector.<sup>328</sup> Additionally, 48% of respondents allowed board members to serve one to two consecutive terms, whereas 47% allowed three or more consecutive terms. Only 5% of respondents did not allow consecutive terms.

While the current two-year term for Directors complies with the CNCA and the COC Code, and is generally consistent with the practices of the Comparator Associations, it is our view that Hockey Canada would be better served by increasing the length of the Director term to up to three years. The complexity of the Hockey Canada organization imposes a steep learning curve on its Directors, particularly those coming from backgrounds outside the sport of hockey. As such, there is a risk that by the time their two-year term expires, the Directors have only recently been able to “get up to speed” in the activities and affairs of the organization. Increasing the single term length by one year would ensure that Directors can familiarize themselves with the nuances of Hockey Canada sufficiently, thereby fostering strategic leadership and enabling Directors to have a more significant impact on the organization’s short- and long-term goals. A term length of up to three

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<sup>322</sup> *Canada Not-for-profit Corporations Act*, SC 2009, c 23, s 128(3).

<sup>323</sup> Curling Canada, “By-laws of Canadian Curling Association” (5 December 2018) at Part VIII, s 2(b).

<sup>324</sup> “Canada Soccer By-laws” (May 2022), s 6.03(A)(i) online (pdf): *The Canada Soccer Association Incorporated* <[https://www.canadasoccer.com/wp-content/uploads/2021/05/CSA-GC-By-laws-2022-EN\\_Final.pdf](https://www.canadasoccer.com/wp-content/uploads/2021/05/CSA-GC-By-laws-2022-EN_Final.pdf)>.

<sup>325</sup> “Canadian Sport Governance Code” (April 2021) at 5, section B.10, online: Canadian Olympic Committee – NSO Sharing Centre <[https://nso.olympic.ca/wp-content/uploads/2021/10/Canadian\\_Sports\\_Governance\\_Code.pdf](https://nso.olympic.ca/wp-content/uploads/2021/10/Canadian_Sports_Governance_Code.pdf)>.

<sup>326</sup> “Leading with Intent: BoardSource Index of Nonprofit Board Practices” (2021) at 33, online (pdf): *BoardSource* <<https://leadingwithintent.org/wp-content/uploads/2021/06/2021-Leading-with-Intent-Report.pdf?hsCtaTracking=60281ff7-cadf-4b2f-b5a0-94ebff5a2c25%7C428c6485-37ba-40f0-a939-aeda82c02f38>>.

<sup>327</sup> “Leading with Intent: BoardSource Index of Nonprofit Board Practices” (2021) at 33, online (pdf): *BoardSource* <<https://leadingwithintent.org/wp-content/uploads/2021/06/2021-Leading-with-Intent-Report.pdf?hsCtaTracking=60281ff7-cadf-4b2f-b5a0-94ebff5a2c25%7C428c6485-37ba-40f0-a939-aeda82c02f38>>.

<sup>328</sup> Grace Bugg & Sue Dallhoff, “National Study of Board Governance Practices in the Non-Profit and Voluntary Sector in Canada” (2006) at 26, online (pdf): *Strategic Leverage Partners Inc., & Centre for Voluntary Sector Research and Development* <[http://www.strategicleveragepartners.com/bhg768kjmhgxxxyzwq/National\\_Study\\_of\\_Board\\_Governance\\_Practices\\_in\\_the\\_Non-Profit\\_and\\_Voluntary\\_Sector\\_in\\_Canada.PDF](http://www.strategicleveragepartners.com/bhg768kjmhgxxxyzwq/National_Study_of_Board_Governance_Practices_in_the_Non-Profit_and_Voluntary_Sector_in_Canada.PDF)>

years, coupled with the introduction of staggered terms (discussed below), also provides greater opportunity for Board renewal and succession planning.

## 1.2 Staggered terms for elected Directors

As mentioned above, the terms of the Hockey Canada Directors are not staggered and the term of each Director expires at the same time. Although the law does not require that the terms of directors be staggered, many organizations use overlapping or rotating terms to avoid having all directors retire at the same time and to ensure that there is a balance of new and experienced directors on the board. In that regard, the CNCA provides that “[i]t is not necessary that all directors elected at a meeting of members hold office for the same term.”<sup>329</sup>

We note that at least three of the five Comparator Associations expressly provide for staggered terms in their By-laws. In accordance with its by-laws, three directors of the Canada Basketball board are elected in even-numbered years and three are elected in odd numbered years.<sup>330</sup> Meanwhile, each of the by-laws of Athletics Canada<sup>331</sup> and Curling Canada<sup>332</sup> provides for a similar rotation process, whereby a minimum number of directors must be elected in even-numbered years and in odd numbered years. Although Soccer Canada’s by-laws do not expressly provide for staggered terms, their elections process is structured in such a way that four directors (excluding the Vice-President and President) are up for election every year. In addition, the election of the Vice-President and President (each of whom serve a four-year term) is also staggered so that every two years either the Vice-President or President is also up for election. Tennis Canada does not provide for staggered election terms in their By-laws.<sup>333</sup>

During our interviews with Hockey Canada representatives, one individual stated that the organization holds an election of Directors only every second year because of the significant amount of time and resources needed to organize and plan it. One of the Member representatives we interviewed expressed the view that there would only be a complete turnover of the Hockey Canada Board if that is what the Members wanted. Respectfully, the risk of a complete turnover of the Board exists independently of what the Hockey Canada Members may want. In any given election year, the two-year term of all of the Hockey Canada Directors naturally expires. While some or all of those Directors may be eligible for re-election, there is never any guarantee that any or all of the eligible Directors will want to run for a subsequent term. Accordingly, we are of the view that the preferred approach is to implement a nominations and elections process that contemplates the election of some Directors at every annual meeting of Members. That not only

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<sup>329</sup> *Canada Not-for-profit Corporations Act*, SC 2009, c 23, s 128(4).

<sup>330</sup> “Bylaw #1 Canada Basketball” (25 May 2014), s 3.11, online (pdf): *Canada Basketball* <[https://assets.website-files.com/5d24fc966ad064837947a33b/5d40ccb3625e7f8a09193ca2\\_Canada\\_Basketball\\_Bylaws\\_2014\\_revision.pdf](https://assets.website-files.com/5d24fc966ad064837947a33b/5d40ccb3625e7f8a09193ca2_Canada_Basketball_Bylaws_2014_revision.pdf)>.

<sup>331</sup> “Athletics Canada Bylaws” (January 2022) at s 5.5, online (pdf): *Athletics Canada* <<https://athletics.ca/wp-content/uploads/2022/01/Athletics-Canada-Bylaws-January-2022.pdf>>.

<sup>332</sup> Curling Canada, “By-laws of Canadian Curling Association” (5 December 2018), s 4 and “Temporary Bylaw Amendment” appended thereto.

<sup>333</sup> Tennis Canada, “By-law N – a by-law relating generally to the conduct of the affairs of Canadian Tennis Association Association canadienne de tennis” (24 August 2015) at 7.02(e).

reduces the risk of having all or an important number of the Directors leave the Board at the same time, but also ensures that there is a combination of new and longer-serving Directors on the Board.

Considering our recommendation above that the term length of an elected Director should be increased to up to three years, we also recommend that the terms be staggered so that only about one third (1/3) of the elected Director positions on the Board of Hockey Canada would be up for election every year. This arrangement would ensure a measure of continuity within the Board for up to three years. In addition, the staggering of Director terms promotes the preservation of institutional knowledge because the knowledge and skills of outgoing Directors are continually being transferred or imparted to new members who are joining the Board on an annual basis.

### 1.3 Appointed Directors

The Board of Hockey Canada may also include up to one Director appointed by the elected Directors of Hockey Canada.<sup>334</sup> The term of an appointed Director commences on the date of such appointment and expires immediately upon the close of the next annual meeting of Members.<sup>335</sup> The CNCA allows such a practice and prescribes that any directors so appointed “shall hold office for a term expiring not later than the close of the next annual meeting of members.”<sup>336</sup> The CNCA also provides that “the total number of directors so appointed may not exceed one third of the number of directors elected at the previous annual meeting of members.”<sup>337</sup>

We note that the term of Hockey Canada’s appointed Director (if one is appointed) is for up to one year and expires at the close of the next annual meeting of members, which is compliant with the CNCA. Accordingly, there is no need to change or revise that practice.

We also point out that, pursuant to the CNCA, the Board of Hockey Canada would only be permitted to exercise its right to appoint an additional Director in those years where an election was held. As mentioned above, the CNCA provides that the total number of appointed directors cannot exceed one third of the number of directors elected at the previous annual meeting of members. Accordingly, if no Directors were elected at the previous annual meeting (i.e. at an annual meeting held in an odd-numbered year), then the Board would not be allowed to appoint any Director during that year. We note that if our recommendation above to implement overlapping or staggered terms for elected Directors is accepted, the likelihood of the Board not being able to appoint a Director would be reduced if not eliminated as there would probably be at least three Directors up for election at every annual meeting of Members.

## 2. Term limits

The law does not mandate a maximum number of consecutive single terms for directors, but term limits are considered useful by many organizations. They are a gentle yet effective way of ensuring

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<sup>334</sup> Industry Canada, “Hockey Canada Association Articles of Continuance” (10 June 2014) at Sched B; “Hockey Canada By-Laws, Regulations and History” (May 2022), s 26.1(b), online (pdf): *Hockey Canada* <<https://cdn.hockeycanada.ca/hockey-canada/Corporate/About/Downloads/2022-23-bylaws-e.pdf>>.

<sup>335</sup> “Hockey Canada By-Laws, Regulations and History” (May 2022), s 30.2, online (pdf): *Hockey Canada* <<https://cdn.hockeycanada.ca/hockey-canada/Corporate/About/Downloads/2022-23-bylaws-e.pdf>>.

<sup>336</sup> *Canada Not-for-profit Corporations Act*, SC 2009, c 23, s 128(8).

<sup>337</sup> *Canada Not-for-profit Corporations Act*, SC 2009, c 23, s 128(8).

people retire from the board on a regular basis. Term limits also assist with a perception of fairness and independence. If a group of directors has been serving the board for a prolonged period, there might be a perception or concern that those directors lack independence<sup>338</sup> and have become too aligned with management. Term limits generate renewal and provide opportunity for new individuals to share fresh ideas with existing directors and management.

Hockey Canada’s By-laws state that an elected Director may, if the Director continues to meet the eligibility criteria, be re-elected for up to four consecutive two-year terms (i.e. eight years).<sup>339</sup> A Director who has served eight consecutive years on the Board is not eligible for re-election to the Board until at least two consecutive years have lapsed since that Director’s last term served.<sup>340</sup>

The By-laws do not prescribe a limit on the number of terms that an appointed Director can serve.

No individual may serve more than two consecutive two year terms as Chair of the Board.<sup>341</sup>

## 2.1 Elected Directors

Hockey Canada’s rule that limits an elected Director to serving no more than eight consecutive years on the Board is generally consistent with the Comparator Associations. Athletics Canada imposes on its elected directors a limit of eight years,<sup>342</sup> Curling Canada prescribes a limit of ten years (which need not be consecutive),<sup>343</sup> Tennis Canada prescribes a limit of ten consecutive years<sup>344</sup>, while Canada Soccer imposes a nine-year maximum.<sup>345</sup> It is not clear if the term limits set out in the By-laws of Athletics Canada and Canada Soccer apply to years served consecutively, or to a total number of years served on the board. Hockey Canada’s eight-year limit also aligns with the practice mandated by the COC Code. In that regard, the COC Code provides that each director “shall be subject to a term limit. Absent compelling reasons to the contrary as determined by the board’s nominating committee, that term limit should be a maximum of nine years (comprised of multiple terms each not longer than four years).”<sup>346</sup> The COC Code does allow a sitting board chair

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<sup>338</sup> Peter Dey & Sarah Kaplan, “360° Governance: Where are the Directors in a World in Crisis?” (2021) at 33, online (pdf): *Rotman School of Management University of Toronto* <<https://www.rotman.utoronto.ca/FacultyAndResearch/ResearchCentres/LeeChinInstitute/Sustainability-Research-Resources/360-Governance-Report>>.

<sup>339</sup> “Hockey Canada By-Laws, Regulations and History” (May 2022), s 30.3, online (pdf): *Hockey Canada* <<https://cdn.hockeycanada.ca/hockey-canada/Corporate/About/Downloads/2022-23-bylaws-e.pdf>>.

<sup>340</sup> “Hockey Canada By-Laws, Regulations and History” (May 2022), s 30.3, online (pdf): *Hockey Canada* <<https://cdn.hockeycanada.ca/hockey-canada/Corporate/About/Downloads/2022-23-bylaws-e.pdf>>.

<sup>341</sup> “Hockey Canada By-Laws, Regulations and History” (May 2022), s 31.6, online (pdf): *Hockey Canada* <<https://cdn.hockeycanada.ca/hockey-canada/Corporate/About/Downloads/2022-23-bylaws-e.pdf>>.

<sup>342</sup> “Athletics Canada Bylaws” (January 2022) at s 5.1(c), online (pdf): *Athletics Canada* <<https://athletics.ca/wp-content/uploads/2022/01/Athletics-Canada-Bylaws-January-2022.pdf>>.

<sup>343</sup> Curling Canada, “By-laws of Canadian Curling Association” (5 December 2018), s 2(b)(ii).

<sup>344</sup> Tennis Canada, “By-law N – a by-law relating generally to the conduct of the affairs of Canadian Tennis Association Association canadienne de tennis” (24 August 2015) at 4.02(b).

<sup>345</sup> “Canada Soccer By-laws” (May 2022), s 6.03(A)(ii) online (pdf): *The Canada Soccer Association Incorporated* <<https://www.canadasoccer.com/wp-content/uploads/2021/05/CSA-GC-By-laws-2022-EN-Final.pdf>>.

<sup>346</sup> “Canadian Sport Governance Code” (April 2021) at 5, section B.10, online: *Canadian Olympic Committee – NSO Sharing Centre* <<https://nso.olympic.ca/wp-content/uploads/2021/10/Canadian-Sports-Governance-Code.pdf>>.

to serve one additional term for a maximum twelve-year term limit, provided that such individual not hold the position of chair of the board for more than six years.<sup>347</sup>

Although the eight-year limit for elected Directors is generally consistent with the practices of the Comparator Associations and the COC Code, we are of the view that the limit should be amended to better align with our recommendation to move to three-year terms for the Directors. If that recommendation is adopted by Hockey Canada without amending the eight-year limit, then a Director re-elected to serve a third term, would not be allowed to complete it and would need to resign in their eighth year of consecutive service. Accordingly, we also recommend that the number of consecutive years that a Director may serve on the Board be increased from eight years to nine years (e.g. three consecutive terms of three years). The slight increase in the maximum number of consecutive years served provides the Hockey Canada Directors with a little more time to educate themselves about the organization and make meaningful contributions to Hockey Canada's long-term goals and strategic objectives. Allowing Directors to serve for up to nine years also ensures greater continuity on the Board, while still avoiding overly long terms, which can "produce directors who are 'stale' and who are no longer able to generate the same degree of commitment and interest in the corporation."<sup>348</sup>

## 2.2 Board Chair

The Chair of Hockey Canada may serve as Chair for no more than four consecutive years (i.e. two consecutive terms of two years).<sup>349</sup> The By-laws do not contemplate an exception to this rule. It is not clear if the time served as Chair counts towards the eight-year limit that applies to elected Directors; that should be clarified. The practice of imposing limits on the number of years a person can serve as chair of a board is common for the same reasons director term limits are considered a good practice – they provide opportunity for fresh insights, and enhance board dynamics.<sup>350</sup> Each of Athletics Canada and Canada Soccer prescribes a limit on the number of years a person may occupy the office of chair/president, namely six<sup>351</sup> and eight<sup>352</sup> years respectively. In addition, the COC Code provides that a board chair "may not hold the position of chair of the board for longer than six years."<sup>353</sup> Tennis Canada's By-laws impose no such limit, but the 3-year Chair term

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<sup>347</sup> "Canadian Sport Governance Code" (April 2021) at 5, section B.10, online: *Canadian Olympic Committee – NSO Sharing Centre* <[https://nso.olympic.ca/wp-content/uploads/2021/10/Canadian\\_Sports\\_Governance\\_Code.pdf](https://nso.olympic.ca/wp-content/uploads/2021/10/Canadian_Sports_Governance_Code.pdf)>.

<sup>348</sup> Burke-Robertson, Carter & Man, *Corporate and Practice Manual for Charities and Not-for-Profit Corporations* (Toronto: Thomson Reuters Canada, 2022) at § 8.15 (Proview).

<sup>349</sup> "Hockey Canada By-Laws, Regulations and History" (May 2022), s 31.6, online (pdf): *Hockey Canada* <<https://cdn.hockeycanada.ca/hockey-canada/Corporate/About/Downloads/2022-23-bylaws-e.pdf>>.

<sup>350</sup> Peter Dey & Sarah Kaplan, "360° Governance: Where are the Directors in a World in Crisis?" (2021) at 33, online (pdf): *Rotman School of Management University of Toronto* <<https://www.rotman.utoronto.ca/FacultyAndResearch/ResearchCentres/LeeChinInstitute/Sustainability-Research-Resources/360-Governance-Report>>.

<sup>351</sup> "Athletics Canada Bylaws" (January 2022) at s 5.1(a), online (pdf): *Athletics Canada* <<https://athletics.ca/wp-content/uploads/2022/01/Athletics-Canada-Bylaws-January-2022.pdf>>.

<sup>352</sup> "Canada Soccer By-laws" (May 2022), s 6.03(A)(iv) online (pdf): *The Canada Soccer Association Incorporated* <[https://www.canadasoccer.com/wp-content/uploads/2021/05/CSA-GC-By-laws-2022-EN\\_Final.pdf](https://www.canadasoccer.com/wp-content/uploads/2021/05/CSA-GC-By-laws-2022-EN_Final.pdf)>.

<sup>353</sup> "Canadian Sport Governance Code" (April 2021) at 5, section B.10(i), online: *Canadian Olympic Committee – NSO Sharing Centre* <[https://nso.olympic.ca/wp-content/uploads/2021/10/Canadian\\_Sports\\_Governance\\_Code.pdf](https://nso.olympic.ca/wp-content/uploads/2021/10/Canadian_Sports_Governance_Code.pdf)>.

coupled with 3-year term as past-Chair can at times lead to an overall term beyond the 10-year term for directors.

Considering that the maximum number of years an elected Director of Hockey Canada may serve on the Board is eight years, the four-year limit on occupying the office of Chair is, in our view, reasonable in the circumstances and generally aligned with the standard prescribed by the COC Code.

Although the four-year limit for the Board Chair is generally consistent with the practices of the Comparator Associations and the COC Code, and for the same reasons expressed above in respect of the limit of consecutive terms that may be served by an elected Director, we are of the view that the Board Chair limit should be amended to better align with our recommendation to move to three-year terms for the Directors. If that recommendation is adopted by Hockey Canada without amending the maximum number of terms for the Chair, then a Chair who is re-elected to serve a second term, would not be allowed to complete it and would need to resign in their fourth year of consecutive service. Accordingly, we also recommend that the number of consecutive years that the Board Chair may serve in that office be increased from four years to six years (i.e. two consecutive terms of three years).

*iii. Hockey Canada’s nominating process and observations about their alignment with best practices*

1. The nominating process

We have been asked to consider whether Hockey Canada’s nominating process needs to be amended. To answer this question, we looked at Hockey Canada’s By-laws and Nominating Committee Terms of Reference. We also heard from a number of Hockey Canada representatives who are familiar with the nominating process, including Hockey Canada’s General Counsel and the Chair of the Nominating Committee. In accordance with the By-laws, the election of Directors is held at each annual meeting in even-numbered years.<sup>354</sup> The election of Directors includes the election of the Board Chair.<sup>355</sup>

Hockey Canada informed us that the nominating process followed in 2020 reflected a renewed approach by the Nominating Committee, who wanted to set out the nominations path and process more clearly. In 2020, the nominating process for the election of Directors, which was led by the Nominating Committee, was carried out as follows:

1. Approximately five months<sup>356</sup> prior to the commencement of the annual meeting of Members, Hockey Canada notified Members, through a call for nominations, that Members may put forward nominations during the nominations period (the “**Call for**

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<sup>354</sup> “Hockey Canada By-Laws, Regulations and History” (May 2022), s 28.1, online (pdf): *Hockey Canada* <<https://cdn.hockeycanada.ca/hockey-canada/Corporate/About/Downloads/2022-23-bylaws-e.pdf>>.

<sup>355</sup> “Hockey Canada By-Laws, Regulations and History” (May 2022), s 31.1, online (pdf): *Hockey Canada* <<https://cdn.hockeycanada.ca/hockey-canada/Corporate/About/Downloads/2022-23-bylaws-e.pdf>>.

<sup>356</sup> Hockey Canada has indicated that in prior years since 2014, the call for nominations was issued sometime between the months of mid-June to early July. There are also no internal rules or policies prescribing when a call for nominations must be deployed.

- Nominations**”). Hockey Canada also reached out to the broader public to seek candidates for the election of the Chair and Directors. The Call for Nominations was published or posted on Hockey Canada’s social media platforms and website, on LinkedIn and through other postings with groups such as the Sport Information Resource Centre and the Institute of Corporate Directors.
2. The Call for Nominations included: (i) a brief description of Hockey Canada; (ii) the positions to be filled on the Board; (iii) a statement indicating that Hockey Canada “is seeking a diverse group of individuals to serve; bringing a variety of thoughts, knowledge and experiences is critical to the success of the organization”; (iv) a statement on who are “ideal candidates” for the Board; (v) the director eligibility criteria required by the CNCA and the Hockey Canada By-laws; (vi) a description of the nominations process, including key dates of the process; and (vii) a summary of the fiduciary duties of Directors.
  3. Pursuant to the By-laws, nominations for the position of elected Director could only be submitted by a Member or by the Chair of the Nominating Committee. No Member could submit a number of nominations that exceeded the number of Directors’ positions available for election.<sup>357</sup> There was no limit on the number of nominations that could be submitted by the Chair of the Nominating Committee.
  4. Through the Call for Nominations, the Chair of the Nominating Committee invited individuals who were interested in being nominated by the Chair of the Nominating Committee (an “**External Candidate**”) to complete and file an application form, in the same way that an individual endorsed by a Member must complete and file one, except the External Candidate’s application need not be endorsed by a Member.
  5. In accordance with the By-laws, all nominations for the position of elected Director had to be submitted to the Chair of the Nominating Committee, at least 60 days prior to the commencement of the annual meeting of Members, and had to include a resume of the candidate’s credentials, and a written statement by the candidate expressing a willingness to serve as a Director.<sup>358</sup>
  6. Any individual nominated for the position of elected Director was eligible to stand for election as Chair of the Board.<sup>359</sup> Individuals who wished to run for the position of Chair of the Board had to, no later than 45 days prior to the annual meeting of Members at which the election will take place, instruct the Chair of the Nominating Committee to include that individual’s name on the ballot for the position of Chair of the Board.<sup>360</sup>

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<sup>357</sup> “Hockey Canada By-Laws, Regulations and History” (May 2022), s 27.1, online (pdf): *Hockey Canada* <<https://cdn.hockeycanada.ca/hockey-canada/Corporate/About/Downloads/2022-23-bylaws-e.pdf>>.

<sup>358</sup> “Hockey Canada By-Laws, Regulations and History” (May 2022), s 27.2, online (pdf): *Hockey Canada* <<https://cdn.hockeycanada.ca/hockey-canada/Corporate/About/Downloads/2022-23-bylaws-e.pdf>>.

<sup>359</sup> “Hockey Canada By-Laws, Regulations and History” (May 2022), s 31.2, online (pdf): *Hockey Canada* <<https://cdn.hockeycanada.ca/hockey-canada/Corporate/About/Downloads/2022-23-bylaws-e.pdf>>.

<sup>360</sup> “Hockey Canada By-Laws, Regulations and History” (May 2022), s 31.3, online (pdf): *Hockey Canada* <<https://cdn.hockeycanada.ca/hockey-canada/Corporate/About/Downloads/2022-23-bylaws-e.pdf>>.

7. The Nominating Committee reviewed all applications submitted by External Candidates and “may, depending on the volume of submissions, create a short-list of external candidates.”<sup>361</sup> The Nominating Committee, in its deliberations with the Chair of the Nominating Committee, made reference to the Matrix and list of duties of Directors that accompanied the Call for Nominations to evaluate and select the External Candidates to be nominated by the Chair of the Nominating Committee.
8. The Nominating Committee met with the External Candidates being considered for a nomination and candidates nominated by the Members to review their applications and résumés.<sup>362</sup>
9. The Nominating Committee created a final list of nominees that included all of the nominations made by the Members, and the External Candidates nominated by the Chair of the Nominating Committee. Each nominee was asked to produce a short video.<sup>363</sup>
10. The Nominating Committee forwarded all nominations for the Director positions and the Chair of the Board position, along with the video and any supporting documentation to the Members at least 30 days prior to the annual meeting of Members.<sup>364</sup> We understand that some candidates offered to speak to Members and that Members’ responses to these offers varied. In accordance with the By-laws, nominations from the floor at the annual meeting of Members were not permitted.<sup>365</sup>
11. The election of the Directors and Chair was carried out at the annual meeting in accordance with the By-laws, which provided (and still provide):
  - a. The Directors and Chair of the Board are elected by the Hockey Canada Members at the annual meeting of Members.<sup>366</sup>
  - b. The names of all of the nominees for elected Director positions shall appear on the ballot.<sup>367</sup> Each Member in attendance at the annual meeting of Members receives a number of ballots equal to the number of votes that the Member is entitled to cast.<sup>368</sup>

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<sup>361</sup> “Nominations for Election to the Hockey Canada Board of Directors” (2020) at 2.

<sup>362</sup> “Nominations for Election to the Hockey Canada Board of Directors” (2020) at 2.

<sup>363</sup> “Nominations for Election to the Hockey Canada Board of Directors” (2020) at 2.

<sup>364</sup> “Hockey Canada By-Laws, Regulations and History” (May 2022), ss 27.2, 31.3, online (pdf): *Hockey Canada* <<https://cdn.hockeycanada.ca/hockey-canada/Corporate/About/Downloads/2022-23-bylaws-e.pdf>>.

<sup>365</sup> “Hockey Canada By-Laws, Regulations and History” (May 2022), s 27.3, online (pdf): *Hockey Canada* <<https://cdn.hockeycanada.ca/hockey-canada/Corporate/About/Downloads/2022-23-bylaws-e.pdf>>.

<sup>366</sup> “Hockey Canada By-Laws, Regulations and History” (May 2022), ss 28.1, 31.1, online (pdf): *Hockey Canada* <<https://cdn.hockeycanada.ca/hockey-canada/Corporate/About/Downloads/2022-23-bylaws-e.pdf>>.

<sup>367</sup> “Hockey Canada By-Laws, Regulations and History” (May 2022), s 28.1, online (pdf): *Hockey Canada* <<https://cdn.hockeycanada.ca/hockey-canada/Corporate/About/Downloads/2022-23-bylaws-e.pdf>>.

<sup>368</sup> “Hockey Canada By-Laws, Regulations and History” (May 2022), s 28.2, online (pdf): *Hockey Canada* <<https://cdn.hockeycanada.ca/hockey-canada/Corporate/About/Downloads/2022-23-bylaws-e.pdf>>.

- c. The Chair candidate receiving the most votes shall be declared elected as Chair of the Board. If more than one Chair candidate receives the highest number of votes on the first ballot or any subsequent ballot, the candidates who receive less than the highest number of votes on the current ballot is removed from the ballot and voting will continue until one candidate is the sole recipient of the most votes.<sup>369</sup>
- d. Following the election of the Chair of the Board, all of the remaining nominees, including nominees who unsuccessfully ran for the position of Chair of the Board, shall be eligible to run for the vacant elected Board positions using the procedure generally described in the By-laws.<sup>370</sup>

As mentioned earlier in this report, the Articles and By-laws provide that the Board may appoint up to one Director.<sup>371</sup> Pursuant to the By-laws, the general process for appointing an additional Director is as follows:

1. The Board informs the Nominating Committee that it wishes to exercise its right to appoint a Director to the Board.
2. Within 30 days of receiving a request from the elected Directors, the Chair of the Nominating Committee forwards to the Board the names of individuals recommended by the Nominating Committee to fill any appointed positions.<sup>372</sup> That By-law requirement is supplemented by the Terms of Reference of the Nominating Committee which reiterate that the Nominating Committee is responsible for identifying and recruiting qualified individuals to stand for appointment as Directors and for providing the Board with the names of such individuals to fill the appointed Director position.<sup>373</sup>
3. The elected Directors by Special Resolution,<sup>374</sup> may appoint a recommended candidate to serve as an appointed Director.<sup>375</sup>

There is no further guidance in the By-laws or other governance documents of Hockey Canada in respect of the nominating or appointment process of appointed Directors.

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<sup>369</sup> “Hockey Canada By-Laws, Regulations and History” (May 2022), s 31.4, online (pdf): *Hockey Canada* <<https://cdn.hockeycanada.ca/hockey-canada/Corporate/About/Downloads/2022-23-bylaws-e.pdf>>.

<sup>370</sup> “Hockey Canada By-Laws, Regulations and History” (May 2022), s 31.5, online (pdf): *Hockey Canada* <<https://cdn.hockeycanada.ca/hockey-canada/Corporate/About/Downloads/2022-23-bylaws-e.pdf>>.

<sup>371</sup> “Hockey Canada By-Laws, Regulations and History” (May 2022), s 26.1(b), online (pdf): *Hockey Canada* <<https://cdn.hockeycanada.ca/hockey-canada/Corporate/About/Downloads/2022-23-bylaws-e.pdf>>.

<sup>372</sup> “Hockey Canada By-Laws, Regulations and History” (May 2022), s 29.2, online (pdf): *Hockey Canada* <<https://cdn.hockeycanada.ca/hockey-canada/Corporate/About/Downloads/2022-23-bylaws-e.pdf>>.

<sup>373</sup> “Hockey Canada Terms of Reference” (updated to 18 March 2022) at 35, s 5.4

<sup>374</sup> “Special Resolution” means “a resolution passed by a majority of not less than two-thirds (2/3) of the votes cast on that resolution.” see “Hockey Canada By-Laws, Regulations and History” (May 2022), s 1aa, online (pdf): *Hockey Canada* <<https://cdn.hockeycanada.ca/hockey-canada/Corporate/About/Downloads/2022-23-bylaws-e.pdf>>.

<sup>375</sup> “Hockey Canada By-Laws, Regulations and History” (May 2022), s 29.3, online (pdf): *Hockey Canada* <<https://cdn.hockeycanada.ca/hockey-canada/Corporate/About/Downloads/2022-23-bylaws-e.pdf>>.

## 2. Observations on nominating process for Directors

### *Mandate of the Nominating Committee*

Hockey Canada’s Nominating Committee leads the nominating process for Directors. Hockey Canada’s Nominating Committee is responsible for ensuring, on a continuing basis, that the Board is comprised of qualified and skilled persons capable of, and committed to, providing effective governance leadership to Hockey Canada.<sup>376</sup> The Nominating Committee Chair oversees elections of the Board Chair and other Board positions. The Nominating Committee Chair must ensure that candidate names appear on official ballots and oversee distribution and collection of ballots, counting of votes, announcing results and destroying ballots immediately thereafter.<sup>377</sup> However, the Nominating Committee Chair may delegate these responsibilities to a third party appointed by the Nominating Committee if the elections happen entirely online, by phone or telecommunications.<sup>378</sup>

Pursuant to its Terms of Reference, the Nominating Committee has a number of other responsibilities, including the following:

- Promoting diversity of the Board in relation to gender, age, language, ethnicity, professional backgrounds and personal experiences;
- Having regard to the specific and desired competencies required on the Board as a whole in soliciting nominations; and
- Carrying out its duties in a manner that encourages a long-term view of Hockey Canada’s leadership needs, as well as Board succession planning.

The language set out in the By-laws and Nominating Committee Terms of Reference suggests to the reader that the Nominating Committee carries out an important leadership role in forming the Board of Hockey Canada, in building a diverse Board whose composition is carefully considered in light of the organization’s needs and strategic objectives, and engages in proactive succession planning for the Board. However, the current nomination process does not allow the Nominating Committee to fully carry out this role.

### *Use of the Board Matrix*

Moreover, there ought to be more effective use of the Matrix in the call for nominations. The 2020 Call for Nominations that we reviewed provides “Hockey Canada is seeking a diverse group of individuals to serve on the Board; bringing a variety of thoughts, knowledge and experiences to the Board is critical to our success.”<sup>379</sup> It also includes a section entitled “Ideal Candidates” that

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<sup>376</sup> “Hockey Canada By-Laws, Regulations and History” (May 2022), s 48.1, online (pdf): *Hockey Canada* <<https://cdn.hockeycanada.ca/hockey-canada/Corporate/About/Downloads/2022-23-bylaws-e.pdf>>.

<sup>377</sup> “Hockey Canada By-Laws, Regulations and History” (May 2022), s 48.3, online (pdf): *Hockey Canada* <<https://cdn.hockeycanada.ca/hockey-canada/Corporate/About/Downloads/2022-23-bylaws-e.pdf>>.

<sup>378</sup> “Hockey Canada By-Laws, Regulations and History” (May 2022), s 48.4, online (pdf): *Hockey Canada* <<https://cdn.hockeycanada.ca/hockey-canada/Corporate/About/Downloads/2022-23-bylaws-e.pdf>>.

<sup>379</sup> “Nominations for Election to the Hockey Canada Board of Directors” (2020) at 1.

describes a number of general qualities of Hockey Canada Directors, such as: “they have a strong passion for the game,” “they have a genuine interest in contributing to the fulfillment of governance responsibilities using policy governance principles,” “they should feel comfortable providing objective and independent points of view with sound judgement and a broad perspective,” “they should be good communicators” and “they should be committed to the values and mission of Hockey Canada that inspire and enable all Canadians to enjoy the sport of hockey.”<sup>380</sup> Although such qualities are personality traits that are desired in Directors, they are not, in our view, the only criteria that ought to be highlighted in a call for nominations for Directors and the Chair of the Board given the skills-expertise Matrix.

As mentioned above, the Hockey Canada Board skills-expertise Matrix serves as an inventory of current Directors’ skills, expertise and characteristics and any gaps in respect of them. As such, the Matrix helps the Nominating Committee identify, for each Director of the Board, which of the listed skills, expertise and characteristics the Director possesses. However, the purpose of a board skills and diversity matrix is not only to provide a snapshot of what the current Board looks like, but also to assist the Nominating Committee in identifying gaps in skills, knowledge and experience, and establishing the eligibility criteria for future directors based on a board’s needs and stakeholder accountability.<sup>381</sup> In other words, the Matrix should form part of a broader framework that strives to establish a Board made up of individuals who collectively and individually have a diverse mix of qualities, skills, knowledge and experience to effectively govern and direct the organization.

Although the 2020 Call for Nominations does state that Hockey Canada is seeking “a diverse group of individuals to serve on the Board,”<sup>382</sup> it does not mention any of the specific skills, expertise or diversity criteria of the Matrix that are of particular interest to the Nominating Committee nor does it encourage individuals who possess some of those specific elements (which might be lacking on the then-current Board) to apply for a position on the Board. In short, the Call for Nominations does not reflect that the Nominating Committee has considered (as it may well have) the specific and desired competencies required on the Board or the elements of diversity needed to address any gaps in the Board’s current composition. Instead, the Call for Nominations casts a very broad net among the Members of Hockey Canada and the general public, and does not draw attention to, or set as eligibility requirements any of the skills, expertise or diversity elements set out in the Matrix.

#### *Members’ right to nominate candidates for election*

In accordance with the Hockey Canada By-laws,<sup>383</sup> the Nominating Committee is required to “forward all nominations to the Members at least thirty (30) Days prior to the commencement of the Annual Meeting.” The By-laws also provide that “the names of all of the nominees for elected

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<sup>380</sup> “Nominations for Election to the Hockey Canada Board of Directors” (2020) at 2.

<sup>381</sup> Anne Corbett & James M Mackay, *Guide to Good Governance: Not-for-Profit and Charitable Organizations*, 2nd ed (September 2013) at 122.

<sup>382</sup> “Nominations for Election to the Hockey Canada Board of Directors” (2020) at 1.

<sup>383</sup> “Hockey Canada By-Laws, Regulations and History” (May 2022), s 27.2, online (pdf): *Hockey Canada* <<https://cdn.hockeycanada.ca/hockey-canada/Corporate/About/Downloads/2022-23-bylaws-e.pdf>>.

Directors' positions shall appear on the ballot.”<sup>384</sup> Although the Call for Nominations provides that the Chair of the Nominating Committee may create a short-list of External Candidates that they want to include on the final list of nominees circulated to the Members,<sup>385</sup> the same practice is not followed for nominations made by the Members. Instead, Hockey Canada allows all of the nominees endorsed by the Members to be included on the final list of nominees that appears on the voting ballot. That may be due in part to the language set out in the By-laws (quoted above) that stipulates that the Nominating Committee “shall forward all nominations” [emphasis added] to the Members and that “the names of all of the nominees [...] shall appear on the ballot” [emphasis added]. We note that the Nominating Committee’s Terms of Reference also provide that, as part of its duty to oversee the election of the Directors and Chair of the Board, the Nominating Committee shall ensure “that all candidates’ names appear on the ballots.”<sup>386</sup> [emphasis added]

We understand that in some years, a call for nominations can generate a high number of candidacies therefore resulting in a ballot with a very long list of candidates. For example, the ballot for the 2020 election of Directors included 24 candidates, of which 15 were on automatically from the Members and nine were from the Chair of the Nominating Committee. Five of those candidates were on the ballot for the position of Board Chair. The high number of candidates is in part a consequence of the biennial election system, which results in having nine Director positions become vacant or up for re-election at the same time. In addition, each Member is entitled to nominate a number of candidates that is equal to the number of Directors’ positions available for election.<sup>387</sup> Consequently, each of the 13 Members could nominate up to nine individuals, in which case the Nominating Committee would receive 117 Members’ nominations, all of which would need to be reviewed and considered for inclusion on the final election ballot.

We have heard from several persons interviewed that elections are held only every two years because of the amount of time, resources and planning required to carry out the nominations and elections process. It is likely that the past and most recent methods of director recruitment and nominations, which are not strongly supported or informed by any skills- or expertise-related criteria, are adding to the workload as the process tends to yield a high number of candidates, who might not have a suitable mix of competencies and experience to effectively carry out the Board’s functions and meet the specific needs of Hockey Canada.

Furthermore, the practice of allowing Members to nominate director candidates without a requirement to have regard to the Matrix and allowing all such nominated candidates to be included on the final election ballot is, in our view, problematic and could be a significant barrier to making progress on diversity objectives. Pursuant to its mandate, the Nominating Committee is “responsible for ensuring, on a continuing basis, that the Board of Directors is composed of qualified and skilled persons capable of, and committed to, providing effective governance

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<sup>384</sup> “Hockey Canada By-Laws, Regulations and History” (May 2022), s 28.1, online (pdf): *Hockey Canada* <<https://cdn.hockeycanada.ca/hockey-canada/Corporate/About/Downloads/2022-23-bylaws-e.pdf>>.

<sup>385</sup> “Nominations for Election to the Hockey Canada Board of Directors” (2020) at 2.

<sup>386</sup> “Hockey Canada Terms of Reference” (updated to 18 March 2022) at 35, s 5.4.

<sup>387</sup> “Hockey Canada By-Laws, Regulations and History” (May 2022), s 27.1, online (pdf): *Hockey Canada* <<https://cdn.hockeycanada.ca/hockey-canada/Corporate/About/Downloads/2022-23-bylaws-e.pdf>>.

leadership to Hockey Canada.”<sup>388</sup> However, that committee’s ability to carry out that mandate effectively and make nominating decisions that have a meaningful impact on the Board’s composition and diversity is limited because, ultimately, the Members have the right to elect the Directors and there is no requirement that all candidates on the ballot have been assessed according to the Matrix. As a result, the individuals whose names appear on the ballot and who are elected by the Members as the Directors may not have the particular skills, experience, competencies or other qualities that are needed on the Hockey Canada Board at that time. As noted above, the current Board nominating process has not provided Hockey Canada with the wide range, depth and diversity of experience that the Board collectively requires to govern this complex organization and to lead significant organizational and cultural change.

As a federated and member-based organization, where the Members of Hockey Canada have the right to elect the Directors, it is not surprising that they would also have the right to nominate Directors. As one of the key stakeholder groups of Hockey Canada, it is reasonable for the Members to want and to have the opportunity to participate in the Director recruitment and nominations process. However, for the reasons set out above, that right should not be unfettered. As discussed in Chapter IX, one of the Board’s duties is to be responsible for its own governance. That includes playing a meaningful role in the creation of a quality Board and establishing rules, policies and procedures to succeed in that regard. To that end, many boards create a nominating committee and delegate to it the performance of that role. The Nominating Committee’s job should be to recruit strategically and to select individuals who possess a variety of skills, experiences, competencies and qualities that collectively align with the organization’s broader strategic objectives. As such, the Nominating Committee can and should be helping the Members think carefully about how to grow its usual pool of candidates to include a broader mix of individuals who have novel ideas and fresh attitudes, which will add value to the Board.<sup>389</sup>

It is critical that this role of the Nominating Committee and the emphasis on recruiting strategically be properly documented in Hockey Canada’s By-laws and policies and endorsed by the Members. Member education on those key principles, along with a robust and transparent process are essential to ensuring that the Members understand the importance of strategic recruitment and, as a result, will want to vote for individuals who are best suited and qualified to serve on the Board and, to meet the needs and respond to the challenges of Hockey Canada.

#### *Recommendations relating to Members’ right to propose candidates for election*

For the reasons set out above, we are of the view that the Director nominating process should continue to provide the Members with the opportunity to play a meaningful role, albeit in a different way. To that end we make the following recommendations:

1. Members should continue to have the right to propose candidates for election as Directors (note that the general public and Nominating Committee should also continue to have that right). However, none of the names proposed (including those proposed by the Members) should automatically appear on the final ballot. Instead, the Nominating

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<sup>388</sup> “Hockey Canada By-Laws, Regulations and History” (May 2022), s 48.1, online (pdf): *Hockey Canada* <<https://cdn.hockeycanada.ca/hockey-canada/Corporate/About/Downloads/2022-23-bylaws-e.pdf>>.

<sup>389</sup> Ellen Hirzy, ed, *Nonprofit Board Committees* (Washington, DC: BoardSource, 2018), at 42.

- Committee should evaluate all candidates proposed and create a short-list of nominees. Only candidates who qualify and can demonstrate that they possess the skills, competencies, experience and qualities identified by the Nominating Committee (using the Matrix) should be nominated by the Nominating Committee;
2. The Members, collectively as a group, should have the right to appoint a limited number of individuals to the Nominating Committee. It would be up to the Members themselves to determine, collectively, who and how such persons are selected; and
  3. The Members should be entitled to receive regular communications from the Nominating Committee on its recruitment work. For example, well in advance of the election of Directors, the Nominating Committee should review and, if necessary, update the Matrix, then identify the particular skills, competencies, experiences and qualities the Board needs for the next election cycle. Once the Nominating Committee has identified those criteria, they should be communicated to the Members, for their review and comment. Informed by any comments received from the Members, the Nominating Committee should then finalize the list of criteria, which should form part of the public call for nominations. We suggest that the Board also be entitled to receive such reports and given an opportunity to provide comments.

We will provide additional discussion and commentary relating to those recommendations (and in particular in respect of the composition of the Nominating Committee) in the section below titled “Observations on Nominating Committee.”

### 3. Observations on nomination and election of Chair

The Board Chair is elected by the Members,<sup>390</sup> who also have the authority to remove the Chair from office.<sup>391</sup> Although the default rule under the CNCA is that the officers of a corporation are appointed by the directors, the CNCA does allow the articles or the by-laws of the corporation to provide for a different manner of appointing officers.<sup>392</sup> The practice of having a chair of the board elected by the members, rather than by the directors, is common in organizations where member involvement is high,<sup>393</sup> such as an NSO. For example, the Chair of Athletics Canada is also elected by its members.<sup>394</sup> At Soccer Canada, the President (who carries out the functions of board chair), is elected at the annual meeting by the members as President-Elect, then subsequently appointed (or “ratified”) by the board as President at the first board meeting following that annual meeting

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<sup>390</sup> “Hockey Canada By-Laws, Regulations and History” (May 2022), s 31.1, online (pdf): *Hockey Canada* <<https://cdn.hockeycanada.ca/hockey-canada/Corporate/About/Downloads/2022-23-bylaws-e.pdf>>.

<sup>391</sup> “Hockey Canada By-Laws, Regulations and History” (May 2022), s 34.1, online (pdf): *Hockey Canada* <<https://cdn.hockeycanada.ca/hockey-canada/Corporate/About/Downloads/2022-23-bylaws-e.pdf>>.

<sup>392</sup> *Canada Not-for-profit Corporations Act*, SC 2009, c 23, s 142.

<sup>393</sup> Burke-Robertson, Carter & Man, *Corporate and Practice Manual for Charities and Not-for-Profit Corporations* (Toronto: Thomson Reuters Canada, 2022) at § 8.27 (Proview).

<sup>394</sup> “Athletics Canada Bylaws” (January 2022) at s 5.1(a), online (pdf): *Athletics Canada* <<https://athletics.ca/wp-content/uploads/2022/01/Athletics-Canada-Bylaws-January-2022.pdf>>.

of members.<sup>395</sup> Each of Basketball Canada<sup>396</sup> and Curling Canada<sup>397</sup> elect their chair of the board on an annual basis. At Tennis Canada, the Nominating Committee recommends a director to act as Chair of the Board, and the Board confirms the appointment by resolution.<sup>398</sup>

The practice of having the board of directors select its own Chair is generally more common in the not-for-profit sector and is considered best practice by the COC Code (it provides that the board chair of an NSO should be elected by the directors)<sup>399</sup> and its supplemental Framework. There are good reasons for that. As mentioned earlier in our report, the Board is responsible for ensuring effective board leadership. It is also responsible for implementing a process for the recruitment and selection of officers, as well as a succession plan for those important roles. Thus, to effectively carry out those responsibilities, we are of the view and recommend that the Directors of Hockey Canada ought to be the group that appoints the Board Chair because they are better positioned than the Members to assess the needs of the Board and to determine who within that group possesses the experience and most suitable skills, qualities and competencies to fulfill that critical leadership role. We recommend that the By-laws be amended accordingly. We also note that three of the Comparator Associations that we examined also follow that practice.

Our review also revealed that there is no defined eligibility qualifications or a well-defined process for selecting the Board Chair of Hockey Canada. In that regard, the By-laws provide that “any individual nominated for the position of elected Director in accordance with [the By-laws] is eligible to stand for election as Chair of the Board”<sup>400</sup> and that “any individual [so nominated] who wishes to run for the position of Chair of the Board shall [...] instruct the Chair of the Nominating Committee to include that individual’s name on the ballot for the position of Chair of the Board.”<sup>401</sup> Essentially, the By-laws allow anyone, regardless of their skills, experience or expertise to be nominated for the position of Board Chair and the By-laws are not supplemented by any other Board policies or terms of reference that would provide additional guidance in this respect.

The absence of such criteria and selection processes is concerning because the role of the chair is a critical one. To be effective, the chair of a board must have the necessary skills and qualities to provide leadership to the board and to the organization as a whole. In addition, the chair must have the ability to manage board meetings, and develop and maintain healthy relationships with other directors, committee chairs, management and stakeholder groups. Such skills and competencies

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<sup>395</sup> “Canada Soccer By-laws” (May 2022), ss 6.03(C)(vii), 8.01(i), online (pdf): The Canadian Soccer Association Incorporated <[https://www.canadasoccer.com/wp-content/uploads/2021/05/CSA-GC-By-laws-2022-EN\\_Final.pdf](https://www.canadasoccer.com/wp-content/uploads/2021/05/CSA-GC-By-laws-2022-EN_Final.pdf)>.

<sup>396</sup> “Bylaw #1 Canada Basketball” (25 May 2014), s 3.26, online (pdf): *Canada Basketball* <[https://assets.website-files.com/5d24fc966ad064837947a33b/5d40ccb3625e7f8a09193ca2\\_Canada\\_Basketball\\_Bylaws\\_2014\\_revision.pdf](https://assets.website-files.com/5d24fc966ad064837947a33b/5d40ccb3625e7f8a09193ca2_Canada_Basketball_Bylaws_2014_revision.pdf)>.

<sup>397</sup> “By-laws of Canadian Curling Association” (5 December 2018) at Part IX, s 2, online (pdf): *Curling Canada* <<https://www.curling.ca/files/2018/12/Curling-Canada-By-laws-as-of-Dec.-5-2018-1.pdf>>.

<sup>398</sup> Tennis Canada, “By-law N – a by-law relating generally to the conduct of the affairs of Canadian Tennis Association Association canadienne de tennis” (24 August 2015) at 5.03(a)-(c).

<sup>399</sup> “Canadian Sport Governance Code” (1 September 2021) at 1, online: *Canadian Olympic Committee – NSO Sharing Centre* <<https://nso.olympic.ca/canadian-sport-governance-code/>>.

<sup>400</sup> “Hockey Canada By-Laws, Regulations and History” (May 2022), s 31.2, online (pdf): *Hockey Canada* <<https://cdn.hockeycanada.ca/hockey-canada/Corporate/About/Downloads/2022-23-bylaws-e.pdf>>.

<sup>401</sup> “Hockey Canada By-Laws, Regulations and History” (May 2022), s 31.3, online (pdf): *Hockey Canada* <<https://cdn.hockeycanada.ca/hockey-canada/Corporate/About/Downloads/2022-23-bylaws-e.pdf>>.

are particularly important in an organization such as Hockey Canada that has a broad and multifaceted mandate and complex organizational and operational structures.

#### 4. Observations on the Nominating Committee

As mentioned above, Hockey Canada’s Nominating Committee leads the nominating process for Directors. The By-laws<sup>402</sup> and the Nominating Committee’s Terms of Reference<sup>403</sup> provide that the Nominating Committee’s overall mandate is as follows:

The Nominating Committee is responsible for ensuring, on a continuing basis, that the [Board of Directors] is comprised of qualified and skilled persons capable of, and committed to, providing effective governance leadership to Hockey Canada.

##### *Committee composition*

The By-laws provide that the Nominating Committee shall have a minimum of four and a maximum of eight members (including the committee chair).<sup>404</sup> They also state that the Chair of the Board appoints the members of the Nominating Committee, including its Chair, and all members of the committee “shall be individuals who are at arm’s length from the Board.”<sup>405</sup>

The requirement that all members of the Nominating Committee must be at arm’s length from the Board is noteworthy. Similar to the concept of independent directors, as described above, that rule is intended to promote impartiality and ensure that no member of the Nominating Committee has close ties to the Directors or to particular factions of the Board. It also has the benefit of engaging an external group of individuals who originate from a wide range of community circles, which “is an asset because [such engagement] yields not only personal contacts, but a varied perspective on the external environment.”<sup>406</sup> We note that some of the Comparator Associations also have a similar requirement. For example, the Nominating Committee of Canada Soccer must include three “Independents” – an “Independent” is defined “as a person who at the time of his/her appointment is not an officer, director or employee of Canada Soccer or any member of Canada Soccer or their members.”<sup>407</sup> However, as the committee responsible for assembling a group of suitable, diverse and engaged individuals with the appropriate mix of skills, experience, qualities and competencies, it is critical that the Nominating Committee also be attuned and responsive to the needs of the Board. In order to do so, the Nominating Committee must have a clear line of sight into the inner workings of the Board. The Nominating Committee “must be alert to board dynamics, the organization’s overall evolution, and current and potential challenges, which will

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<sup>402</sup> “Hockey Canada By-Laws, Regulations and History” (May 2022), s 48.1, online (pdf): *Hockey Canada* <<https://cdn.hockeycanada.ca/hockey-canada/Corporate/About/Downloads/2022-23-bylaws-e.pdf>>.

<sup>403</sup> “Hockey Canada Terms of Reference” (updated to 18 March 2022) at 35.

<sup>404</sup> “Hockey Canada Terms of Reference” (updated to 18 March 2022) at 36.

<sup>405</sup> “Hockey Canada By-Laws, Regulations and History” (May 2022), s 48.2, online (pdf): *Hockey Canada* <<https://cdn.hockeycanada.ca/hockey-canada/Corporate/About/Downloads/2022-23-bylaws-e.pdf>>.

<sup>406</sup> Ellen Hirzy, ed, *Nonprofit Board Committees* (Washington, DC: BoardSource, 2018), at 37.

<sup>407</sup> The Canadian Soccer Association Incorporated, “Governance Policies” (March 2021), p. 15.

all determine its focus and the way it operates. Its job is to build a board that successfully secures the organization’s future.”<sup>408</sup>

In our view, a nominating committee that is comprised exclusively of non-directors is less likely to have that insight because it is not directly linked to the Board. It is also less likely to have a good sense of whether the board of directors is functioning well, the areas that are in need of improvement and which skills, competencies and qualities are most needed on the Board at any given time. For those reasons, we recommend that there be at least one and up to two Directors of the Board sitting on the Nominating Committee. That approach is also consistent with that of Comparator Associations. All of the five Comparator Associations have at least one director on their committee responsible for overseeing the director nominating process, and three of them have three or more directors on its committee. The practice of having directors on a nominating committee also aligns with the COC Code and the Framework’s model “Nominating Committee Terms of Reference,” which provide that the nominating committee of an NSO should “be composed of at least three directors, as designated by the Board from time to time.”<sup>409</sup>

In addition, to enhance the committee’s credibility and avoid any conflict of interests, we recommend that any Director serving on the Nominating Committee not be a Director who is seeking re-election in the next election cycle. At least three of the Comparator Associations also prohibit any director who is up for re-election from serving on their nominating committee. The COC Code<sup>410</sup> and the model “Nominating Committee Terms of Reference,”<sup>411</sup> likewise recommend that the nominating committee of an NSO not include any director up for re-election.

As discussed earlier in this report, we recommend that an athlete representative serve on the Board of Hockey Canada because we are of the view that hockey players should have a meaningful role in the organization’s governance. For those same reasons, we are of the view and recommend that the Nominating Committee should also include at least one athlete representative. The athlete representative serving on the Nominating Committee could, but would not need to be the same person serving as the Board athlete representative, although we do recommend that if they are not the same person, that this hockey player also be selected with significant input from hockey’s athletes.

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<sup>408</sup> Ellen Hirzy, ed, *Nonprofit Board Committees* (Washington, DC: BoardSource, 2018), at 37.

<sup>409</sup> Goodmans LLP, “Canadian Sport Governance Code: Supporting Resources” (27 April 2021) at 62, online: *Canadian Olympic Committee – NSO Sharing Centre* <[https://nso.olympic.ca/wp-content/uploads/2021/10/GOODMANS-7073296-v12-Canadian\\_Sport\\_Governance\\_Code\\_-\\_Combined\\_Templates.docx](https://nso.olympic.ca/wp-content/uploads/2021/10/GOODMANS-7073296-v12-Canadian_Sport_Governance_Code_-_Combined_Templates.docx)>.

<sup>410</sup> “Canadian Sport Governance Code” (1 September 2021) at 7, online: *Canadian Olympic Committee – NSO Sharing Centre* <<https://nso.olympic.ca/canadian-sport-governance-code/>>.

<sup>411</sup> Goodmans LLP, “Canadian Sport Governance Code: Supporting Resources” (27 April 2021) at 62, online: *Canadian Olympic Committee – NSO Sharing Centre* <[https://nso.olympic.ca/wp-content/uploads/2021/10/GOODMANS-7073296-v12-Canadian\\_Sport\\_Governance\\_Code\\_-\\_Combined\\_Templates.docx](https://nso.olympic.ca/wp-content/uploads/2021/10/GOODMANS-7073296-v12-Canadian_Sport_Governance_Code_-_Combined_Templates.docx)>.

To summarize, we recommend the following changes to the Nominating Committee's composition:

- The Nominating Committee be comprised of up to nine (9) individuals and that the fixed number always be an odd number.
- The Nominating Committee be constituted as follows:
  - The majority of the committee members would be individuals who are at arm's length from the Board ("Independents"). "Independent" means a person who at the time of their appointment is not: a) an officer, director or employee of Hockey Canada; b) an officer, director or employee of any Member of Hockey Canada (a "HC Member"); c) an officer, director or employee of an organization that is a member of a HC Member (including without limitation a local Minor Hockey Association); or d) an officer, director or employee of any other hockey club, league or team. The Independents, who should be highly qualified and diverse, would be appointed by the Board of Hockey Canada, with the assistance of a reputable board recruitment firm hired by Hockey Canada;
  - The Members of Hockey Canada, collectively, appoint up to two individuals to serve on the Nominating Committee. It would be up to the Members to decide, collectively and among themselves, how those individuals will be selected;
  - At least one member of the Nominating Committee would be an athlete representative, who would be appointed by the Board of Hockey Canada with significant input from hockey's athletes. That person could, but need not be, the same person who is the athlete representative on the Board (provided that person is not up for re-election to the Board);
  - At least one and up to two Directors of the Hockey Canada Board would be appointed by the Board to serve on the Nominating Committee. A Director who is up for re-election in the next election cycle would not be eligible to serve on the Nominating Committee;
  - In the event the number of members on the Nominating Committee is less than nine, there could only be one Director and one person appointed by the Members.

We acknowledge that a Nominating Committee comprised of up to nine members is a large number. As a reminder, the current Nominating Committee is comprised of seven people. We are suggesting that the committee could include up to nine people in order to allow the committee to have broad representation from a variety of Hockey Canada's key stakeholder groups, including the community at large, the hockey athletes and the Members. To help rebuild confidence in Hockey Canada and mend the fractured relationships with those stakeholders, we believe that it is important, particularly in the short term, to allow those stakeholders to have a meaningful voice in the Director nominating process. We also reiterate our recommendation that the Board engage a reputable board recruitment firm to assist the Directors with the recruitment of highly qualified

and diverse individuals to serve as Independents on the Nominating Committee, who would always be required to be a majority on the committee. In our view, by allowing the Nominating Committee to be served by a broad and diverse mix of individuals, and by enlisting the assistance of a professional board recruitment firm to recruit the Independent members of the committee, there will be a higher level of vetting and scrutiny of candidates, which we hope will allow the organization to rebuild the best Board possible and, be a crucial step towards rebuilding confidence in Hockey Canada.

#### *Nominating Committee mandate*

In addition to its general mandate, the Nominating Committee Terms of Reference go on to list 13 key duties to be performed by the committee.<sup>412</sup> Our review of the Nominating Committee’s Terms of Reference did not reveal any significant anomalies and the overall mandate of the committee largely aligns with the general mandate of the equivalent committee of other Comparator Associations. In that regard, four of the five Comparator Associations have either a “nominating/nominations committee” or a “governance and nominating committee” that is mandated to make recommendations in respect of board composition, to define and assess qualifications of directors and identifying potential candidates to serve on their board of directors. Although the fifth Comparator Association does not have a designated nominations or governance committee *per se*, we were informed that its Executive Committee does have responsibilities in those areas.

We note that the Nominating Committee Terms of Reference were last updated on May 2, 2019 and this would be an opportune time to have them reviewed and updated to include the recommendations we have made above.<sup>413</sup> We provide further discussion and recommendations in respect of Hockey Canada’s general committee structure later in the report.

### 5. Summary of recommendations regarding the nominating process

As previously stated, we are of the view that Hockey Canada ought to make a number of changes to its current Director nominating process with a view to establishing a more robust and transparent process and building a Board that is diverse and best suited to meet the needs and challenges currently facing Hockey Canada. Our recommendations (some of which were stated earlier in the report) are the following:

1. As mentioned above, amend the By-laws to provide that: (a) no more than 60% of the Directors are of the same gender, as per the COC Code; (b) the Board will include at least one athlete representative, who will be nominated by the Nominating Committee with significant input from hockey players; and (c) a majority of the Directors on the Board must be persons who are independent of Hockey Canada. “Independent” would mean a person who at the time of their election as a Director is (i) an employee of Hockey Canada; (ii) an officer, director or employee of any Member of Hockey Canada (an “HC Member”); (iii) an officer, director or employee of an organization that is a member of an HC Member (including, without limitation, a local Minor Hockey

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<sup>412</sup> “Nominations” in *Hockey Canada Terms of Reference* (updated to 18 March 2022) at 36, s 5.4.

<sup>413</sup> “Nominations” in *Hockey Canada Terms of Reference* (updated to 18 March 2022) at 37, s 5.4.

- Association); or (iv) an officer, director or employee of any other hockey club, league or team.
2. Review and, if required, update the Board Matrix to ensure it reflects the skills, experience and diversity elements that are needed on the Hockey Canada Board.
    - Such an exercise falls within the existing duties of the Nominating Committee to ensure, on a continuing basis, that the Board is composed of qualified and skilled persons capable of, and committed to, providing effective governance leadership to Hockey Canada, as set out in its Terms of Reference and By-laws.<sup>414</sup>
    - The skills, experience and diversity elements ought to be reviewed having regard to Hockey Canada’s strategic direction and any specific requirements, initiatives or projects facing the organization in the next three to five years.<sup>415</sup>
    - The Matrix should take into account regional representation of the Hockey Canada Members rather than just “geography.”<sup>416</sup>
    - The Matrix should be reviewed at least annually and otherwise periodically as the circumstances require, and revised as necessary.<sup>417</sup>
  3. For each election cycle (including the 2022 election), that the Nominating Committee use the Board Matrix as a tool to support the call for nominations and to clearly articulate the specific skills and competencies being sought for the Board positions to be filled.<sup>418</sup>
    - This aligns with the Nominating Committee’s duty to “Have regard to the specific and desired competencies required on the Board as a whole in soliciting nominations.”<sup>419</sup>
    - The Nominating Committee should conduct an evaluation of the Board’s composition annually to “strengthen the board’s effectiveness, to assess the

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<sup>414</sup> “Hockey Canada By-Laws, Regulations and History” (May 2022), s 48.1, online (pdf): *Hockey Canada* <<https://cdn.hockeycanada.ca/hockey-canada/Corporate/About/Downloads/2022-23-bylaws-e.pdf>>.

<sup>415</sup> This aligns with the Nominating Committee’s duty to “Carry out [its] duties in a manner that encourages a long-term view of Hockey Canada’s leadership need, as well as Board succession planning.”

<sup>416</sup> This aligns with the Nominating Committee’s duty to “Carry out [its] duties in a manner that encourages a long-term view of Hockey Canada’s leadership need, as well as Board succession planning.” See “Hockey Canada Terms of Reference” (updated to 18 March 2022) at 35, s 5.4.

<sup>417</sup> Goodmans LLP, “Canadian Sport Governance Code: Supporting Resources” (27 April 2021) at 39, online: *Canadian Olympic Committee – NSO Sharing Centre* <<https://nso.olympic.ca/wp-content/uploads/2021/10/GOODMANS-7073296-v12-Canadian Sport Governance Code - Combined Templates.docx>>.

<sup>418</sup> This aligns with the Nominating Committee’s duty to “Have regard to the specific and desired competencies required on the Board as a whole in soliciting nominations.” See “Hockey Canada Terms of Reference” (updated to 18 March 2022) at 35, s 5.4

<sup>419</sup> See “Hockey Canada Terms of Reference” (updated to 18 March 2022) at 35.

diversity in the boardroom, and to highlight gaps between the skills and background of existing Directors and their optimal mix.”<sup>420</sup> The results of that evaluation should be used to inform the next recruitment and nominating process leading up to the next election of Directors.

- We strongly encourage the Nominating Committee to engage and consult with a reputable board recruitment firm to assist it with the review of the Matrix and recruitment of qualified candidates to serve as Directors. That firm could be the same recruitment firm retained by Hockey Canada to assist with the recruitment of candidates for the Nominating Committee.
4. Amend the By-laws to provide that all persons proposed for nomination to positions of elected Directors be submitted to the Nominating Committee, who will have the authority to vet and create a short list of candidates to be placed on the election ballot. That includes amending and removing all language in the By-laws and the Nominating Committee Terms of Reference that states or suggests that all nominations of candidates proposed by the Members shall be included in the final ballot for the election of the Directors and the Board Chair. In that regard, we understand that the Members of Hockey Canada have already approved By-law amendments to that effect at a meeting of the Members held on October 15, 2022. That process of vetting, evaluating and shortlisting candidates should be done having regard to the Board Matrix. We recommend that this approach be implemented for the current election cycle.
  5. The Nominating Committee, as part of its right to vet and create a short list of qualified candidates for nomination, should have the authority and discretion to determine the number of nominees whose names will be included on the final election ballot, which number could be equal to or exceed the number of Directors positions available on the Board. In either case, in accordance with the CNCA, the Members must elect the directors by ordinary resolution.
  6. Amend the By-laws to provide that the Directors of Hockey Canada (and not the Members) have the right to appoint the Board Chair.
  7. Revise and update (or replace) the current “Chair of the Board Terms of Reference” to ensure the description of the Chair’s role and duties is current and reflects the current needs of Hockey Canada. That description of the Chair’s role should, at a minimum, include a list of qualities and minimum competencies required of the Chair.
    - Use the list of defined qualities and competencies to support the selection and appointment of the Board Chair. Some qualities and competencies to consider include:<sup>421</sup>

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<sup>420</sup> Deloitte, “Diversity in the Boardroom, Practices and Perspectives” (2015) at 13, online: [Deloitte <https://www2.deloitte.com/za/en/pages/governance-risk-and-compliance/articles/diversity\\_in\\_the\\_boardroom.html>](https://www2.deloitte.com/za/en/pages/governance-risk-and-compliance/articles/diversity_in_the_boardroom.html).

<sup>421</sup> Anne Corbett & James M Mackay, *Guide to Good Governance: Not-for-Profit and Charitable Organizations*, 2nd ed (September 2013) at 183.

- a. Proven leadership skills;
  - b. Good strategic and facilitation skills; ability to influence and achieve consensus;
  - c. Ability to act impartially and without bias and display tact and diplomacy;
  - d. Effective communicator;
  - e. Political acuity;
  - f. Must have the time to continue the legacy of building strong relationships between the corporation and stakeholders;
  - g. Ability to establish trusted advisor relationships with the chief executive officer and other board members;
  - h. Governance and board-level experience;
  - i. Outstanding record of achievement in one or several areas of skills and experience used to select board members.
- We strongly recommend that such a list be created and used as part of the current nomination process for the new transition Board Chair. Going forward, and for purposes of Board succession planning, the Nominating Committee should ensure that individuals who possess the qualities and skills set out above and who are interested in serving as Board Chair be regularly encouraged to submit their candidacy as part of the annual nominating process. That will ensure that at any given time, there are qualified Directors who can succeed to the office of Board Chair when the time comes.
8. Update or replace the Nominating Committee Terms of Reference to revise its composition and how its members are appointed. Our specific recommendations in that regard are the following:
- The Nominating Committee be comprised of up to nine (9) individuals and that the fixed number always be an odd number.
  - The Nominating Committee be constituted as follows:
    - The majority of the committee members would be individuals who are at arm's length from the Board ("Independents"). "Independent" means a person who at the time of their appointment is not: a) an officer, director or employee of Hockey Canada; b) an officer, director or employee of any Member of Hockey Canada (a "HC Member"); c) an officer, director or employee of an organization that is a member of a HC Member (including without limitation a local Minor Hockey Association); or d) an officer,

director or employee of any other hockey club, league or team. The Independents, who should be highly qualified and diverse, would be appointed by the Board of Hockey Canada, with the assistance of a reputable board recruitment firm hired by Hockey Canada;

- The Members of Hockey Canada, collectively, appoint up to two individuals to serve on the Nominating Committee. It would be up to the Members to decide, collectively and among themselves, how those individuals will be selected;
  - At least one member of the Nominating Committee would be an athlete representative, who would be appointed by the Board of Hockey Canada with significant input from hockey's athletes. That person could, but need not be, the same person who is the athlete representative on the Board (provided that person is not up for re-election to the Board); and
  - At least one and up to two Directors of the Hockey Canada Board would be appointed by the Board to serve on the Nominating Committee. A Director who is up for re-election in the next election cycle would not be eligible to serve on the Nominating Committee.
9. Amend the By-laws to provide that the Board may appoint additional Directors within the legal limits imposed by the CNCA, rather than limiting the option to only one additional Director. That change would also align with the language in the Articles, which currently mirrors the CNCA rule.
- iv. *Hockey Canada's committee structure (standing committees and task teams), committee mandates/terms of reference and mechanisms for reporting to the Board, and observations about their alignment with best practices.*

Committees are formed to assist the Board in performing its duties and responsibilities. Standing committees and other committees of the board are usually established by a board of directors to help manage ongoing board activities that are expected to be carried on permanently or for an indefinite period. Task teams or task forces, sometimes called ad hoc committees or groups, are typically created to assist a board of directors with time-limited projects and tasks. The structure, division and composition of committees, task forces and subcommittees often varies among corporations based on the needs and objectives of each corporation. Committees are an important element of the governance process and “should be established with clearly agreed reporting procedures and a written scope of authority”,<sup>422</sup> typically by way of terms of reference. To be most valuable, terms of reference should include detail pertaining to “the composition of the committee, the objectives, purpose and activities, the powers that have been delegated, any mandate to make recommendations to the board, the lifespan of the committee, and how the committee reports to

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<sup>422</sup> Deloitte, “Board committees” (2014) at 1, online (pdf) Deloitte <[https://www2.deloitte.com/content/dam/Deloitte/za/Documents/governance-risk-compliance/ZA\\_BoardCommittees\\_24032014.pdf](https://www2.deloitte.com/content/dam/Deloitte/za/Documents/governance-risk-compliance/ZA_BoardCommittees_24032014.pdf)>.

the board.”<sup>423</sup> This section will comment on Hockey Canada’s committees by first reviewing committee structure, secondly reviewing each committee’s composition, mandates and terms of reference, and finally reviewing the mechanisms by which committees report to the Board.

## 1. Committee structure

As per its By-Laws, Hockey Canada’s committee structure is comprised of six standing committees, other Board committees and a variety of task teams.

### 1.1 Standing/Board committees

Hockey Canada has six standing committees and one board committee as follows:

- Audit and Finance
- Human Resources
- Risk Management
- Governance
- Nominating
- Program Standards<sup>424</sup>
- Female Hockey Policy<sup>425</sup>

All standing and board committees report to the Board. They must maintain minutes of their meetings and make those minutes available to the Board.<sup>426</sup>

### 1.2 Task teams

Hockey Canada’s Board Chair (in consultation with the Board, the CEO, the President and COO) may establish a Task Team to undertake a specific task or project to be completed within a defined

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<sup>423</sup> Deloitte, “Board committees” (2014) at 1, online (pdf) Deloitte <[https://www2.deloitte.com/content/dam/Deloitte/za/Documents/governance-risk-compliance/ZA\\_BoardCommittees\\_24032014.pdf](https://www2.deloitte.com/content/dam/Deloitte/za/Documents/governance-risk-compliance/ZA_BoardCommittees_24032014.pdf)>.

<sup>424</sup> “Hockey Canada By-Laws, Regulations and History” (May 2022), s 44.1, online (pdf): *Hockey Canada* <<https://cdn.hockeycanada.ca/hockey-canada/Corporate/About/Downloads/2022-23-bylaws-e.pdf>>: note however that the Female Hockey Policy Committee is not referenced in the By-laws.

<sup>425</sup> “Female Hockey Policy Committee” in *Hockey Canada Terms of Reference* (updated to 18 March 2022) at 60-61.

<sup>426</sup> “Standing Committees” in *Hockey Canada Terms of Reference* (updated to 18 March 2022) at 26.

period of time.<sup>427</sup> All Task Teams report to the Board. A Task Team is dissolved once it has accomplished its task or project.<sup>428</sup>

### 1.3 Observations on committee structure

Pursuant to the CNCA, directors of a corporation are permitted to establish committees of the board and delegate to them any of the powers of the directors.<sup>429</sup> The CNCA does, however, prescribe certain limits on the delegation of that authority; namely, directors cannot delegate their power to: submit to the members any question or matter requiring the approval of members, fill a vacancy among the directors or in the office of public accountant or appoint additional directors, issue debt obligations, approve financial statements, adopt, amend or repeal by-laws, establish contributions to be made, or dues to be paid, by members.<sup>430</sup> Otherwise (and subject to a few exceptions, which will be addressed later in the report), the CNCA is generally silent in respect of how a corporation may or should structure its committees, which provides a corporation and its board with a certain amount of latitude in terms of how it organizes its various committees and working groups.

Nonetheless, there are some sound trends and practices in the not-for-profit and NSO sector that are useful points of reference for the purpose of assessing the appropriateness of Hockey Canada's standing/board committees and task forces, such as the COC Code and related Framework. We also considered the committee structure of the Comparator Associations, to the extent such information was made available to us. In that regard, we found that Hockey Canada's committee structure is generally consistent with the practices of the Comparator Associations. Hockey Canada and the Comparator Associations do have some differences with respect to the existence of certain committees, but their overall committee structures are similar. Like Hockey Canada, most Comparator Associations have a mix of permanent committees and temporary committees.

In reviewing the committee structure of the Comparator Associations (other than Basketball Canada for which we did not have the relevant information)<sup>431</sup>, we noted the following:

- Hockey Canada and four Comparator Associations have a combined audit and finance committee.
- Hockey Canada and four Comparator Associations have a governance committee; only Athletics Canada has a combined governance and nominations committee.
- Hockey Canada, Tennis Canada and Canada Soccer have a nominations committee that is separate from its governance committee.

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<sup>427</sup> "Hockey Canada By-Laws, Regulations and History" (May 2022), s 51.1, online (pdf): *Hockey Canada* <<https://cdn.hockeycanada.ca/hockey-canada/Corporate/About/Downloads/2022-23-bylaws-e.pdf>>.

<sup>428</sup> "Hockey Canada By-Laws, Regulations and History" (May 2022), s 51.1, online (pdf): *Hockey Canada* <<https://cdn.hockeycanada.ca/hockey-canada/Corporate/About/Downloads/2022-23-bylaws-e.pdf>>.

<sup>429</sup> *Canada Not-for-profit Corporations Act*, SC 2009, c 23, s 138(1).

<sup>430</sup> *Canada Not-for-profit Corporations Act*, SC 2009, c 23, s 138(2).

<sup>431</sup> Note: Basketball Canada does not currently have as formal a committee structure so is not included in these observations unless expressly stated otherwise.

- Hockey Canada and Soccer Canada have a risk committee; Curling Canada’s finance and audit committee also performs risk management functions.
- Hockey Canada, Athletics Canada, Curling Canada and Tennis Canada (through its Executive Committee) all have a human resources committee.

Hockey Canada’s standing committees generally align with the types of standing committees that one would expect in a large not-for-profit organization, namely the Audit and Finance Committee, the Governance Committee, the Human Resources Committee, the Nominating Committee and the Risk Management Committee. Such committees are common and considered best practice since each of them carries out functions that are related to the core duties and responsibilities of the directors. Those committees are also consistent with the COC Code, which recommends that the board of an NSO should have committees that focus on nominations, governance and ethics, audit and finance, compensation and human resources.<sup>432</sup> The COC Code does, however, recommend a committee that focuses on “governance and ethics”. It appears that Canada Soccer and Basketball Canada are the only Comparator Associations with an ethics committee. Hockey Canada does not currently have a committee dealing specifically with ethics questions relating to the Board.

Further to our review and for the reasons set out above, we are of the view that the structure of Hockey Canada’s various standing/board committees generally aligns with the Comparator Associations and points of reference reviewed.

## 2. Committee composition, mandates and terms of reference

### 2.1 Standing committees

With the exception of the Nominating Committee, all of Hockey Canada’s standing committees are chaired by a Director who is appointed by the Chair of the Board.<sup>433</sup> Each standing committee must be comprised of four to eight members, including the Committee Chair.<sup>434</sup> With the exception of the Nominating Committee, the Chair of the Board (in consultation with the Board) appoints the committee Chair and members of each standing committee.<sup>435</sup> There is also a staff resource person on each committee (non-voting).<sup>436</sup> Standing committee members serve on a committee for

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<sup>432</sup> “Canadian Sport Governance Code” (April 2021) at 6, online: *Canadian Olympic Committee – NSO Sharing Centre* <[https://nso.olympic.ca/wp-content/uploads/2021/10/Canadian\\_Sports\\_Governance\\_Code.pdf](https://nso.olympic.ca/wp-content/uploads/2021/10/Canadian_Sports_Governance_Code.pdf)>.

<sup>433</sup> “Hockey Canada By-Laws, Regulations and History” (May 2022), s 44.2, online (pdf): *Hockey Canada* <<https://cdn.hockeycanada.ca/hockey-canada/Corporate/About/Downloads/2022-23-bylaws-e.pdf>>.

<sup>434</sup> “Hockey Canada By-Laws, Regulations and History” (May 2022), s 44.3, online (pdf): *Hockey Canada* <<https://cdn.hockeycanada.ca/hockey-canada/Corporate/About/Downloads/2022-23-bylaws-e.pdf>>.

<sup>435</sup> “Hockey Canada By-Laws, Regulations and History” (May 2022), s 44.3, online (pdf): *Hockey Canada* <<https://cdn.hockeycanada.ca/hockey-canada/Corporate/About/Downloads/2022-23-bylaws-e.pdf>>.

<sup>436</sup> “Standing Committees” in *Hockey Canada Terms of Reference* (updated to 18 March 2022) at 25.

a term of two years, but may be reappointed for subsequent terms.<sup>437</sup> However, committee members may be removed from their role as committee member, at any time, by the Board Chair.<sup>438</sup>

Each standing committee has its own mandate and Terms of Reference. All standing committees review policies for which they are responsible, as well as their Terms of Reference, at least every two years.<sup>439</sup> The Terms of Reference of standing committees are set out in policies established by the Board. Standing committees may propose changes to its Terms of Reference to the Board.<sup>440</sup> The following paragraphs review each committee individually.

(a) Audit and Finance Committee

*Composition*

Hockey Canada’s Audit and Finance Committee is comprised of between four to eight members, including the committee Chair. The Chair of the Board appoints the Chair of the Audit and Finance Committee, while the Board appoints the other members of the committee. Pursuant to the Audit and Finance Committee Terms of Reference, the committee includes the Chief Executive Officer and/or the President and Chief Operating Officer, as an ex-officio member.<sup>441</sup> At least one member of the Committee must be a CPA, CGA, CMA or “its equivalent professional designation, or will be financially literate as such qualifications are interpreted by the Board in its business judgment.”<sup>442</sup> The inclusion of a person with a professional accounting background or who is financially literate is particularly important given the committee’s core mandate is to ensure Hockey Canada has in place adequate policies and procedures relating to the organization’s finances, audit obligations and financial risk management.

Pursuant to section 194(1) of the CNCA if a corporation has an audit committee, it must be composed of not less than three directors, a majority of whom are not officers or employees of the corporation or its affiliates. Provided Hockey Canada’s Board Chair consistently appoints at least three directors to the Audit and Finance Committee, a majority of whom are not officers or employees, the composition of Hockey Canada’s Audit and Finance Committee will comply with the CNCA. For the 2021-2022 season, the committee members included five Directors,<sup>443</sup> a majority of whom were not officers or employees of Hockey Canada. Hockey Canada’s CFO was also designated as a resource person for that committee.

Hockey Canada’s Audit and Finance Committee composition is similar to other Comparator Associations. For example, Canada Soccer’s audit and finance committee is composed of no fewer

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<sup>437</sup> “Hockey Canada By-Laws, Regulations and History” (May 2022), s 44.4, online (pdf): *Hockey Canada* <<https://cdn.hockeycanada.ca/hockey-canada/Corporate/About/Downloads/2022-23-bylaws-e.pdf>>.

<sup>438</sup> “Hockey Canada By-Laws, Regulations and History” (May 2022), s 44.8, online (pdf): *Hockey Canada* <<https://cdn.hockeycanada.ca/hockey-canada/Corporate/About/Downloads/2022-23-bylaws-e.pdf>>.

<sup>439</sup> “Hockey Canada Terms of Reference” (updated to 18 March 2022) at 25.

<sup>440</sup> “Hockey Canada By-Laws, Regulations and History” (May 2022), s 44.5, online (pdf): *Hockey Canada* <<https://cdn.hockeycanada.ca/hockey-canada/Corporate/About/Downloads/2022-23-bylaws-e.pdf>>.

<sup>441</sup> “Hockey Canada Terms of Reference” (updated to 18 March 2022) at 29.

<sup>442</sup> “Hockey Canada Terms of Reference” (updated to 18 March 2022) at 29.

<sup>443</sup> 2021-22 Hockey Canada Standing Committees of the Board (26 August 2022) at 1.

than four members, plus the president as ex-officio. The committee may include members who are not directors to expand its expertise, but the chair of the committee must be a director.<sup>444</sup> Committee members, including the chair, are appointed by the president with the approval of a majority of the board.<sup>445</sup> Canada Soccer also requires a basic level of financial literacy from members of its audit and finance committee.<sup>446</sup>

As to Athletics Canada's finance committee, the board chair is an ex-officio and non-voting member.<sup>447</sup> The chair of the committee is appointed by the board.<sup>448</sup> Athletics Canada's finance committee is also composed of the treasurer (chair), the chief executive officer, the chief operating officer, up to three individuals appointed by the board, an athlete representative, and the director of finance as ex-officio.<sup>449</sup> The chair and committee members serve two year terms. Athletics Canada's finance committee (as with all of its committees) must also have a minimum of one member of each gender<sup>450</sup> and committee membership is "competency" based.<sup>451</sup> Appointed individuals should have "experience with financial matters" and an accounting designation is considered an asset.<sup>452</sup>

While there are some differences between the composition of Hockey Canada's Finance and Audit committee and those of the Comparator Associations we reviewed, their composition is generally similar to each other and consistent with best practices, such as the COC Code's template audit and finance committee terms of reference. The COC Code template suggests that an audit and

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<sup>444</sup> "Governance Policies" (January 2022) at 13, online (pdf): *The Canadian Soccer Association* <[https://www.canadasoccer.com/wp-content/uploads/2022/03/CSA-Governance-Policies-2022\\_EN.pdf](https://www.canadasoccer.com/wp-content/uploads/2022/03/CSA-Governance-Policies-2022_EN.pdf)>.

<sup>445</sup> "Governance Policies" (January 2022) at 14, online (pdf): *The Canadian Soccer Association* <[https://www.canadasoccer.com/wp-content/uploads/2022/03/CSA-Governance-Policies-2022\\_EN.pdf](https://www.canadasoccer.com/wp-content/uploads/2022/03/CSA-Governance-Policies-2022_EN.pdf)>.

<sup>446</sup> "Governance Policies" (January 2022) at 14, online (pdf): *The Canadian Soccer Association* <[https://www.canadasoccer.com/wp-content/uploads/2022/03/CSA-Governance-Policies-2022\\_EN.pdf](https://www.canadasoccer.com/wp-content/uploads/2022/03/CSA-Governance-Policies-2022_EN.pdf)>.

<sup>447</sup> "Athletics Canada Bylaws" (January 2022) at 25, online (pdf): *Athletics Canada* <<https://athletics.ca/wp-content/uploads/2022/01/Athletics-Canada-Bylaws-January-2022.pdf>>.

<sup>448</sup> "Athletics Canada Bylaws" (January 2022) at 12, online (pdf): *Athletics Canada* <<https://athletics.ca/wp-content/uploads/2022/01/Athletics-Canada-Bylaws-January-2022.pdf>>.

<sup>449</sup> "Athletics Canada Bylaws" (January 2022) at 24, online (pdf): *Athletics Canada* <<https://athletics.ca/wp-content/uploads/2022/01/Athletics-Canada-Bylaws-January-2022.pdf>>..

<sup>450</sup> "Athletics Canada Bylaws" (January 2022) at 9, online (pdf): *Athletics Canada* <<https://athletics.ca/wp-content/uploads/2022/01/Athletics-Canada-Bylaws-January-2022.pdf>>.

<sup>451</sup> "Athletics Canada Bylaws" (January 2022) at 12, online (pdf): *Athletics Canada* <<https://athletics.ca/wp-content/uploads/2022/01/Athletics-Canada-Bylaws-January-2022.pdf>>.

<sup>452</sup> "Athletics Canada Bylaws" (January 2022) at 25, online (pdf): *Athletics Canada* <<https://athletics.ca/wp-content/uploads/2022/01/Athletics-Canada-Bylaws-January-2022.pdf>>.

finance committee be composed of at least three directors, at least one independent director<sup>453</sup> and a chair designated by the board.<sup>454</sup>

### *Mandate*

Pursuant to the Terms of Reference of Hockey Canada’s Audit and Finance Committee, the committee’s mandate is to be “responsible for oversight related to Hockey Canada’s auditing and reporting, financial policies and strategies, and financial risk management.”<sup>455</sup> The Terms of Reference also provide that the “Committee is a limited agent of the Board in relation to audit matters, and is an active advisor to the Board on all other financial matters.”<sup>456</sup> As such, the committee has both audit-related functions and finance-related functions. The committee’s audit-related duties include, at the time of the annual audit, providing the corporation’s auditor with access to Hockey Canada’s financial records, reviewing the Auditor’s report, and submitting that report to the Members.<sup>457</sup> Some of its finance-related duties include working with staff to review and assess budgets, and advise on budget recommendations to the Board.<sup>458</sup> The committee is also responsible for overseeing the following policies: investment policy, expenses, travel, bonding, fees and assessments, and events. We assume that the reference to the committee being a limited agent of the Board means that the Board has delegated limited authority to the Audit and Finance Committee in respect of audit-related matters, but that is not clear. We recommend that the Terms of Reference be revised to remove or clarify that language.

An audit committee “should act as an independent oversight body.”<sup>459</sup> Its primary role is to oversee the integrity and compliance of the corporation’s financial reporting and to manage financial

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<sup>453</sup> “Independent” means that a director has no fiduciary obligation to any body for the subject sport at the national or provincial level, receives no direct or indirect material benefit from any such party, and is free of any conflict of interest of a financial, personal or representational nature (provided that participating in the NSO’s sport does not alone cause a person not to be Independent).” “Canadian Sport Governance Code” (April 2021) at 3, online: *Canadian Olympic Committee – NSO Sharing Centre* <[https://nso.olympic.ca/wp-content/uploads/2021/10/Canadian\\_Sports\\_Governance\\_Code.pdf](https://nso.olympic.ca/wp-content/uploads/2021/10/Canadian_Sports_Governance_Code.pdf)>.

<sup>454</sup> “Canadian Sport Governance Code Combined Templates” (July 2021) at 75, online: *Canadian Olympic Committee – NSO Sharing Centre* <[https://nso.olympic.ca/wp-content/uploads/2021/10/GOODMANS-7073296-v12-Canadian\\_Sport\\_Governance\\_Code\\_-\\_Combined\\_Templates.docx](https://nso.olympic.ca/wp-content/uploads/2021/10/GOODMANS-7073296-v12-Canadian_Sport_Governance_Code_-_Combined_Templates.docx)>.

<sup>455</sup> “Hockey Canada Terms of Reference” (updated to 18 March 2022) at 28.

<sup>456</sup> “Hockey Canada Terms of Reference” (updated to 18 March 2022) at 29.

<sup>457</sup> “Hockey Canada By-Laws, Regulations and History” (May 2022), s 45.2, online (pdf): *Hockey Canada* <<https://cdn.hockeycanada.ca/hockey-canada/Corporate/About/Downloads/2022-23-bylaws-e.pdf>>.

<sup>458</sup> “Hockey Canada Terms of Reference” (updated to 18 March 2022) at 28.

<sup>459</sup> Deloitte, “Board committees” (2014) at 3, online (pdf): *Deloitte* <[https://www2.deloitte.com/content/dam/Deloitte/za/Documents/governance-risk-compliance/ZA\\_BoardCommittees\\_24032014.pdf](https://www2.deloitte.com/content/dam/Deloitte/za/Documents/governance-risk-compliance/ZA_BoardCommittees_24032014.pdf)>.

risk.<sup>460</sup> It also plays “a key role in ensuring accountability and transparency” of the corporation.<sup>461</sup> To do so, an audit committee usually has the responsibility to manage the audit process, recommend the independent auditor, review the audit report with the auditor, present the report to the full board, use the independent auditor as an advisor, and ensure compliance with all reporting requirements.<sup>462</sup> Section 194(2) of the CNCA also provides that the audit committee must review the financial statements of the corporation before they are approved by the directors.<sup>463</sup>

A finance committee also carries out financial oversight functions. While staff typically “prepare the budget and monitor daily income and expenditures, a finance committee “provides oversight by reviewing financial statements and the budget.”<sup>464</sup> The end goal is for the finance committee to ensure “that the board’s policies and strategic priorities are reflected in the budget.”<sup>465</sup>

Like Hockey Canada, Curling Canada, Canada Soccer, Athletics Canada and Tennis Canada have a combined audit and finance committee, whose mandates are all similar to each other and generally align with the mandate and duties that we would expect to find in the terms of reference for an audit and finance committee. The COC Code’s template audit and finance committee terms of reference also provide for a combined audit and finance committee.<sup>466</sup> Nonetheless, for the reasons set out below we recommend that Hockey Canada divide its Audit and Finance Committee into two separate committees: an Audit Committee, and a Finance Committee.

The current crisis has shown that Hockey Canada’s key stakeholders have lost confidence in Hockey Canada’s ability to oversee and manage the funds of the organization with transparency and accountability. As a step towards regaining that confidence, we are of the view that the new

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<sup>460</sup> Kevin D Chen and Andy Wu, “The Structure of Board Committees” (2016) at 5, online (pdf): *Harvard Business School* <[https://www.hbs.edu/ris/Publication%20Files/17-032\\_22ea9e7a-4f26-4645-af3d-042f2b4e058c.pdf](https://www.hbs.edu/ris/Publication%20Files/17-032_22ea9e7a-4f26-4645-af3d-042f2b4e058c.pdf)>; Deloitte, “Board committees” (2014) at 5, online (pdf): *Deloitte* <[https://www2.deloitte.com/content/dam/Deloitte/za/Documents/governance-risk-compliance/ZA\\_BoardCommittees\\_24032014.pdf](https://www2.deloitte.com/content/dam/Deloitte/za/Documents/governance-risk-compliance/ZA_BoardCommittees_24032014.pdf)>.

<sup>461</sup> Deloitte, “Board committees” (2014) at 5, online (pdf): *Deloitte* <[https://www2.deloitte.com/content/dam/Deloitte/za/Documents/governance-risk-compliance/ZA\\_BoardCommittees\\_24032014.pdf](https://www2.deloitte.com/content/dam/Deloitte/za/Documents/governance-risk-compliance/ZA_BoardCommittees_24032014.pdf)>.

<sup>462</sup> “Board Committee Membership: Who Should Serve on Which Committee?” (2017) at 5, online (pdf): *BoardSource* <<https://boardsource.org/wp-content/uploads/2017/08/Committees-Who-Serves-Where.pdf?hsCtaTracking=86de16b1-84e0-49d2-b5a3-de66f0a7df72%7C2c5d5d88-615f-4567-9d09-2fc7758fd168>>.

<sup>463</sup> *Canada Not-for-profit Corporations Act*, SC 2009, c 23, s 194.

<sup>464</sup> “Board Committee Membership: Who Should Serve on Which Committee?” (2017) at 4, online (pdf): *BoardSource* <<https://boardsource.org/wp-content/uploads/2017/08/Committees-Who-Serves-Where.pdf?hsCtaTracking=86de16b1-84e0-49d2-b5a3-de66f0a7df72%7C2c5d5d88-615f-4567-9d09-2fc7758fd168>>.

<sup>465</sup> “Board Committee Membership: Who Should Serve on Which Committee?” (2017) at 4, online (pdf): *BoardSource* <<https://boardsource.org/wp-content/uploads/2017/08/Committees-Who-Serves-Where.pdf?hsCtaTracking=86de16b1-84e0-49d2-b5a3-de66f0a7df72%7C2c5d5d88-615f-4567-9d09-2fc7758fd168>>.

<sup>466</sup> Goodmans LLP, “Canadian Sport Governance Code: Supporting Resources” (27 April 2021) at 75, online: *Canadian Olympic Committee – NSO Sharing Centre* <[https://nso.olympic.ca/wp-content/uploads/2021/10/GOODMANS-7073296-v12-Canadian\\_Sport\\_Governance\\_Code\\_-\\_Combined\\_Templates.docx](https://nso.olympic.ca/wp-content/uploads/2021/10/GOODMANS-7073296-v12-Canadian_Sport_Governance_Code_-_Combined_Templates.docx)>.

transition Board should focus particular attention on the responsibilities of those committees that have finance-related responsibilities, such as the Audit and Finance Committee and the Risk Management Committee. The composition, mandates and key functions of those committees should be carefully considered and revised to ensure that robust practices and procedures relating to financial management, audit reporting and transparency are well documented and implemented. The new transition Board may very well determine that the Board’s financial oversight functions need to be diversified and finance-related functions reallocated among a separate Audit Committee and a separate Finance Committee in order to perform those oversight functions with greater efficiency, transparency and accountability.

Not all organizations structure their “financial committees” in the same way. Factors such as the organization’s size, maturity and complexity influence how the Board will configure and organize its committees.<sup>467</sup> Larger boards have more people and resources and can usually support a higher number of committees. By increasing the size of its Board, as we have recommended, Hockey Canada will have more Directors and resources to support an additional committee, if need be.<sup>468</sup> The allocation of financial-related duties among multiple committees has other advantages. For example, “when a board separates its financial tasks [...], it is in a better position to focus on the key aspects of each task.”<sup>469</sup> For organizations like Hockey Canada with multi-million budgets and multiple revenue streams, the allocation of finance-related functions and audit-related functions to two separate committees is especially prudent, as it adds another layer of fiscal oversight. As one author has stated, such an approach “provides for added accountability when oversight for financial management and the independent audit are fully detached.”<sup>470</sup> When separate, the finance committee is responsible for monitoring the organization’s financial practices, while the audit committee monitors the process by which the financial practices are carried out. For that reason, the audit committee should have plenty of independence from the finance committee.

Given the current challenges Hockey Canada is facing with respect to the transparency of its National Equity Fund, we recommend that Hockey Canada’s new Board reconfigure the current Audit and Finance Committee and establish instead two separate committees: a Finance Committee, and an Audit Committee. We also make the following additional recommendations with respect to each of those committees.

#### *New Finance Committee*

1. The Terms of Reference should emphasize that the committee’s overall mandate is to oversee and monitor the Hockey Canada’s financial practices to ensure it is operating in a financially sustainable manner. The Finance Committee’s specific duties should include:<sup>471</sup>
  - a. ensuring that accurate and complete financial records are maintained;

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<sup>467</sup> Ellen Hirzy, ed, *Nonprofit Board Committees* (Washington, DC: BoardSource, 2018), at 81.

<sup>468</sup> Ellen Hirzy, ed, *Nonprofit Board Committees* (Washington, DC: BoardSource, 2018), at 81.

<sup>469</sup> Ellen Hirzy, ed, *Nonprofit Board Committees* (Washington, DC: BoardSource, 2018), at 81.

<sup>470</sup> Ellen Hirzy, ed, *Nonprofit Board Committees* (Washington, DC: BoardSource, 2018), at 81.

<sup>471</sup> Ellen Hirzy, ed, *Nonprofit Board Committees* (Washington, DC: BoardSource, 2018), at 84.

- b. ensuring that accurate, timely, and meaningful financial statements are prepared and presented to the Board;
  - c. overseeing budget preparation and financial planning;
  - d. safeguarding Hockey Canada’s assets;
  - e. helping the full Board understand Hockey Canada’s financial affairs; and
  - f. ensuring compliance with federal, provincial and other regulatory or contractual requirements relating to the organization’s finances.
2. The Finance Committee should have between 3 and 7 members.
  3. The Board should appoint the members of the Finance Committee, including the Chair of the committee.
  4. At least a majority of the Finance Committee members should be Directors, including the committee Chair.
  5. The Finance Committee should include some people with expertise or experience in financial matters, including the committee Chair.
  6. Non-Directors may be appointed as members of the Finance Committee, to enhance the collective skills, experience or competencies of committee, or to provide specialized knowledge or expertise on a particular financial issue facing the organization. Non-Directors who are subject-matter experts should add value and contribute meaningfully to the committee’s work.

#### *New Audit Committee*

1. The Terms of Reference should emphasize that the committee’s overall mandate is to ensure the integrity of financial controls and integrated reporting and identifying and managing financial risk.<sup>472</sup> The Audit Committee’s specific duties should include:<sup>473</sup>
  - a. overseeing the external audit process, which includes meeting with the auditor without staff present, and interpreting the findings of the independent auditor;
  - b. ensuring accurate and transparent financial reporting in accordance with Canadian accounting standards for not-for-profit organizations (ASNPO), which includes reviewing the budget process and ensuring that financial reports are received, monitored and disseminated; and

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<sup>472</sup> Deloitte, “Board committees” (2014) at 3, online (pdf): *Deloitte* <[https://www2.deloitte.com/content/dam/Deloitte/za/Documents/governance-risk-compliance/ZA\\_BoardCommittees\\_24032014.pdf](https://www2.deloitte.com/content/dam/Deloitte/za/Documents/governance-risk-compliance/ZA_BoardCommittees_24032014.pdf)>.

<sup>473</sup> Ellen Hirzy, ed, *Nonprofit Board Committees* (Washington, DC: BoardSource, 2018), at 92.

- c. monitoring financial risk management and internal controls, which includes examining financial management policies and practices to ensure that operations are carried out according to policy and with adequate controls.
2. The Audit Committee should have between 3 and 5 members.
3. The Board should appoint the members of the Audit Committee, including the committee Chair.
4. In accordance with the CNCA,<sup>474</sup> the Audit Committee should be composed of not less than three Directors, a majority of whom are not officers or employees of the corporation or its affiliates. Notwithstanding the CNCA, we recommend that no current or former employees of Hockey Canada be permitted to serve on the Audit Committee. We do think it is reasonable to have the Chief Financial Officer attend meetings of the Audit Committee, as needed, as a staff resource person.
5. All members of the Audit Committee should be Directors, including the Chair. A majority of them should be Independent Directors.
6. All members of the Audit Committee should have some experience in audit-related matters, and in particular be able to read and reasonably interpret financial statements.
7. At least one member of the Audit Committee should be someone with expertise in financial matters, and preferably in accounting or auditing. They should also be familiar with and understand: complex accounting issues, Canadian accounting standards for not-for-profit organizations (ASNPO), financial statements, procedures relating to internal controls and financial reporting, and the functions of an audit committee.<sup>475</sup>
8. If there is a low number of Directors with accounting expertise on the Board, non-Directors may be appointed to serve in an advisory capacity, provided they are non-voting.
9. No staff, including the Chief Financial Officer, should attend any audit planning meetings with the auditor, or meetings where the committee reviews the draft financial statements with the auditor before they are provided to the full Board.<sup>476</sup>

(b) Human Resources Committee

Hockey Canada's Human Resources Committee is composed of the Committee Chair (a Director appointed by the Chair of the Board) and between four and eight members (appointed by the Board and including the Chair). For the 2021-2022 season, the committee members included five Directors and two Member Presidents.<sup>477</sup>

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<sup>474</sup> *Canada Not-for-profit Corporations Act*, SC 2009, c 23, s 194.

<sup>475</sup> Ellen Hirzy, ed, *Nonprofit Board Committees* (Washington, DC: BoardSource, 2018), at 98.

<sup>476</sup> Ellen Hirzy, ed, *Nonprofit Board Committees* (Washington, DC: BoardSource, 2018), at 95.

<sup>477</sup> 2021-22 Hockey Canada Standing Committees of the Board (26 August 2022) at 1.

The Human Resources Committee is responsible for overseeing the development of employment policies for Hockey Canada and for policies related to volunteers, as well as for monitoring compliance with those policies.<sup>478</sup> The committee is also responsible for overseeing the implementation of the following policies: Code of conduct, gifting, social networking, dispute resolution, bullying and harassment, national registry, privacy, privileges for award winners, recognition of service by the Board Chair, out of country medical insurance, neutrality, and non-discrimination.<sup>479</sup>

A board of directors has the authority to establish committees at its discretion. Not all boards have a human resources committee, and such a committee might not be appropriate for every organization. In some organizations, the human resources committee is a non-board committee, populated mostly by staff and reporting directly to the chief executive officer, rather than the board. We note that two of the five Comparator Associations have a human resources committee. We note that the COC Code and COC model terms of reference for the Audit and Finance Committee also provide that if a NSO board does not have a compensation or human resources committee, another board committee should have the responsibilities in those areas.<sup>480</sup> Those responsibilities should include (but not be limited to): i) the appointment, performance evaluation and compensation of senior management; and ii) the compensation structure of senior management including salaries and annual and long-term incentive plans. We note that at Hockey Canada, the Governance Committee is responsible for “proposing policies for the recruitment, selection and evaluation of the Chief Executive Officer of Hockey Canada.”<sup>481</sup>

Regardless of its nature as either a board or non-board committee, typically a human resources committee is responsible for monitoring and/or creating values-based systems and policies to ensure that the organization is complying with its statutory obligations and certain best practices relating to its employees and creating an attractive environment for current and prospective employees.<sup>482</sup> In other words, the committee’s primary role (particularly when it is a board committee) is usually to ensure there is an appropriate framework for the oversight of the corporation’s human resources.

While the Terms of Reference for Hockey Canada’s Human Resources Committee describe some functions that relate to that role, we noted that certain key duties of the committee are not within the usual scope of responsibilities of a human resources committee. Those include: i) establishing self-assessment tools for the Directors and the Board; ii) ensuring there is proper orientation, support and continuing education for the Directors; and iii) ensuring there is an annual evaluation of the performance of individual Directors and the Board as a whole. In our view, the Human Resources Committee should not be responsible for those functions and we recommend that such functions should instead form part of the Governance Committee’s duties, as they better align with

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<sup>478</sup> “Hockey Canada By-Laws, Regulations and History” (May 2022), s 46.1, online (pdf): *Hockey Canada* <<https://cdn.hockeycanada.ca/hockey-canada/Corporate/About/Downloads/2022-23-bylaws-e.pdf>>.

<sup>479</sup> “Hockey Canada Terms of Reference” (updated to 18 March 2022) at 31.

<sup>480</sup> “Canadian Sport Governance Code” (April 2021), at 6, online: *Canadian Olympic Committee – NSO Sharing Centre* <<https://nso.olympic.ca/canadian-sport-governance-code/>>.

<sup>481</sup> “Hockey Canada Terms of Reference” (updated to 18 March 2022) at 37.

<sup>482</sup> Michele Berger, “Human Resources Committee” (21 January 2014), online (pdf): *Nonprofit Law Blog by NEO Law Group* <<https://nonprofitlawblog.com/human-resources-committee/>>.

that committee’s responsibility for advising the Board on matters relating to the Board’s own evaluation processes, and those of individual Directors.<sup>483</sup>

In addition, we are of the view that there is an opportunity to streamline the current duties of the Human Resources Committee, by reassessing and reallocating those duties to other committees, with a view to disbanding this committee. As mentioned above, the governance-related duties, such as Board evaluations, Board orientation and ongoing education, guidelines for media-related policies and guidelines for Directors should be reassigned to the Governance Committee. Moreover, the remaining duties set out in the Terms of Reference appear to be outdated and they focus heavily on duties that require the committee to establish vague policies relating to the management of human resources or to ensure that such policies exist. We recommend that Hockey Canada carefully review those human resources-related duties to determine whether they are still appropriate and should continue be performed by a standing committee of the Board.

As mentioned above, in some organizations, the human resources committee is a non-board committee, consisting predominantly of staff and reporting directly to the chief executive officer, rather than the board. One advantage of that approach is that it avoids the need for an additional Board committee. Furthermore, the ability to populate a board committee with adequate human resources-related experience and expertise from among the directors is often a challenge. Accordingly, we recommend that any committee duties that are related to human resources be clearly identified and reallocated to either the Governance Committee or the new Finance Committee, as appropriate. For example, we recommend that any responsibilities related to the compensation framework of senior management, including salaries and annual and long-term incentive plans, be a responsibility of the Finance Committee.

### (c) Risk Management Committee

Hockey Canada’s Risk Management Committee is composed of the Committee Chair (a Director appointed by the Chair of the Board), between four to eight members (appointed by the Board and including the Chair), and the President and COO (as ex-officio members). For the 2021-2022 season, the committee members included five Directors, one expert, and two Member Presidents.<sup>484</sup>

The Risk Management Committee is responsible for ensuring the development and implementation of a comprehensive risk management program and for monitoring compliance with the program standards and objectives.<sup>485</sup> The committee is also responsible for overseeing the implementation of the policies relating to insurance, maltreatment, bullying and harassment protection and prevention, co-ed dressing room, concussion, screening, Canadian Anti-Doping Program, criminal record searches, return to play following player injury, and the Hockey Canada COVID-19 vaccination policy.<sup>486</sup> The Risk Management Committee is required to consider the input and expertise of the Hockey Canada Chief Medical Officer (“CMO”) and other subject matter experts as required. In addition, although not formally or explicitly noted within the

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<sup>483</sup> “Hockey Canada Terms of Reference” (updated to 18 March 2022) at 38.

<sup>484</sup> 2021-22 Hockey Canada Standing Committees of the Board (26 August 2022) at 1.

<sup>485</sup> “Hockey Canada By-Laws, Regulations and History” (May 2022), s 47.1, online (pdf): *Hockey Canada* <<https://cdn.hockeycanada.ca/hockey-canada/Corporate/About/Downloads/2022-23-bylaws-e.pdf>>.

<sup>486</sup> “Hockey Canada Terms of Reference” (updated to 18 March 2022) at 33.

Committee’s Terms of Reference, Hockey Canada has advised us that the Risk Management Committee occasionally receives information about individual legal claims when further direction is required.<sup>487</sup>

We note that at least two of the five Comparator Associations have a board committee tasked specifically with a risk management mandate. Canada Soccer’s risk management committee has a similar mandate to that of Hockey Canada’s: it assists the directors in fulfilling their duty of care with respect to the safety, security and integrity of the operations of Canada Soccer, and provides oversight and makes policy recommendations regarding significant hazards and risks.<sup>488</sup>

Although the COC Code’s template audit and finance committee terms of reference includes the responsibility for risk management, we recommend that Hockey Canada continue with its practice of having a standalone Risk Management Committee. Given recent events and the current climate at Hockey Canada, risk management ought to be a topic of great priority and importance to the organization and requires the attention of a subject expert committee than can focus on the challenging and immediate risk management issues currently facing Hockey Canada. In that regard, we are also of the view that Hockey Canada’s Risk Management Committee should receive frequent reports from relevant staff and advise the Board on any material government investigations, litigation, contractual disputes, or legal matters, a responsibility that currently lies solely with the Audit and Finance Committee. This role should be entrenched in the Risk Management Committee’s Terms of Reference, as it is currently only an occasional and secondary role. We provide further commentary on the Risk Management Committee in Chapters VII and VIII.

#### (d) Nominating Committee

For a detailed discussion on Hockey Canada’s Nominating Committee, please refer to section B(iii) 4 of this Chapter.

#### (e) Governance Committee

Hockey Canada’s Governance Committee is composed of the Committee Chair (a Director appointed by the Chair of the Board), between four to eight members (appointed by the Board and including the Chair), the CEO (as ex-officio member) and the President and COO (as non-voting members).

COC Code’s template terms of reference recommends that the committee have at least one independent director.<sup>489</sup> For the 2021-2022 season, Hockey Canada’s Governance Committee

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<sup>487</sup> Email to Nadia Effendi from Mary Anne Veroba (17 October 2022); Email to Nadia Effendi from Blaire Peterson (13 October 2022).

<sup>488</sup> “Canada Soccer By-laws” (May 2022), s 9.01(iv) online (pdf): *The Canada Soccer Association Incorporated* <[https://www.canadasoccer.com/wp-content/uploads/2021/05/CSA-GC-By-laws-2022-EN\\_Final.pdf](https://www.canadasoccer.com/wp-content/uploads/2021/05/CSA-GC-By-laws-2022-EN_Final.pdf)>.

<sup>489</sup> ““Independent” means that a director has no fiduciary obligation to any body for the subject sport at the national or provincial level, receives no direct or indirect material benefit from any such party, and is free of any conflict of interest of a financial, personal or representational nature (provided that participating in the NSO’s sport does not alone cause a person not to be Independent).” “Canadian Sport Governance Code” (April 2021) at 3, online: *Canadian*

members included three Directors and two Member Presidents.<sup>490</sup> As indicated by the COC Code, we recommend that the Governance Committee have one member who is not a Director and who is independent from other provincial and local hockey associations. This would allow for a fresh and unbiased contribution to the corporation's governance matters. We also recommend that such person have significant experience in board governance matters.

Hockey Canada's Governance Committee is responsible for advising the Board on matters relating to the Board's governance structure, processes and policies, evaluation of the Board's effectiveness, education and evaluation of Directors, and for establishing policies on hiring and evaluating the CEO.<sup>491</sup> The committee is also responsible for overseeing the implementation of the following policies: president hiring, non sanctioned hockey, trophy, Hockey Canada representative on other sport federation's boards, Hockey Canada trademark, official languages, COI, record keeping, transfer agreements, and appeals.

We have the following observations and recommendations with respect to the Governance Committee.

As mentioned above, the Governance Committee should expand its responsibilities in relation to training and evaluation of the Directors and the Board. In addition, the Governance Committee should take over the following responsibilities from the Human Resources Committee: establishing self-assessment tools for Directors and the Board, ensuring there is proper orientation, support and continuing education for the Directors, and ensuring there is an annual evaluation of the performance of individual Directors and the Board as a whole. To help support the Governance Committee with those functions, we recommend that Hockey Canada retain the services of a reputable governance consultant who can serve as a resource person and advisor, as needed.

Again, we note that the COC Code's template terms of reference suggests that a NSO should have a committee focused on governance and ethics. We also note that none of the terms of reference that we reviewed for each of the standing committees provide for duties relating to Board ethics and Director behaviour. To be clear, we are not suggesting that any of the Hockey Canada committees or Directors have acted unethically. However our review did identify this content gap in the committee's written terms of reference. For those reasons, we recommend that the Board amend the terms of reference of the Governance Committee and attribute to it responsibility for matters relating to Board ethics and Director conduct. For instance, as part of its ethics duties, the Governance Committee should be responsible for reviewing the Directors' Code of Conduct.

Third, although there is no reporting relationship between the Governance Committee and the Nominating Committee (both report to the Board), pursuant to its Terms of Reference, the Governance Committee makes recommendations to the Board and the Nominating Committee with respect to the structure and functioning of the Board to ensure that policy governance is successfully implemented and maintained. It also makes recommendations to the Board to assist

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*Olympic Committee – NSO Sharing Centre* <[https://nso.olympic.ca/wp-content/uploads/2021/10/Canadian\\_Sports\\_Governance\\_Code.pdf](https://nso.olympic.ca/wp-content/uploads/2021/10/Canadian_Sports_Governance_Code.pdf)>.

<sup>490</sup> 2021-22 Hockey Canada Standing Committees of the Board (26 August 2022) at 1.

<sup>491</sup> "Hockey Canada By-Laws, Regulations and History" (May 2022), s 50.1, online (pdf): *Hockey Canada* <<https://cdn.hockeycanada.ca/hockey-canada/Corporate/About/Downloads/2022-23-bylaws-e.pdf>>.

the Nominating Committee in identifying ideal candidate profile(s), skills matrix and diversity needs. Hockey Canada staff are unaware of any situation where the Governance Committee has made any recommendations to the Nominating Committee.<sup>492</sup> We recommend that the terms of reference of both committees be reviewed and revised to remove all duplication of responsibilities and ensure there are no gaps or omissions.

Subject to the above, Hockey Canada's Governance Committee is generally consistent with the Comparator Associations. Although Athletics Canada has a combined Governance & Nominating Committee, the committee's governance-focused responsibilities are similar to those of Hockey Canada's Governance Committee.<sup>493</sup> At Curling Canada, the Nominations Committee is a sub-committee of the Governance Committee, but its mandate is similar to that of Hockey Canada's Governance Committee.<sup>494</sup> The mandate of Canada Soccer's Governance Committee is also similar.<sup>495</sup>

#### (f) Program Standards Committee

The Program Standards Committee is one of the six standing committees set out in the By-laws. Pursuant to the By-laws and the committee's terms of reference, the Program Standards Committee is responsible for the general oversight of Hockey Canada programs by ensuring the establishment of program practice standards and for monitoring compliance with such standards and performance of programs against approved objectives.<sup>496</sup> One of the Committee's key duties is to ensure that Hockey Canada's Members deliver programs and services consistent with national standards.<sup>497</sup> The committee is also responsible for overseeing the implementation of the following policies: forfeiture, hockey helmet, and individual program policies. The committee's terms of reference provide that the committee is composed of the Committee Chair (a Director appointed by the Chair of the Board) and between four to eight members (appointed by the Board and including the Chair).

Hockey Canada has advised that the Program Standards Committee ceased to be an active committee in or about 2018 when Hockey Canada created the Member Engagement department and the position of Vice President, Member Engagement, who would lead that department.<sup>498</sup> We understand that senior leaders in office at the time, including the CEO and COO, were of the view that the work performed by the Program Standards Committee was operational in nature and it would be appropriate to move those functions to staff working within the Member Engagement

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<sup>492</sup> Email to Victoria Prince from Sean Kelly (15 September 2022).

<sup>493</sup> "Athletics Canada Bylaws" (January 2022) at 16, online (pdf): *Athletics Canada* <<https://athletics.ca/wp-content/uploads/2022/01/Athletics-Canada-Bylaws-January-2022.pdf>>.

<sup>494</sup> Curling Canada, "Policy Manual" (May 2021) at 21, online (pdf): *Curling Canada* <<https://www.curling.ca/files/2021/06/POLICY-MANUAL-May-2021-edition.pdf>>.

<sup>495</sup> "Canada Soccer By-laws" (May 2022), s 9.01(iii) online (pdf): *The Canada Soccer Association Incorporated* <[https://www.canadasoccer.com/wp-content/uploads/2021/05/CSA-GC-By-laws-2022-EN\\_Final.pdf](https://www.canadasoccer.com/wp-content/uploads/2021/05/CSA-GC-By-laws-2022-EN_Final.pdf)>.

<sup>496</sup> "Hockey Canada By-Laws, Regulations and History" (May 2022), s 49.1, online (pdf): *Hockey Canada* <<https://cdn.hockeycanada.ca/hockey-canada/Corporate/About/Downloads/2022-23-bylaws-e.pdf>>.

<sup>497</sup> "Hockey Canada Terms of Reference" (updated to 18 March 2022) at 39.

<sup>498</sup> "Email to Sylvie Lalonde from Pat McLaughlin" (25 October 2022).

department. Based on our review of the committee’s Term of Reference, we agree that the committee’s duties appeared to be operational.

At this time, Hockey Canada does not intend to revive the Program Standards Committee and is considering creating another staff position, “Director of Program Implementation” to take on additional responsibilities that the now-defunct committee might have otherwise been asked to perform. Given the status of the Program Standards Committee, we recommend that the Board formally dissolve the committee and repeal its terms of reference, and that all references to the Program Standards Committee be deleted from the By-laws.

(g) Female Hockey Policy Committee

The Female Hockey Policy Committee (the “**FHP Committee**”) is “responsible for monitoring the needs of the Female hockey player playing either in “Female Only” Divisions or on hockey teams that include non-female players and making such recommendations to the Board as it deems appropriate to address those needs.”<sup>499</sup> The Committee’s Terms of Reference provide that the FHP Committee is composed of the Committee Chair (appointed by the Board Chair), up to three other people (appointed by the Board), one Director (liaison), staff resource person(s) such as the General Counsel or VP Grow the Game, and the CEO, President and COO (each as ex-officio members). Hockey Canada has advised that it no longer has a “VP Grow the Game” and that the Director, Women & Girls Hockey is the person invited to serve on the FHP Committee instead.

The FHP Committee was established in 2019. Its specific duties include: fostering and encouraging policies for the development approach to the teaching of the game to female hockey players, reviewing and considering audits on the state of “female only” hockey and make recommendations for improving policies related to the game for all female players.<sup>500</sup> In addition to the duties set out in its Terms of Reference, the FHP Committee hosts forums and other events dedicated to promoting female hockey and females in hockey.

For example, the FHP Committee hosted a virtual National Forum and Women’s Hockey Summit on May 8 and 9, 2021 with female hockey leaders and advocates from each Member of Hockey Canada, as well as other leaders from the Members and Hockey Canada.<sup>501</sup> The Women’s Hockey Summit on Day 2 was an open event where Canadian hockey administrators, coaches, officials, players, and parents were able to attend in addition to all Day 1 participants. One of the objectives of that event was to engage with the collective of people involved in hockey in Canada and gather information to inform a set of recommendations aimed at moving towards gender equity in the sport of hockey. The FHP Committee compiled its 11 recommendations into three key themes:<sup>502</sup>

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<sup>499</sup> “Hockey Canada Terms of Reference” (updated to 18 March 2022) at 60.

<sup>500</sup> Interview of Female Hockey Policy Committee (Stephanie White, Chair, and Barry Reynard, Board Liaison) (17 October 2022).

<sup>501</sup> “Female Hockey Policy Committee National Forum & Women’s Hockey Summit Executive Summary Report (8-9 May 2021) at 1.

<sup>502</sup> “Female Hockey Policy Committee National Forum & Women’s Hockey Summit Executive Summary Report” (8-9 May 2021) at 2.

1. Investment – Investing in women is an opportunity to strengthen society

Example recommendation: “Provide opportunities for girls to play with girls at all levels. This is often missing at the youngest levels. Start-up funding for female hockey associations is required to support this area.”

2. Equity – Gender equity means fairness of treatment for men and women according to their respective needs

Example recommendation: “A statement be released by Hockey Canada endorsing regulatory changes by Members that support the advancement of female hockey and females in hockey (i.e., flexibility in age division modifications, transfers, double carding, zoning, etc.)”.

3. Visibility – Representation matters – in all roles and at all levels of the game

Example recommendation: “Establish gender equity in all levels of leadership across Hockey Canada Members by following Hockey Canada’s lead and implementing a Board gender equity policy (across all Hockey Canada Members to all Local Hockey Associations)”.

We highlight those recommendations as they are directly tied to the “Women and Girls Hockey Plan” identified as part of Hockey Canada’s “Focused Growth and Retention” strategy.<sup>503</sup> In our view, the existence of the FHP Committee demonstrates that Hockey Canada is committed to addressing the issue of females in hockey and that the Board has chosen to give that issue prominence by exercising an oversight function of that initiative through that committee. In addition, the Chair of the FHP Committee stated that the committee’s status as a Board committee provides a critical connection between the Board and the Members, and enhances the committee’s ability to influence meaningful changes that affect female hockey players.<sup>504</sup> This structure, along with the presence of a Director on the committee, gives the Chair of the FHP Committee easy access to the Board and Board Chair and provides a platform where ideas and recommendations can be made directly to the top leaders of Hockey Canada.

We observed no similar board committees at Comparator Associations or in the COC Code. Nevertheless, we are of the view that the FHP Committee plays a critical role in advancing a clearly defined strategic plan objective and initiative and we encourage Hockey Canada to maintain this committee.

## 2.2 Task Teams

As mentioned above, Task Teams may be established by the Chair of the Board (in consultation with the Board, the CEO, the President and Chief Operating Officer) to undertake a specific task

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<sup>503</sup> Hockey Canada, “Strategic Plan 2022-2026” at 21.

<sup>504</sup> Interview of Female Hockey Policy Committee (Stephanie White, Chair, and Barry Reynard, Board Liaison) (17 October 2022).

or project to be completed within a defined period of time.<sup>505</sup> Task Teams are typically created between November and January and they operate on an annual basis.<sup>506</sup> A Task Team will be dissolved once it has accomplished its task or project.<sup>507</sup> Task Teams are generally struck following the request of a Member or from the initiative of the Board Chair.<sup>508</sup> More recently, there has been an effort to ensure the goal of a Task Team stems from a need identified within the strategic plan or an issue the Board feels needs attention.<sup>509</sup> The Task Teams Terms of Reference provide that a Task Team “will maintain minutes of its meetings and will make those minutes available to the Board.”<sup>510</sup>

Task Team chairs and members are appointed by the Chair of the Board. Task Teams also include a Director, appointed by the Chair of the Board, who serves in a non-voting role to act as a liaison between the Task Team and the Board. Each Task Team must be comprised of four to eight members, including the Task Team Chair, but not including the appointed Director.

Like standing committees, Task Teams have their own mandates and Terms of Reference. Task Teams also have Charters which detail the Task Team’s specific mandate, key action items, budget considerations, and how success will be measured. In addition to this, a Task Team Tracker exists to keep track of the overall status of a Task Team’s action items in relation to its due dates.

At the time of this review, Hockey Canada’s active Task Teams are the following:

- Gender Expression and Identity
- Canadian Development Model – Minor
- Canadian Development Model – Female
- Canadian Development Model – Junior
- Coaching
- Officiating
- Financial Accessibility to Hockey
- Rules Review
- Officiating Curriculum (ad hoc)

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<sup>505</sup> “Hockey Canada By-Laws, Regulations and History” (May 2022), s 51.1, online (pdf): *Hockey Canada* <<https://cdn.hockeycanada.ca/hockey-canada/Corporate/About/Downloads/2022-23-bylaws-e.pdf>>.

<sup>506</sup> Interview with Sean Kelly and Pat McLaughlin, October 18, 2022.

<sup>507</sup> “Hockey Canada By-Laws, Regulations and History” (May 2022), s 51.1, online (pdf): *Hockey Canada* <<https://cdn.hockeycanada.ca/hockey-canada/Corporate/About/Downloads/2022-23-bylaws-e.pdf>>.

<sup>508</sup> Interview with Sean Kelly and Pat McLaughlin, October 18, 2022.

<sup>509</sup> Interview with Sean Kelly and Pat McLaughlin, October 18, 2022.

<sup>510</sup> “Hockey Canada Terms of Reference” (updated to 18 March 2022) at 43.

Basketball Canada, Athletics Canada, Curling Canada and Soccer Canada all have ad hoc committees, task forces or temporary work groups like Hockey Canada that function in a very similar fashion.<sup>511</sup>

Hockey Canada has communicated to us that Task Teams are most useful when they are created to meet a specific need of the corporation and when a Task Team’s objective is too broad or runs long term, the Task Team tends to become unproductive.

Task Teams are another way of referring to “task forces” or “temporary work groups”. These types of committees “allow boards to tackle immediate issues [...] quickly and efficiently without rethinking the whole committee structure or assignments.”<sup>512</sup> Task forces are often able to “accomplish a great deal with their focused, short-term assignments.”<sup>513</sup> Some authors consider “a lean committee structure supported by task forces to be the best way to help the board accomplish its work.”<sup>514</sup> We are of the view that the practice of Hockey Canada’s Board to establish and rely on Task Teams to carry out specific and short-term functions can be an effective and useful way of transacting specialized board business. Task Teams should be established in a way that allows for effective and efficient delegation of work to a small group of people and produces work that is of the highest quality and relevance to the Board’s work. The work delegated to a Task Team ought to be directly related to the strategic objectives and priorities established by the Board. That said, we do not believe that the three Canadian Development Model Task Teams, in particular, should function as Task Teams. These Task Teams were not established for a specific and short-term goal. Rather, they have broad and longer-term objectives. As such, we believe the Canadian Development Model Task Team responsibilities would be more appropriately carried out by an operational committee or staff. We recommend that the Board, in consultation with the CEO re-evaluate all Task Teams and their respective Terms of Reference and Charter to determine whether a Task Team appropriately exists for a specific and short-term function related to the strategic plan and the Board’s functions. If they do not, we recommend that Hockey Canada reconstruct these Task Teams into operational committees or other forms of working groups.

In addition, Task Teams should be populated by Directors and non-Directors who have the right mix of skills and competencies to tackle the particular issue and tasks that the Task Team is being established to consider and perform. Task Teams should include subject experts and key stakeholders who will be able to contribute high quality and relevant work to the Task Team, and by extension, to the Board’s work. To ensure the most appropriate individuals are selected for Task Teams, staff and the Board should be consulted as to whom they would consider a valuable addition to the Task Team.

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<sup>511</sup> “Bylaw #1 Canada Basketball” (25 May 2014), s 3.37, online (pdf): *Canada Basketball* <[https://assets.website-files.com/5d24fc966ad064837947a33b/5d40ccb3625e7f8a09193ca2\\_Canada\\_Basketball\\_Bylaws\\_2014\\_revision.pdf](https://assets.website-files.com/5d24fc966ad064837947a33b/5d40ccb3625e7f8a09193ca2_Canada_Basketball_Bylaws_2014_revision.pdf)>; “Athletics Canada Bylaws” (January 2022) at 14, online (pdf): *Athletics Canada* <<https://athletics.ca/wp-content/uploads/2022/01/Athletics-Canada-Bylaws-January-2022.pdf>>; “Policy Manual” (May 2021) at 18, online (pdf): *Curling Canada* <<https://www.curling.ca/files/2021/06/POLICY-MANUAL-May-2021-edition.pdf>>; “Canada Soccer By-laws” (May 2022), s 9.02, online (pdf): *The Canadian Soccer Association Incorporated* <[https://www.canadasoccer.com/wp-content/uploads/2021/05/CSA-GC-By-laws-2022-EN\\_Final.pdf](https://www.canadasoccer.com/wp-content/uploads/2021/05/CSA-GC-By-laws-2022-EN_Final.pdf)>

<sup>512</sup> Ellen Hirzy, ed, *Nonprofit Board Committees* (Washington, DC: BoardSource, 2018), at p 12.

<sup>513</sup> Ellen Hirzy, ed, *Nonprofit Board Committees* (Washington, DC: BoardSource, 2018), at p 27.

<sup>514</sup> Ellen Hirzy, ed, *Nonprofit Board Committees* (Washington, DC: BoardSource, 2018), at p 27.

To the extent that Task Teams are being used in the above fashion, we think that they should continue to form part of the Board overall committee structure.

While it is important for the Board to have a solid foundation of board committees and temporary work groups to assist it with its work, we want to emphasize that the Board should use Task Teams thoughtfully and always consider whether the Board has sufficient bandwidth to support the number of Task Teams that are struck at any given time. Overuse of Task Teams that require the participation of many Directors may exert a strain on already busy Directors, which might impact the quality of the work and tasks being performed not only by the Task Teams themselves, but by the Board as a whole.

### 2.3 Meetings of Members, Forums and Congresses

Although not committees, the By-Laws provide for three types of meetings Members can attend, namely, Members' Meetings (including the annual meeting and special meetings), Congresses and Members Forums.

In accordance with the CNCA, Hockey Canada must hold the annual meeting no later than six months after the end of its preceding financial year and no later than 15 months after its previous annual meeting.<sup>515</sup> The annual meeting is an opportunity for Members to participate in the governance of the organization. Pursuant to the By-laws, the order of business for the annual meeting includes (among other items) reports by the Chair of the Board and the CEO, the approval of financial statements, the appointment of auditors and the election of the Directors and Board Chair.<sup>516</sup> The Members' right to approve the financial statements is also set out at section 59.2 of the By-laws.<sup>517</sup> We note that the approval of financial statements is not a typical function of the Members. Under the CNCA,<sup>518</sup> it is the directors of a corporation and not its members who are required to approve financial statements. The rationale is that the directors are fiduciaries who are required to act with care, diligence and with a view to the best interests of the corporation. As such, they are expected to have in-depth knowledge of the corporation's finances and exercise oversight of its general financial affairs. While members are entitled to appoint the auditor<sup>519</sup> and to receive and consider the audited financial statements of the corporation under the CNCA,<sup>520</sup> they are not fiduciaries and are not as intimately familiar with the corporation's finances. For those reasons, we are of the view that the Members of Hockey Canada should not be asked to approve the financial statements and that only the Directors should be required to approve the financial statements in accordance with the CNCA. We also recommend that Hockey Canada amend the By-laws to remove all language that provides for the Members' right to approve the financial

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<sup>515</sup> *Canada Not-for-profit Corporations Act*, SC 2009, c 23, s 160; "Hockey Canada By-Laws, Regulations and History" (May 2022), s 21.1, online (pdf): *Hockey Canada* <<https://cdn.hockeycanada.ca/hockey-canada/Corporate/About/Downloads/2022-23-bylaws-e.pdf>>.

<sup>516</sup> "Hockey Canada By-Laws, Regulations and History" (May 2022), s 21.2, online (pdf): *Hockey Canada* <<https://cdn.hockeycanada.ca/hockey-canada/Corporate/About/Downloads/2022-23-bylaws-e.pdf>>.

<sup>517</sup> "Hockey Canada By-Laws, Regulations and History" (May 2022), s 59.2, online (pdf): *Hockey Canada* <<https://cdn.hockeycanada.ca/hockey-canada/Corporate/About/Downloads/2022-23-bylaws-e.pdf>>.

<sup>518</sup> *Canada Not-for-profit Corporations Act*, SC 2009, c 23, s 178(1).

<sup>519</sup> *Canada Not-for-profit Corporations Act*, SC 2009, c 23, s 181(1)

<sup>520</sup> *Canada Not-for-profit Corporations Act*, SC 2009, c 23, s 162(9).

statements and to instead provide that the Directors shall be the ones responsible for approving them.

Congresses are at the call of the Board and may focus on issues including the execution of Board priorities, technical workshops, professional development, policy issues and governance.<sup>521</sup> Members are entitled to attend them.<sup>522</sup> In practice, each Congress is a two to three day seasonal meeting. The event normally includes workshops and education sessions, along with more formal meetings.

The By-laws also provide for a Member Forum, which “shall provide an opportunity for discussion and communication between representatives of the Members and the Board regarding key issues.”<sup>523</sup> The Member Forum consists of the Chair and Executive Director of each Member, as well as the Directors and certain senior executives of Hockey Canada. The Forum is usually held three times each year – one at each of the Spring and Winter Congresses.<sup>524</sup> The third is typically held during the Annual Meeting.<sup>525</sup> It is a recommending body that has no decision-making authority.<sup>526</sup> Reports (written or oral) and presentations are provided from committees and task teams during Members Forums.<sup>527</sup>

These types of meetings are particularly important for engaging with Members and we recommend that they be preserved in some fashion. These events should be maximized and utilized by the Board as a tool to engage with and report to Members in a thoughtful way. Hockey Canada’s Board and staff should ensure that reports and presentations made at these meetings are detailed, open and transparent and should ensure that Members have ample opportunity for discussion and questions. Such reports should form part of an ongoing, cyclical reporting practice (e.g., quarterly) whereby the Board keeps Members apprised of developments on key issues such as risk, growth plans, state of operations, needed disclosures, cases being settled, etc.

We also recommend that minutes be taken and kept for all meetings of Members, Forums and Congresses. Hockey Canada should designate a resource person and/or secretary who can assist with minute taking and preparation of reports to Members, as needed. We also recommend that a schedule be published on Hockey Canada’s website detailing the dates that regular Board and Member meetings occur. This would assist in clearly demonstrating how often the Board discusses, as well as how often the Board engages with its Members.

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<sup>521</sup> “Hockey Canada By-Laws, Regulations and History” (May 2022), s 23.1, online (pdf): *Hockey Canada* <<https://cdn.hockeycanada.ca/hockey-canada/Corporate/About/Downloads/2022-23-bylaws-e.pdf>>.

<sup>522</sup> “Hockey Canada By-Laws, Regulations and History” (May 2022), s 10.1, online (pdf): *Hockey Canada* <<https://cdn.hockeycanada.ca/hockey-canada/Corporate/About/Downloads/2022-23-bylaws-e.pdf>>.

<sup>523</sup> “Hockey Canada By-Laws, Regulations and History” (May 2022), s 42.1, online (pdf): *Hockey Canada* <<https://cdn.hockeycanada.ca/hockey-canada/Corporate/About/Downloads/2022-23-bylaws-e.pdf>>.

<sup>524</sup> “Hockey Canada By-Laws, Regulations and History” (May 2022), s 43.1, online (pdf): *Hockey Canada* <<https://cdn.hockeycanada.ca/hockey-canada/Corporate/About/Downloads/2022-23-bylaws-e.pdf>>; “Hockey Canada Terms of Reference” (updated to 18 March 2022) at 10.

<sup>525</sup> Email to Victoria Prince from Sean Kelly (15 September 2022).

<sup>526</sup> “Hockey Canada Terms of Reference” (updated to 18 March 2022) at 10.

<sup>527</sup> “Board and Member Forum Reports: Committees, Work Groups and Task Teams” (15-16 November 2019).

With time, such practices along with other Member engagement strategies will help Hockey Canada regain the trust of its Members and that of Participants and Canadians at large.

#### 2.4 Final observations and recommendations on committee structure

Hockey Canada is a large and complex organization. In addition, it has multiple and sophisticated revenue streams. On paper and subject to some exceptions, Hockey Canada generally has the right complement of Standing and Board Committees, and the terms of reference of the various committees do not reveal any significant deviations from what we would normally expect for a not-for-profit corporation. However, as mentioned above, there is some duplication of duties in some committees, and consideration should be given as to whether some duties should be shifted from one committee to another. Furthermore, the duties and functions of the various committees are often described in the terms of reference in a vague or unclear manner. We also noted that the terms of reference do not, in every instance, accurately reflect what the Committees and Task Teams are actually doing.

Our examination of Hockey Canada's governance policies and practices suggest that certain aspects of the current committee structure and the language of the terms of reference may have lost some of their relevance or outgrown some of their usefulness given the current climate and, in particular, as a result of the challenges arising out of the organization's management of the NEF. Hockey Canada is at a critical juncture and will soon be governed by a new transitional Board. If our recommendation is adopted, the Board's size will also be increasing next year. We have heard from a number of Directors that they are members of too many committees and that Directors spend too much time discussing operational matters, which significantly increases the hours that a Director devotes to Hockey Canada. As Hockey Canada's and the new Board's strategic priorities and objectives change, the number, size and mandates of the Board committees are also likely to need further internal assessment and review.

In our view, now is an opportune time for this and we recommend that Hockey Canada conduct an in-depth review of its committee structure with a view to: 1) streamlining and maintaining core committees focused on meeting the needs of the new Board; 2) restructuring or disbanding Committees or Task Teams that have lost their relevance or that are operationally focused and perform staff functions; and 3) developing a suite of new, refreshed and robust terms of reference that clearly define each committee's mandate and role, its key duties and functions, what it is responsible for achieving, and to whom it reports and is accountable. We also recommend that, for greater flexibility, the By-laws be amended to remove details of any particular committee structure and instead include only general language that provides for the Board's authority to establish and disband committees and working groups as needed.

### 3. Mechanisms for reporting to the Board by Board committees and Task Teams

This section reviews how Board committees and Task Teams report to the Board. Chapter IX, on the other hand, will discuss how staff and operational committees report to the Board.

Several people we interviewed expressed concern that the Directors dedicate too many hours to Hockey Canada per year. Based on our conversations with Hockey Canada Directors, all

committees provide written reports to the Board approximately fifteen days prior to Board meetings. A Director suggested that, given the number of committees, Directors often receive 200-250 pages of written committee reports, which are circulated in advance of Board meetings. They suggest this is too much.

With respect to Task Teams specifically, some Task Teams provide periodic updates to the Board, while other Task Teams, primarily those that are most operational, report back to the Board only when their task is complete.<sup>528</sup> A Task Team’s reporting style depends on the instructions provided to it by the Board.<sup>529</sup>

We agree that it is a good governance practice for Board committees and Task Teams “to provide [...] reports and information sufficiently in advance of the meeting to allow directors to come to the meeting prepared.”<sup>530</sup> Other Comparator Associations follow this practice. Curling Canada’s committees annually create and report to the board on a work plan, maintain a suite of documents suitable for briefing new directors on the role, background, and work of the committee, and regularly update the board on committee activities.<sup>531</sup> Canada Soccer’s committees report to the board by way of written reports.<sup>532</sup> Athletics Canada also submits reports to the board in advance of their meetings.<sup>533</sup>

It is important for committees to have an organized, consistent and well-documented system for communicating with the board.” In addition, committees and Task Teams should make their reports available to the Board well in advance of Board meetings, ideally about two weeks prior,<sup>534</sup> to give Directors sufficient time to review the material and prepare for the meeting.

With respect to the contents of written committee reports, these “should be presented in the context of the strategic picture – a reminder of the strategic objective with some updates.”<sup>535</sup> As noted above, Directors are busy and are volunteers. Reports “should be presented in a concise way so that [Directors] can grasp the details quickly.”<sup>536</sup> Where “committee reports are confusing or incomplete, the board may waste time at meetings asking questions to get the missing information.”<sup>537</sup> In other words, committees should include in their reports concise background information on their work, “but not a detailed account.”<sup>538</sup> As a general rule:

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<sup>528</sup> Interview with Sean Kelly and Pat McLaughlin, October 18, 2022.

<sup>529</sup> Interview with Sean Kelly and Pat McLaughlin, October 18, 2022.

<sup>530</sup> Anne Corbett & James M Mackay, *Guide to Good Governance: Not-for-Profit and Charitable Organizations*, 2nd ed (September 2013) at 163.

<sup>531</sup> Curling Canada, “Policy Manual” (May 2021) at p 17, 18 online (pdf): *Curling Canada* <<https://www.curling.ca/files/2021/06/POLICY-MANUAL-May-2021-edition.pdf>>.

<sup>532</sup> Interview with Canada Soccer, September 12, 2022.

<sup>533</sup> Interview with Athletics Canada, September 26, 2022.

<sup>534</sup> Ellen Hirzy, ed, *Nonprofit Board Committees* (Washington, DC: BoardSource, 2018), at p 22.

<sup>535</sup> Ellen Hirzy, ed, *Nonprofit Board Committees* (Washington, DC: BoardSource, 2018), at p 22.

<sup>536</sup> Ellen Hirzy, ed, *Nonprofit Board Committees* (Washington, DC: BoardSource, 2018), at p 22.

<sup>537</sup> Ellen Hirzy, ed, *Nonprofit Board Committees* (Washington, DC: BoardSource, 2018), at p 22.

<sup>538</sup> Ellen Hirzy, ed, *Nonprofit Board Committees* (Washington, DC: BoardSource, 2018), at p 22.

Reports “may include a request to the [B]oard for feedback on an idea, an emerging direction with salient pros and cons, or a recommendation for board action. If the committee is not making a recommendation or requesting feedback, it should submit a progress report for the board’s information only, with no discussion needed during the board meeting.”<sup>539</sup>

We recommend that Hockey Canada committees and Task Teams continue to provide written reports to the Board sufficiently in advance of Board meetings. We also recommend that committees and Task Teams adopt a consistent form of report that is clear, concise and impactful, and that is focused on providing information to Directors that is directly related to the strategic objectives of Hockey Canada and not on operational details. The form of report should be streamlined and organized in a way that allows all standing committees and Task Teams to report to the Board in a consistent way, with themes that are focused on strategic outcomes and effectiveness, and assist the Board in carrying out its functions and fiduciary oversight. To that end, executive summaries and dashboard reporting can be particularly helpful. Some committee members and members of the senior leadership team informed us that some of those strategic alignment tools, such as dashboards, initiative trackers and scorecards have started to be developed and deployed within the organization with the objective of improving communications and reporting between senior staff, committees and Board. We support those steps and encourage Hockey Canada to continue its efforts in that regard.

Committee reports should be approved by the Chair of the committee and each committee should have a dedicated resource person and/or secretary who can assist with minute taking and preparation of reports. In addition, the minutes of all Standing Committees and Task Teams meetings should be made readily and easily available to all Directors so they can be consulted by them if they require or desire additional detail. We understand that the Hockey Canada Board uses a SharePoint site or Board portal to facilitate the Directors’ access to relevant corporate and governance-related documents, and meeting materials as needed and on a timely basis. We encourage the continued use of such tools.

**C. Conclusion and summary of recommendations in light of observations and best practices**

Terms of Reference Question	Response
<p>2. Are the organization’s By-Laws concerning the constitution and operation of the Board of Directors in line with current best practices, appropriate or require amendments?</p>	<p>- The current By-laws are not significantly misaligned with the points of reference that we examined (i.e. Sports Canada’s Governance Principles for Sport Organizations, the Canadian Sport Governance Code, Athletics Canada Athlétisme Canada, Canada Basketball, Curling Canada, Canada Soccer and Tennis Canada).</p>

<sup>539</sup> Ellen Hirzy, ed, *Nonprofit Board Committees* (Washington, DC: BoardSource, 2018), at p 22.

Terms of Reference Question	Response
	<ul style="list-style-type: none"> <li>- However, as set out above, we have several suggested changes.</li> </ul>
<p>a. Recognizing the Board’s current composition, are there recommended changes to the organization’s governance structure that would support and further enhance the diversity of the Board?</p>	<ul style="list-style-type: none"> <li>- Yes.</li> <li>- Amend the corporation’s Articles to increase the maximum number of Directors from 9 to 13.</li> <li>- Amend the By-laws to provide that the Board will consist of a number of Directors between the minimum and maximum number of Directors specified in the Articles, rather than prescribing a fixed number.</li> <li>- Amend the By-laws to provide that no more than 60% of the Directors are of the same gender, to bring this aspect in line with the COC Canadian Sport Governance Code.</li> <li>- Amend the By-laws to provide that the Board will include at least one athlete representative, who will be nominated by the Nominating Committee with significant input from hockey players.</li> <li>- Amend the By-laws to provide that at least a majority of the Directors on the Board be persons who, at the time of their election, are independent of Hockey Canada. By “independent” we mean a person who at the time of their election as a Director is not: a) an employee of Hockey Canada; b) an officer, director or employee of any Member of Hockey Canada (a “HC Member”); c) an officer, director or employee of an organization that is a member of a HC Member (including without limitation a local Minor Hockey Association); or d) an officer, director or employee of any other hockey club, league or team.</li> <li>- See our additional recommendations below under “c.” respecting the nominating process.</li> </ul>

Terms of Reference Question	Response
<p>b. Are current terms and term limits aligned with best practices?</p>	<ul style="list-style-type: none"> <li>- There are no significant divergences from best practices, but the following measures would strengthen the Board’s capacity:</li> <li>- Increase the Directors’ terms to up to three years from two;</li> <li>- Stagger Directors’ terms so that only about one third of the Board would be up for re-election in any year;</li> <li>- Increase term limit to nine consecutive years from eight (e.g. three consecutive terms of three years);</li> <li>- Increase term limit of the Board Chair to six consecutive years from four to align with the new three-year term for Directors (e.g. two consecutive terms of three years).</li> </ul>
<p>c. Does the nominating process need to be amended?</p>	<ul style="list-style-type: none"> <li>- Yes.</li> </ul> <p>Nominating Committee</p> <ul style="list-style-type: none"> <li>- The Nominating Committee should be comprised of up to nine individuals and that the fixed number always be an odd number.</li> <li>- The Nominating Committee should be constituted as follows: <ul style="list-style-type: none"> <li>o The majority of the committee members would be individuals who are at arm’s length from the Board (“Independents”). The Independents, who should be highly qualified and diverse, would be appointed by the Board with the assistance of a reputable board recruitment firm hired by Hockey Canada.</li> <li>o The Members of Hockey Canada, collectively, would be entitled to appoint up to two individuals to serve on the Nominating Committee.</li> </ul> </li> </ul>

Terms of Reference Question	Response
	<ul style="list-style-type: none"> <li>○ At least one member of the Nominating Committee would be an athlete representative, who would be appointed by the Board of Hockey Canada with significant input from hockey’s athletes.</li> <li>○ At least one and up to two Directors of the Hockey Canada Board would be appointed by the Board to serve on the Nominating Committee. A Director who is up for re-election in the next election cycle would not be eligible to serve on the Nominating Committee.</li> </ul> <p>- Update or replace the Nominating Committee Terms of Reference to revise its composition and how its members are appointed and to better define the committee’s role and duties.</p> <p>Nominating Process</p> <ul style="list-style-type: none"> <li>- Review and, if required, update the Board Matrix to ensure it reflects the skills, experience and diversity elements that are needed on the Hockey Canada Board; this can be put into effect immediately and should be done annually.</li> <li>- For each election cycle (including the 2022 election), that the Nominating Committee use the Board Matrix as a tool to support the call for nominations and to articulate clearly the specific skills and competencies being sought for the Board positions to be filled.</li> <li>- We strongly encourage the Nominating Committee to engage and consult with a reputable board recruitment firm to assist it with the review of the Matrix and recruitment of qualified candidates to serve as Directors. That firm could be the same recruitment firm retained by Hockey Canada to assist with the recruitment of candidates for the Nominating Committee.</li> <li>- Members (along with the general public and the Nominating Committee) should continue to have the</li> </ul>

Terms of Reference Question	Response
	<p>right to propose candidates for election as Directors. However, none of the names proposed (including those proposed by the Members) should automatically appear on the final ballot. Instead, the Nominating Committee should evaluate all candidates proposed and create a short-list of nominees. Only candidates who qualify and can demonstrate that they possess the skills, competencies, experience and qualities identified by the Nominating Committee (using the Matrix) should be and nominated by the Nominating Committee.</p> <ul style="list-style-type: none"> <li>- Amend the By-laws to provide that all persons proposed for nomination to positions of elected Directors be submitted to the Nominating Committee, who will have the authority to vet and create a short list of candidates to be placed on the election ballot. That includes amending and removing all language in the By-laws and the Nominating Committee Terms of Reference that states or suggests that all nominations of candidates proposed by the Members shall be included in the final ballot for the election of the Directors and the Board Chair. In that regard, we understand that the Members of Hockey Canada have already approved By-law amendments to that effect at a meeting of the Members held on October 15, 2022. That process of vetting, evaluating and shortlisting candidates should be done having regard to the Board Matrix. We recommend that this approach be implemented for the current election cycle and all future ones.</li> <li>- The Members should be entitled to receive regular communications from the Nominating Committee on its recruitment work and given an opportunity to provide comments. The Board should also be entitled to receive such reports and given an opportunity to provide comments.</li> <li>- The Nominating Committee, as part of its right to vet and create a short list of qualified candidates, should have the authority and discretion to determine the number of nominees whose names will be included on the final election ballot, which number could be</li> </ul>

Terms of Reference Question	Response
	<p>equal to or exceed the number of Directors positions available on the Board. In either case, in accordance with the CNCA, the Members must elect the Directors by ordinary resolution.</p> <p>Board Chair</p> <ul style="list-style-type: none"> <li>- Amend the By-laws to provide that the Directors (and not the Members) have the right to appoint the Board Chair.</li> <li>- Revise and update the current “Chair of the Board Terms of Reference” to ensure they are current and include a list of qualities and minimum competencies required of the Board Chair. Such a list should be created and used as part of the current nomination process for the new transition Board Chair.</li> </ul> <p>Appointed Directors</p> <ul style="list-style-type: none"> <li>- Amend the By-laws to provide that the Board may appoint additional Directors within the legal limits imposed by the CNCA, rather than limiting the option to only one additional Director.</li> </ul>
<p>d. Is the structure of the various standing committees and task teams, including their Terms of Reference/mandates and reporting mechanism to the Board, appropriate?</p>	<ul style="list-style-type: none"> <li>- Hockey Canada’s standing committees generally align with the types of standing committees that one would expect in a large not-for-profit organization, namely the Audit and Finance Committee, the Governance Committee, the Human Resources Committee, the Nominating Committee and the Risk Management Committee.</li> <li>- However, as set out above, we have several recommended changes.</li> <li>- Divide the Audit and Finance Committee into two separate committees: an Audit Committee, and a Finance Committee.</li> <li>- Adopt new terms of reference for each of the new Audit Committee and Finance Committee, as we suggest above.</li> </ul>

Terms of Reference Question	Response
	<ul style="list-style-type: none"> <li data-bbox="673 300 1421 441">- Reassess the current duties of the Human Resources Committee and reallocate relevant duties to other committees or staff, with a view to disbanding the Human Resources Committee.</li> <li data-bbox="673 478 1421 693">- Enhance the role of the Risk Management Committee to include receiving regular reports from staff and advising the Board on any material government investigations, litigation, contractual disputes, or legal matters. That role should be entrenched in the Terms of Reference.</li> <li data-bbox="673 730 1421 835">- Have one member of the Governance Committee be someone who is not a Director and who is independent from other provincial and local hockey associations.</li> <li data-bbox="673 873 1421 1306">- Have the Governance Committee take over the following responsibilities from the Human Resources Committee: establishing self-assessment tools for Directors and the Board, ensuring there is proper orientation, support and continuing education for the Directors, and ensuring there is an annual evaluation of the performance of individual Directors and the Board as a whole. To help support the Governance Committee with those functions, we recommend that Hockey Canada retain the services of a reputable governance consultant who can serve as a resource person and advisor, as needed.</li> <li data-bbox="673 1344 1421 1449">- Assign to the Governance Committee responsibility for matters relating to Board ethics and Director conduct.</li> <li data-bbox="673 1486 1421 1663">- Formally dissolve the Program Standards Committee, which has been inactive for approximately four years, and repeal its terms of reference. Remove from the By-laws all references to the Program Standards Committee.</li> <li data-bbox="673 1701 1421 1806">- Maintain the Female Hockey Policy Committee, which plays a critical role in advancing a clearly defined strategic plan objective and initiative.</li> </ul>

Terms of Reference Question	Response
	<ul style="list-style-type: none"> <li data-bbox="673 300 1421 590">- That the Board, in consultation with the CEO re-evaluate all Task Teams and their respective Terms of Reference and Charters to determine whether they exist for a specific and short-term function related to the strategic plan and the Board’s functions. If they do not, we recommend that Hockey Canada reconstruct these Task Teams into operational committees or other forms of working groups.</li> <li data-bbox="673 625 1421 800">- Amend the By-laws to remove all language that provides for the Members’ right to approve the financial statements and to instead provide that the Directors shall be the ones responsible for approving them.</li> <li data-bbox="673 835 1421 1010">- Ensure minutes be taken and kept for all meetings of Members, Forums and Congresses. Hockey Canada should designate a resource person and/or secretary who can assist with minute taking and preparation of reports to Members, as needed.</li> <li data-bbox="673 1045 1421 1451">- Conduct an in-depth review of the overall committee structure with a view to: 1) streamlining and maintaining core committees focused on meeting the needs of the new Board; 2) restructuring or disbanding Committees or Task Teams that have lost their relevance or that are operationally focused and perform staff functions; and 3) developing a suite of new, refreshed and robust terms of reference that clearly define each committee’s mandate and role, its key duties and functions, what it is responsible for achieving, and to whom it reports and is accountable.</li> <li data-bbox="673 1486 1421 1661">- Amend the By-laws to remove details of any particular committee structure and instead include only general language that provides for the Board’s authority to establish and disband committees and working groups as needed.</li> <li data-bbox="673 1696 1421 1871">- Adopt a consistent form of report for Standing Committees and Task Teams that is clear, concise and impactful, and focused on providing information to Directors that is directly related to the strategic objectives of Hockey Canada and not on operational</li> </ul>

<b>Terms of Reference Question</b>	<b>Response</b>
	details. The form of report should be streamlined and organized in a way that allows all Standing Committees and Task Teams to report to the Board in a consistent way, with themes that are focused on strategic outcomes and effectiveness, and assist the Board in carrying out its functions and fiduciary oversight.

## VIII. WAS THE USE OF THE NATIONAL EQUITY FUND APPROPRIATE?

Risk management is an important consideration for all organizations. One of the Board’s core responsibilities is to ensure that risks are identified and that appropriate measures are put in place to address them.

Many not-for-profit corporations create reserve funds as a risk management tool to ensure they have sufficient resources to respond to risks if and when they materialize. Hockey Canada’s National Equity Fund (“NEF”) must be understood and assessed in this context. The key questions for this review are whether the NEF was established properly, and whether Hockey Canada governs the maintenance and use of the Fund appropriately.

### A. Development, Purposes and Funding of the National Equity Fund

#### *i. Introduction*

The NEF has existed in some form since 1986,<sup>540</sup> but its purposes have evolved over time. For this review, its evolution is best divided into three phases – the self-insurance phase (1986–1995), the initial commercial insurance phase (1995–2016), and the current phase (2016–Present).

The NEF is now one element in an interlocking framework, which aims to ensure that Hockey Canada retains adequate resources to meet its potential liabilities and those of its Members, and Participants. The other elements are two distinct funds: the Participants Legacy Trust Fund (the “**Legacy Trust**”) – which while it does not belong to Hockey Canada is for the benefit of its Members – and the Insurance Rate Stabilization Fund (“**IRS Fund**”) along with extensive insurance coverages.

For the purpose of this Chapter, we have defined the following terms:

- **Members** are the provincial, regional or territorial associations/federations that manage and foster amateur hockey within their geographic regions and have the responsibility to represent their constituents.<sup>541</sup> The 13 Members of Hockey Canada currently are: British Columbia Hockey, Hockey Alberta, Hockey Saskatchewan, Hockey Manitoba, Hockey Northwestern Ontario, Ontario Hockey Federation, Hockey Eastern Ontario, Hockey Québec, Hockey New Brunswick, Hockey Nova Scotia, Hockey Prince Edward Island, Hockey Newfoundland and Labrador, and Hockey North. These Members have certain rights and obligations under Hockey Canada’s constating documents.
- **Participant** means all players, coaches, referees, assistant coaches, trainers, managers and volunteers of Hockey Canada and its Members, including local associations and teams.

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<sup>540</sup> Questions Answered by Glen McCurdie, former Vice President of Insurance and Risk at Hockey Canada (dated 29 August 2022).

<sup>541</sup> “Hockey Canada 2020-21 Annual Report” (2020-21) at 5, online (pdf): *Hockey Canada* <<https://cdn.hockeycanada.ca/hockey-canada/Corporate/About/Downloads/2020-21-annual-report-e.pdf>>; “Hockey Canada By-Laws, Regulations and History” (May 2022) at s 8.1, online (pdf): *Hockey Canada* <<https://cdn.hockeycanada.ca/hockey-canada/Corporate/About/Downloads/2022-23-bylaws-e.pdf>>.

ii. *1986–1995: The self-insurance phase*

In September 1986, Hockey Canada’s predecessor, the Canadian Amateur Hockey Association (“CAHA”), began operating the National Equity Fund Insurance Program (the “**Program**”).<sup>542</sup> This self-funded Program was created as an opportunity to reduce insurance costs and benefit from the CAHA’s size to spread out individual Members’ financial risk.<sup>543</sup> The partner organization, Canadian Hockey League (“CHL”), and several Members across Canada contributed to the Program throughout its existence, under which they were “beneficiaries.”<sup>544</sup> The Fédération québécoise de hockey sur glace (now Hockey Québec) only participated in the Program until August 31, 1993, and only certain teams in that federation participated between September 1, 1993 and August 31, 1995.<sup>545</sup> Hockey North (which currently holds jurisdiction of the Northwest Territories and Nunavut) was not a contributing Member.<sup>546</sup>

The Program was initially comprised of general liability coverage of \$2 million from the CAHA Liability Fund (which we understand to be the NEF), bolstered with \$3 million excess liability coverage with Segwick Tomenson Inc., which also provided comprehensive accident insurance coverage (for accidental injury or death while participating in sanctioned hockey activities).<sup>547</sup>

In 1988, Hockey Canada obtained a \$3 million comprehensive general liability policy with the Co-operators General Insurance Company (the “**Co-operators**”), in addition to a \$3 million excess policy from the Zurich Insurance Company. Hockey Canada advised that, in the same year, the CAHA contracted with the Cooperators to administer the Program, and paid them an annual premium (the “**Co-operators Agreement**”). Unfortunately, Hockey Canada has been unable to locate the original agreement with the Co-operators. The information provided indicates that the

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<sup>542</sup> See Canada Hockey Association, “Trust Agreement” (1 June 1999); see also Canadian Amateur Hockey Association, “General Liability Fund and Excess Insurance Plus Comprehensive Accident Insurance Brochure” (1986-1987 Season).

<sup>543</sup> The Alexander Consulting Group, “Summary of Insurance” (31 May 1989) at s I.

<sup>544</sup> Hockey Canada, “History of the National Equity Fund” at 1.

<sup>545</sup> Canada Hockey Association, “Trust Agreement” (1 June 1999); Interview of Brian Cairo (6 September 2022): Hockey Canada advised that certain teams within Hockey Québec had provincial coverage and thus did not contribute from September 1, 1993 and August 31, 1995.

<sup>546</sup> The contributing members at the time the Program was established included different organizations/associations than today. At the time the self-insurance program was operating, the following entities were considered contributing members: British Columbia Amateur Hockey Association, the Alberta Amateur Hockey Association (now Hockey Alberta), the Saskatchewan Amateur Hockey Association (now Saskatchewan Hockey), the Manitoba Amateur Hockey Association (now Hockey Manitoba), the Thunder Bay Amateur Hockey Association (now Hockey Northwestern Ontario), the Ontario Hockey Federation, the Ottawa and District Hockey Association (now Hockey Eastern Ontario), the Prince Edward Island Hockey Association (now Hockey PEI), the New Brunswick Amateur Hockey Association (now Hockey New Brunswick), the Nova Scotia Hockey Association (now Hockey Nova Scotia), the Newfoundland and Labrador Hockey Association (now Hockey Newfoundland and Labrador), the Fédération Québécoise de Hockey sur Glace (now Hockey Quebec) and the Canadian Hockey League; see Canada Hockey Association, “Trust Agreement” (1 June 1999) at s 1; see also “Hockey Canada By-Laws, Regulations and History” (May 2022) at s 9.1, online (pdf): *Hockey Canada* <<https://cdn.hockeycanada.ca/hockey-canada/Corporate/About/Downloads/2022-23-bylaws-e.pdf>>.

<sup>547</sup> Canadian Amateur Hockey Association, “General Liability Fund and Excess Insurance Plus Comprehensive Accident Insurance Brochure” (1986-1987 Season) at 2-4; The Alexander Consulting Group, “Summary of Insurance” (31 May 1989) at 1-7.

agreement has been in force since at least 1988.<sup>548</sup> Hockey Canada has advised that the agreement was renewed annually.

Under the Co-operators Agreement, a Claims Management Committee, which included representatives from the CAHA and the Co-operators, would administer claims.<sup>549</sup> However, the CAHA bore the responsibility of reporting, investigating, defending and settling all claims made under the Program.<sup>550</sup> The Co-operators Agreement also included an excess commercial liability policy. The policy existed to insure all Members and Participants for injuries, and provided the CAHA coverage of up to \$6 million in the event a claim exceeded the NEF balance at a given time.<sup>551</sup> To the best of Hockey Canada's knowledge, the NEF had sufficient funding to respond to all claims and the excess policy was never invoked.<sup>552</sup> The Co-operators Agreement also required the CAHA to maintain an escrow trust fund. It is unclear if and how the escrow trust fund was used and if it was linked to the NEF or the settlement of claims.<sup>553</sup>

We have not been provided with any constituting documents for the NEF. The CAHA first reported the NEF in its audited financial statement for the 1987-1988 fiscal year.<sup>554</sup> The financial statement clearly advises that the CAHA was involved in defending legal actions resulting from accidents and injuries sustained by "participants in CAHA play."<sup>555</sup> The statement provides that the NEF balance was accumulated as a precaution against current and potential future claims against the CAHA, Members, and Participants.<sup>556</sup> Indeed, in 1987, the NEF had a balance of \$445,117, which rose to \$981,435 in 1988.<sup>557</sup>

On September 1, 1988 the CAHA created the Health and Accident Fund to provide supplementary medical and dental coverage to Participants, which continues to operate today as the Health Benefit Trust Fund.<sup>558</sup>

The December 1989 Board of Directors meeting minutes document the first NEF-funded settlement, which involved a player in one of the leagues of the CHL who became paralyzed from

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<sup>548</sup> Canadian Amateur Hockey Association & Cooperators General Insurance Company, "Agreement" (1 September 1993) at ss 3, 7: replacing the agreement between the parties dated September 1, 1988; see also Cooperators General Insurance Company Insurance Policy No. 1135073 (1 September 1988).

<sup>549</sup> Canadian Amateur Hockey Association & Cooperators General Insurance Company, "Agreement" (1 September 1993) at ss 5, 7: replacing the agreement between the parties dated September 1, 1988.

<sup>550</sup> Interview of Sam Ciccolini (24 August 2022).

<sup>551</sup> Interview of Sam Ciccolini (24 August 2022).

<sup>552</sup> Interview of Sam Ciccolini (24 August 2022).

<sup>553</sup> Canadian Amateur Hockey Association & Cooperators General Insurance Company, "Agreement" (1 September 1993) at ss 3, 7: replacing the agreement between the parties dated September 1, 1988.

<sup>554</sup> Canadian Amateur Hockey Association, "Audited Financial Statement 1987-88 fiscal year."

<sup>555</sup> Canadian Amateur Hockey Association, "Audited Financial Statement 1987-88 fiscal year" at 9.

<sup>556</sup> Canadian Amateur Hockey Association, "Audited Financial Statement 1987-88 fiscal year" at 9.

<sup>557</sup> Canadian Amateur Hockey Association, "Audited Financial Statement 1987-88 fiscal year" at 9.

<sup>558</sup> Canadian Amateur Hockey Association, "Audited Financial Statement 1987-88 fiscal year" at 9.

an injury sustained during a hockey game.<sup>559</sup> The minutes indicate that the terms and amount of the settlement were not disclosed due to confidentiality requirements.<sup>560</sup>

Hockey Canada has advised that the NEF originally operated as a vehicle to receive premiums from Participants to fund the Program.<sup>561</sup> We have been advised that Participants paid an annual fee of approximately \$11.50 – consisting of a \$1.50 membership fee and a \$10.00 self-insurance premium – to the CAHA through their Member.<sup>562</sup> The membership fee was deposited into the CAHA’s Operating Fund whereas the self-insurance premium made its way into the NEF and the Health and Benefit Trust Fund. The organization then used the NEF funds to pay the annual premium to the Co-operators as well as any claims made against the CAHA, its Members and all Participants.<sup>563</sup>

The Program continued to operate until 1995.

*iii. 1995–2016: The initial commercial insurance phase*

On February 1, 1995, Supplementary Letters Patent were issued to the CAHA, changing its name to the Canadian Hockey Association.<sup>564</sup> Concerned with the increase of serious spinal injuries in amateur hockey across Canada and the liability that could flow from them, the organization, on September 1, 1995, purchased commercial liability insurance policies instead of continuing the Program. These new policies provided a myriad of coverages including general liability, personal injury and medical expense coverage to the CAHA, its Members and all Participants.<sup>565</sup> As under the former Program, Participants paid an annual fee to the CAHA through the Members. A portion of this fee then remained and grew in the NEF and covered the insurance premiums for the commercial policies, any deductibles, and any uninsured or underinsured claims.<sup>566</sup>

In 1998, the Canadian Hockey Association merged with Hockey Canada bringing every aspect of Canadian Hockey, both amateur and international competition, under one umbrella known as Hockey Canada.<sup>567</sup>

1. Purchase of sexual misconduct coverage

In 1998, largely in response to the abuse committed by Graham James, Hockey Canada expanded its commercial liability policy to provide sexual misconduct coverage for Hockey Canada, its

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<sup>559</sup> Hockey Canada, Board of Directors, *Minutes of Meeting* (held on 1-3 December 1989) at 240.

<sup>560</sup> Hockey Canada, Board of Directors, *Minutes of Meeting* (held on 1-3 December 1989) at 240.

<sup>561</sup> Interview of Glen McCurdie (31 August 2022).

<sup>562</sup> All Participants paid the same insurance fee; however, referees paid a different membership fee that was dependent on the level of hockey they were working in.

<sup>563</sup> Interview of Glen McCurdie (31 August 2022).

<sup>564</sup> Industry Canada, “Canadian Amateur Hockey Association Supplementary Letters Patent” (1 February 1995).

<sup>565</sup> Interview of Barry Lorenzetti (24 August 2022).

<sup>566</sup> Interview of Glen McCurdie (24 August 2022).

<sup>567</sup> “Learn about the history of Hockey Canada” (last visited 21 August 2022), online: *Hockey Canada* <[www.hockeycanada.ca/en-ca/corporate/history](http://www.hockeycanada.ca/en-ca/corporate/history)>; for further information about the history of the CAHA and Hockey Canada please see Chapter IV of this Report.

Members and its Participants.<sup>568</sup> We understand that, as a condition of this coverage, known and suspected acts of past sexual misconduct were excluded from coverage, and the insurer required that Hockey Canada provide a list of all individuals suspected of having committed sexual misconduct during the self-insured period (i.e. 1986–1995).<sup>569</sup> Hockey Canada, working with its Members, compiled a list of known perpetrators it provided to the insurer; claims in relation to those known perpetrators were excluded from coverage under the new sexual misconduct insurance.<sup>570</sup> The current policy document states a retroactive coverage date of December 31, 1998. All incidents related to the known perpetrators are expressly excluded from coverage.<sup>571</sup> A risk remained that historic events might give rise to claims of various types that would not be statute barred. Concerns grew that further late-reported claims might be brought against Hockey Canada, its Members or Participants. In response, the NEF continued to accrue funds in reserve to cover any potential uninsured, historic claims.

## 2. The Participants Legacy Trust Fund

On June 1, 1999, Hockey Canada entered into a Trust Agreement to settle the Legacy Trust in order to respond to historic claims. The Legacy Trust provided that Hockey Canada could use funds on behalf of its Members and the CHL to respond to late reported claims for incidents occurring prior to September 1, 1995, in the event the NEF balance was insufficient.<sup>572</sup> Approximately \$7.1 million was transferred from the NEF to benefit the Members who had contributed to the former Program.<sup>573</sup> In other words, all Members and the CHL, except Hockey North, are beneficiaries of the Legacy Trust and receive an annual distribution, comprised of realized annual investment income, based on their respective contribution levels made to the NEF from 1986 to 1995.<sup>574</sup> Hockey Canada is not a beneficiary of the Legacy Trust, but Hockey Canada’s current and former Chief Financial Officers are among its trustees. These annual distributions do not relate to funding potential or actual liabilities nor risk management. However, the Legacy Trust does permit trustees to transfer \$2.1 million per occurrence (with no aggregate limit) from the Legacy Trust to the NEF to pay late-reported claims relating to events that occurred from 1986 to 1995.<sup>575</sup> Hockey Canada itself does not receive any annual distributions from the Legacy Trust and does not control distributions. However, as noted, current and former Hockey Canada officers serve among its trustees.

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<sup>568</sup> Sexual Misconduct was defined as any: (a) sexual or physical abuse or sexual or physical molestation of any person, including but not limited to, any sexual involvement, sexual conduct or sexual contact, regardless of consent, with a person who is a minor or who is legally incompetent; or (b) sexual exploitation, including but not limited to, the development of, or the attempt to develop, a sexual relationship, whether or not there is apparent consent from the individual.

<sup>569</sup> Interview of Sam Ciccolini (24 August 2022).

<sup>570</sup> AIG Insurance Company of Canada, “Endorsement No 21: Sexual Misconduct Liability Endorsement” (effective 1 September 2020); Interview of Sam Ciccolini Canada (24 August 2022).

<sup>571</sup> Interview of Sam Ciccolini (24 August 2022).

<sup>572</sup> Hockey Canada, “Financial Statements” (year end 30 June 2000) at note 9.

<sup>573</sup> Canada Hockey Association, “Trust Agreement” (1 June 1999).

<sup>574</sup> Application made to the Court of Queen’s Bench of Alberta by the Trustees of the Legacy Trust (25 January 2019). The Trust Agreement was renewed to May 15, 2039 with no modifications.

<sup>575</sup> Canada Hockey Association, “Trust Agreement” (1 June 1999) at Article V, s 5.1(e).

Schedule A to the Legacy Trust Agreement is a Tail Coverage Agreement, executed in May 1999, directing that all claims from the self-insured period (1986 to 1995) are to be paid by the NEF.<sup>576</sup> Hockey Canada has advised that the Legacy Trust operates to provide additional funding in the event the NEF has insufficient funding to respond to historic, uninsured claims on behalf of Members and the CHL. The Legacy Trust essentially acts as an excess policy, accessible once the NEF has been exhausted. The Legacy Trust was originally set to terminate on May 15, 2020, the so-called “division date.” However, in 2019, Hockey Canada filed a court application in Alberta, with written consent from all beneficiaries of the Trust (i.e., the beneficiary Members and the CHL), seeking to vary the division date of the Trust.<sup>577</sup> The Affidavit of Hockey Canada’s Chief Financial Officer, filed in support of the application, explained that the Trust was set to terminate on the division date, but only if no unpaid claims remained outstanding, and that Hockey Canada expected more claims (both related and unrelated to sexual misconduct) to arise after the original division date.<sup>578</sup> Thus, the prime motivator for the application was “to be able to settle or deal with further Claims which were intended to be dealt with through the establishment of this Trust”.<sup>579</sup> Indeed, the consent forms signed by all beneficiaries of the Trust acknowledged this recommendation from the Trustees and indicated that the beneficiaries “agree[d] with this advice”.<sup>580</sup>

Hockey Canada has advised that the only payments that have been made out of the Legacy Trust are the annual distributions paid to the beneficiaries and the legal fees associated with renewing the trust agreement to May 15, 2039.<sup>581</sup> For example, the earnings distributed from the Legacy Trust to Members in 2019 totalled \$318,931. The distribution is based on the Members’ respective contribution levels to the Self-Insurance Program from 1986 to 1995. This resulted in the OHF receiving the largest share, at 20.76% (\$66,210), followed by Hockey Alberta at 17.39% (\$55,462) and BC Hockey at 16.27% (\$51,890). The Members who received the lowest number of distributions were Hockey Québec (0.56% - \$1,786), Hockey PEI (1.21% - \$3,859) and HNO (1.53% - \$4,879). A third party trust firm, who manages the trust fund investments, makes these distributions. The Legacy Trust has not funded any settlements.<sup>582</sup>

Hockey Canada has no formal policy governing the Legacy Trust, beyond the Trust Agreement. Notably, the Tail Coverage Agreement includes conditions requiring that Hockey Canada provide a certain amount of disclosure about the status of the NEF to Members, as discussed below.

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<sup>576</sup> Canadian Hockey Association, “Tail Coverage Agreement” (24 May 1999) at ss 1-2.

<sup>577</sup> Application made to the Court of Queen’s Bench of Alberta by the Trustees of the Legacy Trust (25 January 2019).

<sup>578</sup> Affidavit of Brian Cairo, sworn 23 January 2019, filed in support of the Application to vary the Legacy Trust, at para 13; Notes from Call on Legacy Trust between Brian Cairo, Brian Cameron, Sean Kelly, Glen McCurdie and Johanna Bond (19 January 2018).

<sup>579</sup> Affidavit of Brian Cairo, sworn 23 January 2019, filed in support of the Application to vary the Legacy Trust, at para 13.

<sup>580</sup> Exhibit “B” to the Affidavit of Brian Cairo, sworn 23 January 2019, filed in support of the Application to vary the Legacy Trust. Hockey Canada made a presentation at the 2018 Spring Congress to its Members, explaining the various options on how to move forward with the Legacy Trust, and providing the recommendation to extend the division date to May 15, 2039. This direction was approved unanimously at the same Spring Congress.

<sup>581</sup> Interview of Brian Cairo (6 September 2022).

<sup>582</sup> Interview of Sam Ciccolini (24 August 2022).

### 3. Transfers to Pillar Funds

From 1999 to 2008, the NEF continued to operate as planned, receiving annual fees from Participants to fund insurance premiums, deductibles, and settle uninsured and underinsured claims. Hockey Canada also established several internally restricted funds known as the “Pillar Funds,” the most relevant of which for present purposes being the Insurance Rate Stabilization Fund (“**IRS Fund**”).<sup>583</sup>

The IRS Fund forms another part of Hockey Canada’s risk management matrix. Created and approved by the Board of Directors during the 2007–2008 fiscal year,<sup>584</sup> the IRS Fund acts as a buffer against future increases in insurance rates, as stated in Hockey Canada’s audited financial statements.<sup>585</sup> As discussed below, it is apparent that the IRS Fund is now also used as a reserve fund, which is not indicated on the financial statements. Hockey Canada has no formal policy governing the IRS Fund. Hockey Canada has authorized several inter-fund transfers from the NEF to the other Pillar Funds over the years, the vast majority of these going to the IRS fund.<sup>586</sup> These inter-fund transfers are approved by the Board of Directors and included in the audited financial statements Members receive prior to the annual meeting.

In September 2022, during our review, Hockey Canada’s Audit and Finance Committee approved a draft Pillars Policy which provides clarity on the purpose of the Pillar Funds and outlines the authorization process for inter-fund transfers (this policy has yet to be approved by the Board). This draft policy clarifies that the IRS Fund may be used to support four purposes:

- to offset any significant increases in third party insurance premiums to mitigate increases in insurance fees Hockey Canada charges Members;
- to pay liability settlements for claims related to Hockey Canada’s uninsured period, including fiscal years 1986–87 to 1994–95;
- to support insurance-related strategic plan initiatives; and
- to cover start-up expenses related to a Hockey Canada self-insured insurance plan.

The draft policy provides that any payments from the IRS Fund would require Board approval following a recommendation from the Risk Management Committee. Additionally, any transfer or re-allocation of funds between Hockey Canada Operating Fund, Health Benefit Trust or NEF to the Pillar Funds, or between the Pillar Funds would require Board approval following a motion at a Director’s meeting. Finally, transfers of NEF year-end surplus, if applicable, to the IRS Fund would require a Board motion on an annual basis. The Board of Directors has not yet approved the

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<sup>583</sup> Hockey Canada, “Audited Financial Statement” (June 2007-2008) at 14; the other Pillar Funds are the Growth Fund, Facilities Fund, Branch Support Fund, International Event Housing Support Fund, and Technology. Please consult the Audited Financial Statements for more information about the purposes of each of these funds.

<sup>584</sup> Hockey Canada, “Audited Financial Statement” (June 2007-2008) at 13.

<sup>585</sup> Hockey Canada, “Audited Financial Statement” (June 2007-2008) at 13.

<sup>586</sup> See Hockey Canada, “Audited Financial Statement” (June 2015-2016, June 2016-2017, 2017-2018, 2018-2019, 2019-2020).

draft policy.<sup>587</sup> However, we are advised by Hockey Canada that it does currently transfer NEF year-end surpluses, when they arise, to the IRS Fund with Board approval.

#### 4. Removal of reserve funds from financial statements and surplus transfers

In 2015, a substantial portion of the NEF consisted of designated reserve funds for possible uninsured or underinsured claims described by Hockey Canada as “general reserves for concussion and sexual abuse.”<sup>588</sup> On the advice of its auditors, Hockey Canada removed the presentation of the reserves from the 2015–2016 audited financial statements, which had been listed as liabilities in previous financial statements.<sup>589</sup> The auditors believed it was incorrect to list the reserves as liabilities since it was not possible to identify to whom specifically the liabilities would be payable or their amount. Effectively, this presentation change decreased reported liabilities on Hockey Canada’s balance sheet and increased the reported balance of the NEF by several million dollars.<sup>590</sup> In turn, Hockey Canada had to restate the 2015 NEF opening balance to account for this increase, which it disclosed in note 16 of its 2015–2016 audited financial statement.<sup>591</sup> The auditors advised us that, in their view, Hockey Canada had overestimated its liabilities during that period.<sup>592</sup> When asked how they had estimated those liabilities, Hockey Canada informed us that they had relied on past claims but beyond that, it is not clear to us how these liabilities were estimated.

We were advised by Hockey Canada’s Chief Financial Officer that the intent was to ensure the general reserves were clearly identifiable and remained separate from annual insurance transactions and other transactions in the NEF. In addition, Hockey Canada advised that the “artificial” growth of National Equity balance based on an accounting presentation change created an increased chance of lawsuits by individuals attracted to the larger balance in the fund.<sup>593</sup> Therefore, on November 17, 2016, the Board approved the transfer of \$10.25 million in reserve funds from the NEF into the IRS Fund “for the purpose of providing financial support against potential future non-insured claims.”<sup>594</sup> In so doing, the Board expanded the scope of the IRS Fund to include a reserve sub-fund for uninsured claims. Indeed, the minutes from the Board meeting during which the transfer was approved note that the transfer was not intended to change the original purpose of the fund, but “simply add to its purpose.”<sup>595</sup> This expanded purpose is not reflected in the audited financial statements, which show the IRS Fund as a fund to buffer insurance premium increases.

The summary notes of the 2016 Annual Winter Congress (which took place on November 19, 2016) indicate that Members were “advised of Board approval of transfer of funds from Equity

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<sup>587</sup> Hockey Canada, “Draft Pillars Policy” (2022).

<sup>588</sup> Hockey Canada, “History of the National Equity Fund” at 1.

<sup>589</sup> Interview of Tim Sothern (24 August 2022).

<sup>590</sup> Interview of Tim Sothern (24 August 2022); Interview of Brian Cairo (24 August 2022); see also Hockey Canada, “Audited Financial Statement” (2015-2016).

<sup>591</sup> Hockey Canada, “Audited Financial Statement” (2015-2016) at 18.

<sup>592</sup> Interview of Tim Sothern (24 August 2022).

<sup>593</sup> Hockey Canada, “History of the National Equity Fund” at 4.

<sup>594</sup> Hockey Canada, Board of Directors, *Minutes of Meeting* (held on 17 November 2016) at 4, item 5.4.

<sup>595</sup> Hockey Canada, Board of Directors, *Minutes of Meeting* (held on 17 November 2016).

Fund to the [IRS Fund] for the purpose of providing financial support against potential future non-insured claims.”<sup>596</sup>

From 2016 to present, any surplus generated from investments in the NEF has been transferred to the IRS Fund.<sup>597</sup> These inter-fund transfers are approved by the Board and included in Hockey Canada’s audited financial statements. For example, during a November 16, 2017 meeting, the Board of Directors approved three inter-fund transfers: \$723,000 from the IRS Fund to the NEF (which Hockey Canada indicated was required to pay settlements relating to uninsured claims against Gordon Stuckless and Graham James), \$2,651,180 from the NEF back to the IRS Fund, and \$1,827,479 from the Growth Fund to the Operating Fund.<sup>598</sup> Neither the minutes for the 2017 annual meeting (November 18, 2018) nor those for the 2017 Winter Congress (November 16–18, 2017) mention the transfers. However, the \$2,651,180 transfer to the IRS Fund and the \$1,827,479 transfer to the Operating Fund are noted on the 2017–2018 financial statements, and the \$723,000 transfer to the NEF is included in notes for the 2016–2017 fiscal year.<sup>599</sup>

*iv. 2016–Present: The current phase*

The NEF, the IRS Fund and the Legacy Trust continue to operate to date. Hockey Canada has advised that the IRS Fund contains two sub-funds: the reserve fund and the funds to buffer insurance premium increases. These sub-funds are not listed separately on the audited financial statements. Instead, only the total amount of funds contained in the IRS Fund is displayed, but Hockey Canada maintains that Members are aware of the two so-called sub-funds.<sup>600</sup> Hockey Canada also advised that they maintain an internal document to track the balance of the sub-fund reserve; however, the specific balances are not routinely provided to the Members.<sup>601</sup>

Until December 2021, Hockey Canada’s Vice President of Risk and Risk Management managed the NEF, with the assistance of the former Director of Insurance and Risk Management. However, following the departure of these two individuals from Hockey Canada, it appears that the responsibility for the management of the fund was in transition, which may have initially caused confusion within Hockey Canada as to who was responsible for the fund. We were initially told the CFO was involved in NEF management. Next, Hockey Canada informed us that the Director of Sport Safety (a position created in May 2022) played an important role in managing the fund. When asked about the subject, the Director of Sport Safety denied having such a role, and clarified that she was only involved in the NEF insofar as insurance had a certain level of interaction with the Safe Sport initiative. However, she was not involved in NEF management from an insurance perspective. After obtaining these responses, certain Hockey Canada executives again informed us that the Director of Sport Safety managed the fund, but with the assistance of legal counsel. Most recently, the CFO provided us with a chart according to which all matters involving insurance reserves, renewals and claims, as well as settlement expenses were handled by Associate Counsel in Insurance and Risk Management (a position created in August 2022) and General Counsel. The

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<sup>596</sup> Hockey Canada, Winter Congress, *Annual Meeting Summary* (held on 19 November 2016).

<sup>597</sup> Interview of Brian Cairo (24 August 2022).

<sup>598</sup> Hockey Canada, Board of Directors, *Minutes of Meeting* (held on 16 November 2017) at 8.

<sup>599</sup> See Hockey Canada, “Audited Financial Statement” (2016-2017, 2017-2018).

<sup>600</sup> Interview of Brian Cairo (6 September 2022).

<sup>601</sup> Interview of Brian Cairo (6 September 2022).

chart also indicated that the Director of Sport Safety only touches on NEF matters insofar as they concern Safe Sport-related expenses. It would appear that the Risk Management Committee and the Audit and Finance Committee also play a role. The Audit and Finance Committee consists of between four and eight members, in addition to the CEO and President/COO as members *ex officio*. While Hockey Canada designated its CFO as a resource to the Audit and Finance Committee in the 2021-2022 season, the CFO is not a member of the Committee. Hockey Canada also has a Risk Management Committee, which includes a Committee Chair chosen by the Board from its Directors, between four and eight members, and the CEO and President/COO as members *ex officio*. The Committees meet to discuss various financial risk management items, including ongoing lawsuits and claims against Hockey Canada, its Members and Participants.<sup>602</sup>

The Risk Management Committee, which reports to the Board, is responsible for ensuring the development and implementation of a comprehensive risk management program and for monitoring compliance with program standards and objectives.<sup>603</sup> Among its key duties, the Risk Management Committee oversees and makes recommendations with respect to Hockey Canada insurance policies, and makes recommendations relating to hazard, operational, strategic and financial risks as they arise.<sup>604</sup> Hockey Canada advised that individual claims are dealt with by its staff who deal with insurance, the representatives of the insurer who may cover the claim, and subject matter experts as required (e.g., legal counsel).<sup>605</sup> In addition, Hockey Canada's CFO and the Current Chair of the Risk Management Committee advised that the Committee does not deal with individual claims, and that information relating to individual claims is only shared with the Committee if further direction is required, which is rare.<sup>606</sup> Information is shared with Members and the Board on a case-by-case basis according to the given risk, and this would occur *in camera*.<sup>607</sup> Additional details on Hockey Canada's claims management process follow below.

Hockey Canada's Board has never formally approved a process for funding under and uninsured claims that exceed the balance available in the NEF, nor has it adopted any written policy to that effect (or regarding any of the NEF, the IRS Fund or the Legacy Trust, for that matter). However, we understand that Hockey Canada would address such claims first by transferring money from the IRS Fund reserve sub-fund, and if necessary, use the remaining IRS Fund money designated to buffer against insurance premium rate increases. For claims against Legacy Trust beneficiaries, we understand that Hockey Canada would transfer funds from the Legacy Trust, and if necessary, request further funding from the Members under the Tail Coverage Agreement before resorting to the IRS Fund buffer money.

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<sup>602</sup> Interview of Glen McCurdie (31 August 2022).

<sup>603</sup> "Hockey Canada Terms of Reference," (18 March 2022) s 5.3, online: *Hockey Canada* <<https://cdn.hockeycanada.ca/hockey-canada/Corporate/About/Downloads/hockey-canada-terms-of-reference-e.pdf>>; "Hockey Canada By-Laws, Regulations and History" (May 2022), s 47.1, online (pdf): *Hockey Canada* <<https://cdn.hockeycanada.ca/hockey-canada/Corporate/About/Downloads/2022-23-bylaws-e.pdf>>.

<sup>604</sup> "Hockey Canada Terms of Reference," (18 March 2022) s 5.3, online: *Hockey Canada* <<https://cdn.hockeycanada.ca/hockey-canada/Corporate/About/Downloads/hockey-canada-terms-of-reference-e.pdf>>.

<sup>605</sup> Email to Nadia Effendi from Mary Anne Veroba (17 October 2022).

<sup>606</sup> Email to Nadia Effendi from Mary Anne Veroba (17 October 2022); Email to Nadia Effendi from Blaire Peterson, (13 October 2022).

<sup>607</sup> Email to Nadia Effendi from Mary Anne Veroba (17 October 2022).

At present, the NEF is significantly depleted and projected to be in a deficit by 2023.<sup>608</sup> Going forward, Hockey Canada will need to make important decisions about how it will continue to manage its risks and retain sufficient funding in reserves to meet its potential liabilities.

1. Funds received and funds paid out of the NEF

Currently, NEF funds accumulate from past surpluses, income on investments, and annual registration fees paid by Members (currently set at **\$23.80** per Participant).<sup>609</sup>

The annual registration fee paid to Hockey Canada breaks down as follows:

<b>Fund</b>	<b>Fee description</b>	<b>Amount</b>
Operations fund	Registration/Operations Fee	\$3.00* <sup>610</sup>
NEF	Directors and Officers Insurance	\$2.00
	General Commercial Liability, including sexual misconduct coverage	\$8.90
	Safety and Administration	\$2.75
	<b>Total (NEF)</b>	<b>\$13.65</b>
Health and Benefit Trust Fund	Major Medical and Dental Coverage	\$2.00
	Accidental Death and Dismemberment	\$5.15
	<b>Total (Health and Benefit Trust Fund)</b>	<b>\$7.15</b>
<b>Total Insurance</b>		<b>\$20.80</b>
<b>Total (All Funds)</b>		<b>\$23.80</b>

The Members also charge an additional \$0.50 insurance and risk management fee, which they recover from each Participant.<sup>611</sup> Therefore, the total cost of insurance per Participant is \$21.30. This amount accords with the \$21.30 illustrated in the insurance fee section in Hockey Canada’s information guide titled: “Safety Requires Teamwork & Safety for All Management and Insurance Fees.”<sup>612</sup> This guide is publicly available on Hockey Canada’s website and provided to Members

<sup>608</sup> Hockey Canada, “2022/2023 Budget Review PowerPoint” (April 2022).

<sup>609</sup> It is our understanding that some Participants are charged further administration fees from their local association or Member.

<sup>610</sup> Note: this fee was reduced to \$1.50 during the 2020/2021 season and \$0 during the 2021/2022 season because of the pandemic; see also Questions answered by Brian Cairo, Chief Financial Officer of Hockey Canada (26 August 2022).

<sup>611</sup> Interview of Brian Cairo (24 August 2022).

<sup>612</sup> “Safety Requires Teamwork & Safety for All” (revised 2021-2022) at 59, online (pdf): *Hockey Canada* <<https://cdn.hockeycanada.ca/hockey-canada/Hockey-Programs/Safety/Insurance/Downloads/2022/2021-22-safety-requires-teamwork-revised-e.pdf>>.

for distribution to their Participants. In fact, we understand that a version of this guide has existed and has been distributed to Participants since 1987.<sup>613</sup>

Notably, deductibles or uninsured claims are not mentioned as a part of the annual registration fee nor are they mentioned in the guide provided to Participants.

The Risk Management Committee is responsible for determining the rate to charge Participants to cover insurance premiums. Hockey Canada wants to avoid increasing the premiums every year. Therefore, the Risk Management Committee will charge Participants for the cost of the premiums set by the insurance company and an additional margin which is deposited into the NEF.<sup>614</sup>

The rates of insurance premiums charged to Participants remained the same from 2000 to 2017. In 2017 premiums increased as Hockey Canada decided to pass on to Participants the cost of Directors and Officers Insurance where previously this expense was borne by Hockey Canada itself.<sup>615</sup>

In a Memo to its Members dated July 2022, Hockey Canada advised that the NEF is used to pay insurance premiums, deductibles, uninsured and underinsured claims, in addition to funding a wide range of safety, wellbeing and wellness initiatives, including “counselling and treatment for players”.<sup>616</sup> Hockey Canada maintains it has a longstanding practice of reviewing the NEF’s purposes with Members annually. Hockey Canada advised that it has offered counselling services to players affected by various incidents (including injury, sexual misconduct, and post-traumatic stress disorder) not linked to active claims. Hockey Canada advised that these services could, in some cases, resolve issues before formal claims were made and offer treatment to the affected player. These expenditures were not consistently recorded in the financial statements or general ledger.<sup>617</sup> Indeed, our review of the NEF general ledger from 2014 to present does not clearly indicate that the NEF funded counselling services or treatments for Participants. If such services were indeed provided to potential claimants and funded by the NEF, it is concerning that they were not recorded in a consistent manner. We also have no indication that Members would have been advised when such services were offered. We have now been advised by Hockey Canada that these services are funded from the Health and Benefit Trust.

The following table sets out the proportion of the NEF used to cover various categories of expense from 2014 to 2022.

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<sup>613</sup> The Alexander Consulting Group, “Summary of Insurance” (31 May 1989) at s II; Canadian Amateur Hockey Association, “General Liability Fund and Excess Insurance Plus Comprehensive Accident Insurance Brochure” (1986-1987 Season).

<sup>614</sup> Interview of Brian Cairo (13 September 2022).

<sup>615</sup> Interview of Brian Cairo (13 September 2022).

<sup>616</sup> Brian Cairo, “Memo to Members: Message from Hockey Canada regarding National Equity Fund” (July 2022) at 5; we were also informed by Hockey Canada on September 12 that the NEF had funded counselling and treatment for players between 2014 and present.

<sup>617</sup> Interview of Brian Cairo (13 September 2022).

<b>Category of Expense</b>	<b>Description</b>	<b>Percentage of Total Expenditures paid out of NEF from 2014-2022</b>
1. Settlements for uninsured and underinsured claims	All settlements paid out of the NEF. This amount is inclusive of deductibles paid on insured claims.	<b>2-26%</b>
2. Salaries	Salaries paid to four to five of Hockey Canada employees responsible for the administration of the NEF, including the Senior Manager for Insurance Member Services, and the new Director of Sport Safety.	<b>3-6%</b>
3. Insurance Policies	Premiums and brokerage fees paid to maintain Hockey Canada's commercial insurance policies.	<b>67-86%</b>
4. Grants	Donations to various organizations, telephone helplines, support for concussion research, and funding various initiatives	<b>1-8%</b>
5. Professional Services	General professional services, consultant fees, licence/service fees, and all legal fees, including lawyer fees from settlements, investigations, and non-settlement-related legal matters (i.e. corporate matters).	<b>3-10%</b>
6. Travel/Accommodations /Meals	Expenses submitted by employees with respect to activities related to the administration of the fund, including the administration of insurance and claims	<b>0-1%</b>
7. Reserve Adjustment	An amount set aside within the NEF for potential liabilities, adjusted for actual settlement payouts.	<b>-14-14%*</b>
8. Investments, Banking, and Accounting	Interest and bank fees, investment management fees, foreign exchange gain/loss.	<b>0-1%</b>

\*Note: negative values represent adjustments to funds set aside within the NEF to pay settlements; where actual settlement payments were smaller than anticipated, the balance of the reserve is released within the NEF, thus showing as a “negative” expenditure.

From 2014 to 2022, the majority of the disbursements from the NEF are for insurance premiums (67% to 86%) so it is clear that the NEF does not operate purely as a reserve fund for uninsured or underinsured claims. Settlements for these uninsured and underinsured claims range from 2% to 26% of the total disbursements from the NEF. The reserve fund also pays the salaries of four to five Hockey Canada employees whose roles relate to or involve administering the NEF. However, these salaries represent a very small percentage (3% to 6%) of the expenses paid from the NEF in a given year.

From 1989 to 2022, the NEF covered 21 settlements for uninsured or underinsured claims.<sup>618</sup> 10 of the 21 settlements related to injuries and accidents in relation to which the claims exceeded available insurance coverage and included claims related to Ontario Human Rights Tribunal complaints.<sup>619</sup>

The remaining 11 claims relate to sexual misconduct matters. Nine were historic sexual misconduct claims involving three perpetrators: Graham James, Gordon Stuckless and Brian Shaw. As these claims stemmed from historic events that occurred prior to 1998 and involved perpetrators Hockey Canada had identified to its insurer, they were excluded from the sexual misconduct insurance. For some of these matters, no formal civil claim was issued. Instead, the injured parties made a complaint to Hockey Canada, which the latter investigated and ultimately settled before any civil claims were commenced.<sup>620</sup> The tenth claim, involving a historical sexual assault claim against a referee, was denied coverage by Hockey Canada’s insurer because the insurer maintained that the perpetrator was known to Hockey Canada and should have been disclosed in the list of named perpetrators.

Hockey Canada settled the eleventh matter in May 2022, which concerned allegations of sexual misconduct made against players on the 2018 World Junior Team. Hockey Canada was a named Defendant in the action, along with the CHL and eight players not specifically named. We understand that Hockey Canada and its insurer continue to discuss the scope of the sexual misconduct insurance policy as it relates to its application for acts committed by players against a non-participant in an off-ice setting. With respect to the May 2022 case, there was concern that a significant amount of the claim would not be covered by insurance. Hockey Canada proceeded to discuss the case with their insurer who advised that Hockey Canada was permitted to settle the matter on its own.<sup>621</sup>

Some of the 21 settlements are subject to non-disclosure agreements. Accordingly, their terms and amounts remain confidential. While controversial more recently, the use of non-disclosure agreements or confidentiality clauses as part of a settlement agreement has been a common practice and can serve the interests of survivors who wish to retain anonymity. Other settlements are either

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<sup>618</sup> Documentation provided by Brian Cairo, Chief Financial Officer of Hockey Canada (2 September 2022).

<sup>619</sup> Interview of Glen McCurdie (12 September 2022).

<sup>620</sup> Interview of Brian Cairo (6 September 2022).

<sup>621</sup> Email to BFL Canada from AIG (11 May 2022).

not subject to confidentiality agreements at all, or only partially covered (e.g., not disclosing the amount).<sup>622</sup>

## **B. Claims management process**

### *i. The insurance policies*

Unlike the Comparator Associations, Hockey Canada provides general liability insurance not only to national team athletes, but also to the Members and all associations, leagues, Participants and teams forming part of them.

Hockey Canada’s reporting obligations towards its insurer are set out in each of its insurance policies. For example, the 2020-2022 Commercial General Liability Policy provides that the insured “must see to it that [the insurer is] notified promptly of an “occurrence” which may result in a claim when the manager or secretary of the local association is made aware of the “occurrence” [...]”.<sup>623</sup>

Aside from these reporting obligations set out in the insurance policies, Hockey Canada currently has no formal policy in place to deal with claims (this is true for insured claims, as well as under and uninsured claims). Until recently, it was unclear how affected individuals would make claims or complaints known to Hockey Canada (for example, whether they would need to communicate to Hockey Canada via their provincial sport organization). It was also unclear how each claim or complaint would then be handled within Hockey Canada, whether an investigation would take place, and what information would be shared with Members. However, Hockey Canada advised that it frequently reinforces with Members and local associations the importance of raising any actual or potential claim as soon as possible, as delaying notice to the insurer could affect available insurance coverage.<sup>624</sup>

All claims or potential claims are submitted to Hockey Canada’s lawyer in charge of Insurance & Risk Management. Once a claim/potential claim is in Hockey Canada’s hands, it is passed on to their broker and independent adjuster, Crawford & Company (“**Crawford**”), who then reports it to the insurer. If the insurer determines an investigation is required given the nature of the matter reported, such investigation is handled by Crawford.<sup>625</sup> Hockey Canada provides instructions when requested, but otherwise the insurance company has carriage over the claim once it is reported to it.<sup>626</sup> In other words, Hockey Canada does not owe its insurer any specific duty to investigate a matter that is reported to them, but it is nonetheless required to cooperate with the investigation.<sup>627</sup>

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<sup>622</sup> Email to Mathieu Dompierre from Brian Cairo (14 September 2022).

<sup>623</sup> AIG Insurance Company of Canada, *Commercial General Liability Policy, Policy no 3630507* (1 September 2020 – 1 September 2022), section IV, article 5 a).

<sup>624</sup> Email from Brent Craswell (5 October 2022).

<sup>625</sup> Email from Brent Craswell (5 October 2022).

<sup>626</sup> Email from Sean Kelly (27 September 2022).

<sup>627</sup> AIG Insurance Company of Canada, *Commercial General Liability Policy, Policy no 3630507* (1 September 2020 – 1 September 2022), section IV, article 5 c).

We also note that the 2020-2022 Commercial General Liability Policy provides that Hockey Canada must not, “except at their own cost, voluntarily make any payment, assume any obligation, or incur any expense, other than for first aid, without [the insurer’s] consent”.<sup>628</sup>

Lastly, if the insurer is of the view that the claim/potential claim is not covered by the insurance, we were advised that, depending on the nature of the claim, Hockey Canada would negotiate with the insurer based on the language of the insurance policy. This could eventually lead to a coverage application and interim steps could be taken while the dispute over coverage is being dealt with.<sup>629</sup> Where it is determined that a claim/potential claim is not covered by the insurance, Hockey Canada would use the NEF to deal with the matter.

*ii. The OSIC*

As indicated in Chapter V, it is up to the NSOs to determine which participants will be covered by the UCCMS and incidentally, who will be benefiting from the OSIC process. Even after the participants have been identified, some questions would still remain in terms of the OSIC jurisdictional authority. For example, if the participant is the subject of a complaint, but the alleged behaviour occurred outside of the NSO’s environment, it is unclear whether the OSIC would have the authority to proceed with the complaint.

In addition, most NSOs are choosing not to extend the OSIC’s jurisdiction to the provincial level by selecting national level only participants, such as National team players and coaches. They do so notably to reduce the costs associated with the program, but also because some provinces already have their own provincial mechanisms (e.g. in Québec, the Complaints Officer of the protection of the integrity in the practice of sport). However, depending on the circumstances, it may not always be clear whether a participant falls under the national or the provincial jurisdiction. For example, a player who is affiliated with a Member and play for a provincial team may also be part of the National team and play some games at the national level. In addition, since not every province and territory has their own maltreatment complaints and investigation processes, which would be equivalent to the OSIC at the national level, some if not most Participants may not have access to this type of mechanism.

Because of these jurisdictional issues, it is important for the NSO that becomes a Program Signatory of the OSIC to maintain, in parallel, an independent third party mechanism to deal with complaints that would fall outside of the OSIC’s jurisdiction.

On October 27, 2022, Hockey Canada advised that it had become a Program Signatory to the OSIC program. It advised that it had obtained the consent forms from all of its Directors and Hockey Canada Standing Committee members and virtually all Hockey Canada employees. It further advised that it was in the process of collecting the consent from the various Hockey Canada players

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<sup>628</sup> AIG Insurance Company of Canada, *Commercial General Liability Policy, Policy no 3630507* (1 September 2020 – 1 September 2022), section IV, article 5 d).

<sup>629</sup> Email from Brent Craswell (18 October 2022).

as these teams were being formed. We understand that training on OSIC and the Independent Third Party processes will be provided to the teams in the coming weeks.<sup>630</sup>

*iii. The Independent Third Party*

Hockey Canada has developed its own independent and confidential complaint mechanism, known as the Independent Third Party (“ITP”).<sup>631</sup> The ITP performs a triage function to determine whether a complaint should be dealt with at the local, provincial or national level. During this screening, the ITP will determine whether it has jurisdiction and whether the allegation is sufficient to establish a policy or Code of Conduct breach. If it determines it has no jurisdiction, the ITP informs the complainant and directs them to the entity with jurisdiction to pursue the complaint or allegation. Where it determines that a national investigation is warranted, the ITP assumes a case management role, with absolute discretion to select and hire the investigator. While Hockey Canada ultimately reimburses the ITP for the investigator’s costs, it has no input on investigator selection. The ITP can impose preliminary or interim measures pending adjudication of the claim, and will appoint a mediator before selecting an investigator. Once the investigator makes their findings, the ITP selects members for a Discipline Panel, with whom it administers the discipline proceedings. Finally, the Discipline Panel makes the final decision, which it may make public at its discretion.

Even after it becomes an OSIC Program Signatory, Hockey Canada has advised that the ITP will continue to operate in conjunction with the OSIC for claims that fall outside of the OSIC’s jurisdiction (e.g. for complaints which involve an alleged violation of a Hockey Canada policy, such as Hockey Canada’s Code of Conduct, that do not amount to a violation of the UCCMS). For this reason, Hockey Canada has adopted a Discipline & Complaints Policy, which was approved by the Board on September 28, 2022, in order to “provide a fully independent and procedurally fair manner to handle all [complaints] which remain under its jurisdiction even as it signs on to [the] OSIC”.<sup>632</sup>

*iv. Possible conflicts regarding the different processes*

We have briefly outlined the various mechanisms that might be triggered when a claim is brought forward, namely Hockey Canada’s general liability insurance, the OSIC, as well as Hockey Canada’s ITP. In certain circumstances, criminal proceedings could also come into play. The question that arises is whether there is any conflict between these mechanisms.

We have already indicated how the OSIC and the ITP (i.e. the “sport process”) could interact. If the same complaint is brought forward through the sport process as well as the criminal process, most NSOs will usually stay the proceedings until the criminal proceedings are completed.

As for the insurance versus the sport process, it is likely they can both run in parallel considering that their purpose is different: the first is intended to respond to claims for damages, the latter deals

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<sup>630</sup> Emails to Nadia Effendi from Natasha Johnston (28 October 2022).

<sup>631</sup> “Hockey Canada Safety Programs,” online: *Hockey Canada* <<https://www.hockeycanada.ca/en-ca/hockey-programs/safety>>; Hockey Canada, “Governance Review Question pertaining to OSIC” (received 28 September 2022).

<sup>632</sup> Hockey Canada, Discipline & Complaints Policy (1 October 2022).

with sanctions and other measures that could be put in place to protect the victim. In addition, since Hockey Canada insurance policies apply to both provincial and national level Participants, whereas the OSIC process most likely only applies to national level Participants, the insurance process may be triggered and follow its course even though the OSIC does not have jurisdiction for the same allegations.

In the same vein, since the OSIC does not have an obligation to notify the NSO when a participant files a complaint, the insurance process will only get triggered if the persons involved in the OSIC process (e.g. the respondent) report the occurrence in accordance with the reporting obligations set out above. Considering that there are no formal policies in place to deal with claims, and that a person involved in the OSIC process may not be inclined to report the occurrence, there may be situations in which there is a delay before the insurance process is engaged.

### **C. Key observations on the NEF and its role within the risk management matrix**

Considering the above, we make the following observations in respect of the NEF and its role within the risk management matrix.

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

Yes. We will not be commenting on particular cases given that this review, under the Terms of Reference, is not an assessment of Hockey Canada's response to any particular incident or issue. That said, the establishment of reserve funds to address the risk of uninsured and underinsured claims is not only sound, but the failure to do so would be a serious oversight. It is appropriate to use NEF funds to address potential uninsured and underinsured liabilities for Hockey Canada and/or any Participant for whose benefit the reserve is maintained. However, we note the absence of policies or procedures governing the purposes or functions of the NEF or the process for its use (though we were provided with a signing authority document for the fund). The same applies for the IRS Fund and the Legacy Trust. This is problematic because Members have no written documentation or source informing them how the three funds are managed and how they interrelate. Moreover, the lack of written policies or procedures in this regard signals that Members (and the Board itself) have no point of reference to guide their application in particular cases or against which to assess Board decisions regarding their use and management. In other words, there is no set standard, such as a published policy, and therefore Members have little information available to them to assess the appropriateness of the criteria considered by the Board when addressing claims. Some concern has been expressed that the Board's decisions are not recorded in the minutes of Board meetings. While it may often be the case that much of the consideration of claims must be kept confidential, final decisions should be recorded in the minutes to the extent that any legal obligations of confidentiality permit.

Second, there is a certain level of overlap among the three funds (particularly the NEF and the IRS Fund) which is a potential source of confusion. Both the NEF and the IRS Fund are used for purposes that are not fully disclosed in the financial statements. The NEF is not used solely to accumulate funds for uninsured and underinsured claims. Hockey Canada uses the NEF to collect money for annual insurance premiums from Participants, pay those premiums, and transfer any surplus reserve funds to the IRS Fund from time to time. The latter two uses are not reflected in

the description of the purpose of the NEF disclosed in the financial statements (although the inter-fund transfers are disclosed). Presently, the balance of the NEF is significantly depleted whereas the IRS Fund contains a comparatively large balance. For its part, the IRS Fund is described as a fund to ensure future insurance rate increases are buffered whereas in fact, it is also a significant reserve fund for uninsured and underinsured claims. As explained above, this sub-fund is not disclosed on Hockey Canada's financial statements. Hockey Canada advises that Members approved the initial transfer to the sub-fund and approved each subsequent transfer. Hockey Canada also maintains that Members have many opportunities to ask questions regarding the sub-fund (including during annual meetings and special presentations on the financial statements), though we note that the sub-fund balance is not explicitly disclosed unless requested.

We make similar observations concerning the Legacy Trust within the risk management matrix. The Legacy Trust Agreement says that it was established to respond to historic claims against its beneficiaries. The Tail Coverage Agreement (which preceded the IRS Fund) provides that Hockey Canada will use the NEF first for such claims. Now Hockey Canada has adopted an informal approach that would see claims run first through the NEF, then the reserve sub-fund in the IRS Fund, then to the Legacy Trust, and finally to the remaining funds in the IRS Fund. To our knowledge, the Legacy Trust was not designed with the IRS Fund in mind and no formal policy exists to govern how Hockey Canada is to respond to claims.

**D. Transparency of NEF to membership, players, and the public**

The second main issue is whether the purpose and use of the NEF have been sufficiently transparent. Hockey Canada has no specific policies prescribing disclosure of these matters.

*i. Disclosure provided to Members*

The Tail Coverage Agreement, which we understand still applies, is the only documentation imposing specific disclosure requirements on Hockey Canada vis-à-vis Members, hockey associations, and leagues regarding the NEF.<sup>633</sup>

The Tail Coverage Agreement has three requirements, which we will consider in turn:

1. Hockey Canada must update Members on the NEF at every annual meeting of Hockey Canada.

With respect to the first requirement, Hockey Canada provides an update on the NEF at the Annual General Meeting, insofar as Members receive information regarding its financial status. However, this update does not always address ongoing uninsured claims or recent settlements paid out of the NEF.

Hockey Canada clearly marks and segregates the NEF on the annual financial statement. The notes to the financial statements also provide an explanation of the NEF's purposes.

Hockey Canada provides a copy of the annual audited financial statement to Members at least 21 days prior to the annual meeting. Hockey Canada also prepares and provides Members with a

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<sup>633</sup> Canadian Hockey Association, "Tail Coverage Agreement" (24 May 1999) at s 2.

supplementary document which explains the content of the financial statements in plain language to help Members better understand the financial information contained in the statements. The supplement includes discussion of inter-fund transfers and provides Members with an overview of the balance of Operating Fund, Health Benefit Trust, and NEF from 2012 to present.<sup>634</sup> Members then approve the statements at the annual meeting. The audited financial statements provide a clear breakdown of the NEF's annual revenue and expenditures. The expenditures section includes a line item for "insurance claims." Hockey Canada's independent financial auditors advise that this line item accounts for the total funds paid out of the NEF annually to cover insurance deductibles and fund settlements for uninsured or underinsured claims.

The annual meeting minutes from 2014 to 2022 do not reveal that any discussions about the NEF took place during the annual meetings held during that period. Hockey Canada maintains that Members do in fact discuss the NEF as needed, and that these discussions – specifically in respect of under and uninsured claims – are held *in camera*. However, a number of Members interviewed noted that these topics were rarely discussed at length, and no Members interviewed could recall specifically what was discussed.

The CFO makes a presentation regarding inter-fund transfers from the NEF to other Pillar funds. However, the minutes provide scant information about the substance of such presentations and *in camera* discussions. Further, Hockey Canada noted that its CFO offers Members semi-annual presentations approximately two weeks before to the Spring and Winter Congresses to discuss the budget (spring) and the draft financial statements (winter). Attendance at these presentations includes Member Presidents, Executive Directors and financial officers (where applicable), giving them the chance to ask questions about Hockey Canada's financials. No meeting minutes are taken.

2. Hockey Canada must report when new claims, settlements or judgments, or valuation of existing claims may result in changes to the NEF reserves exceeding \$500,000.00.

As for this second requirement of the Tail Coverage Agreement, Hockey Canada has not adopted any disclosure procedure to report to Members when a claim, settlement or judgment exceeds \$500,000. Based on our review of the settlements paid out of the NEF, since 1999 (when the Tail Coverage Agreement was concluded), it appears that at least six matters met the threshold and thus required disclosure. Our review of Members' meeting summaries over that period indicates that Members did not receive formal notice of these matters. However, Hockey Canada has advised that all of these discussions would occur *in camera* and that they did not keep minutes of those *in camera* portions of the meetings.<sup>635</sup>

A review of Board of Director meeting minutes from 2014 onwards reveals that the Board discussed on occasion ongoing civil actions involving Hockey Canada, as well as insurance coverage options and updates, including discussions involving sexual misconduct coverage. The Board appears to have discussed the Legacy Trust; however, the discussions appear limited to conversations about renewing the Trust Agreement and extending the division date. Again, there appear to be discussions about settlements; however, the minutes provide minimal description and

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<sup>634</sup> Hockey Canada, "Supplement to the 2020-2021 Audited Financial Statements."

<sup>635</sup> Interview of Brian Cairo (13 September 2022).

some of these conversations take place *in camera*, with no accompanying notes. Still, these discussions would not satisfy the disclosure requirement under the Tail Coverage Agreement, which requires providing formal notice to Agreement signatories, i.e., the Members.

3. Hockey Canada must update each Member immediately if ongoing claims require Members to pay additional amounts to the NEF to ensure adequate funding for claims, as actuarially valued from time to time.<sup>636</sup>

The third requirement imposed by the Tail Coverage Agreement has never been triggered because, as we understand, Hockey Canada has never requested further funds from the Members to respond to any uninsured claims.

*ii. Members perception*

Members have different perceptions of the degree of transparency related to the NEF, its function and use. Most concerning is the notion that in the view of some, but by no means all Members to whom we spoke, Hockey Canada may not have provided Members with sufficient details on inter-fund transfers, particularly in relation to the settlement of past and ongoing claims. Several Members interviewed confirmed that they knew the NEF existed, that its funding came from a portion of annual registration fees, and that it served to settle uninsured claims. Some explained that if Members ever had questions about the NEF they could always ask the Board of Directors or the Risk Management Committee. Others noted that if a Member did not know about the NEF, their own inattention to the information provided was to blame.

In contrast, some Members noted that Hockey Canada did not readily share information on the intent or the purpose of the NEF and its use, nor on incidents in relation to which the fund was engaged. Some Members noted that they knew the NEF served to respond to historic claims, but believed it would only extend to claims linked to the named perpetrators, as opposed to “protecting” predators going forward, as they put it. Indeed, these two groups of Members cite a lack of transparency on specific cases and payments from the NEF vis-à-vis stakeholders and a lack of oversight. These Members indicate that Hockey Canada could remedy the issue by providing more information on particular claim/settlement amounts and the NEF balance – even if this were done so annually – and if the use of the NEF, particularly in relation to claim settlements, were governed by a publicly available policy.

If little is disclosed about ongoing or potential claims, and how the risk management matrix would handle these claims, Members must then flag issues with the management of the NEF and other funds without being fully aware of the facts. Said differently, Members can only raise issues if they are able to identify them. Still, it is important to be sensitive to the privacy interests of survivors and those affected by sexual misconduct, particularly where non-disclosure agreements have been put in place. We recommend that Hockey Canada take steps to provide timely disclosure of publicly available information to its Members regarding ongoing and potential claims. Once a settlement is reached, we recommend that Hockey Canada disclose all publicly available information (i.e., what was provided in the claim) while respecting the restrictions of any non-disclosure agreements in force. For example, where a non-disclosure agreement only precludes the

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<sup>636</sup> Canadian Hockey Association, “Tail Coverage Agreement” (24 May 1999) at s 2.

disclosure of a settlement amount, Hockey Canada could inform its members of the nature of the claim, the fact that a settlement was reached and how/when the settlement would be funded.

*iii. Disclosure provided to players and the public*

Hockey Canada uses a portion of Participants' annual registration fees (\$13.65 per Participant) to maintain the NEF. When Participants register they are provided with a breakdown of the registration fees; however, this breakdown does not reveal the portion of the registration fees that are set aside to fund uninsured and underinsured claims.

Hockey Canada's website has a section dedicated to Insurance Information and Resources. The website provides that each Participant pays an annual fee into the Hockey Canada Insurance Program, which covers liability insurance, accidental death and dismemberment, major medical and dental insurance, risk management and administration, directors and officer's liability insurance and sexual misconduct liability insurance.<sup>637</sup> Notably, the website does not provide any information about the use of annual fees to fund uninsured and underinsured claims. Hockey Canada recently advised Members that \$13.65 of a Participant's annual registration fee is deposited into the NEF to maintain insurance coverage.<sup>638</sup> However, Members were not informed about what proportion of the \$13.65 is used to fund uninsured and underinsured claims. It does not appear that Hockey Canada has directly advised Participants about the \$13.65 deposited into the NEF every year to pay premiums, deductibles, and to cover uninsured losses.

Hockey Canada's communication structure is hierarchical. Hockey Canada provides information to its Members who then disseminate it to associations, teams, and Participants, as the case may be. Because there is no direct communication channel to Participants, Hockey Canada must rely on Members who then rely on associations and teams to share important information with Participants. This increases the possibility of knowledge gaps between individual players across Canada. For example, not all Members include a breakdown of their annual fees on their websites.

**E. Best practices for risk management and reserve funds**

Risk management includes the application of management policies, procedures and practices to identify, assess, manage, monitor and communicate risk.<sup>639</sup> Hockey Canada's insurance brokers and independent auditors have confirmed that it is in the best interest of the organization to maintain a fund for uninsured liabilities. They explained that the absence of a reserve fund, such

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<sup>637</sup> "Learn about Hockey Canada's Insurance Program," online: *Hockey Canada* <<https://hockeycanada.ca/en-ca/hockey-programs/safety/essentials/insurance>>.

<sup>638</sup> Brian Cairo, Memo to Member Presidents and Executive Directors/CEOs, "Message from Hockey Canada regarding National Equity Fund (July 2022).

<sup>639</sup> Hugh Lindsay, "20 Questions Directors of Not-For-Profit Organizations Should Ask About Risk" (2009) at 4, online (pdf): *Chartered Professional Accountants Canada* <[20-Questions-NFP-Directors-Should-Ask-About-Risk-2009 \(1\).pdf](#)>.



the organization.<sup>647</sup> The reserve policy should clearly describe authorization for the use of the reserve fund and outline requirements for reporting and monitoring. Without a policy or procedure, an organization runs the risk of misusing funds and depleting the reserve gradually to the point that it is no longer available when needed.

A reserve policy can be contained within an organization's other financial policies or may stand alone. Having a written and approved policy can help to ensure that the Board of Directors of Hockey Canada as well as its Members and Participants understand the authority and operational guidelines which apply to the use of the fund.<sup>648</sup>

It is difficult to determine how much money an organization should accrue in a reserve fund. However, the accounting firm, Grant Thornton, recommends the following four steps to quantify the appropriate target for a reserve fund:

1. Build a baseline five-year financial forecast.
  - Whether the reserve is meant to mitigate against future financial consequences or accumulate assets to execute major projects, these goals have a “multi-year time horizon”. “By developing a five-year forecast management can see financial trends that are not evident in annual budgets.”<sup>649</sup>
2. Conduct a detailed analysis of potential risks.
  - Management needs to identify, quantify, and assign likelihoods to potential downside performance within the organization's short-and-long-term financial plan.
3. Quantify the risks.
  - Once the risks are identified, this information can be synthesized, “by applying probability-weighted net present value adjusted averages of risk exposure across critical budget lines.”<sup>650</sup>

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<sup>647</sup> Grant Thornton, “Planning ahead: Improving financial health with reserves planning” (13 December 2017) at 3, online (pdf): Grant Thornton <<https://www.grantthornton.ca/globalassets/1.-member-firms/canada/insights/pdfs/planning-ahead-improving-financial-health-with-reserves-planning.pdf>>; Hugh Lindsay, “20 Questions Directors of Not-For-Profit Organizations Should Ask About Risk” (2009) at 16, online (pdf): *Chartered Professional Accountants Canada* <[20-Questions-NFP-Directors-Should-Ask-About-Risk-2009 \(1\).pdf](https://www.cpacanada.ca/~/media/CPA/~/media/20-Questions-NFP-Directors-Should-Ask-About-Risk-2009-1.pdf)>.

<sup>648</sup> “Operating Reserves and Policy Examples,” online: *Propel Nonprofits* <<https://www.propelnonprofits.org/resources/nonprofit-operating-reserves-policy-examples/>>.

<sup>649</sup> Grant Thornton, “Planning ahead: Improving financial health with reserves planning” (13 December 2017) at 5, online (pdf): Grant Thornton <<https://www.grantthornton.ca/globalassets/1.-member-firms/canada/insights/pdfs/planning-ahead-improving-financial-health-with-reserves-planning.pdf>>.

<sup>650</sup> Grant Thornton, “Planning ahead: Improving financial health with reserves planning” (13 December 2017) at 6, online (pdf): Grant Thornton <<https://www.grantthornton.ca/globalassets/1.-member-firms/canada/insights/pdfs/planning-ahead-improving-financial-health-with-reserves-planning.pdf>>.

4. Establish the target reserves and funding approach.

- Once an organization knows the appropriate amount of funds that should be maintained in a reserve, management is now in a position to recommend the target reserve level to the Board of Directors and determine its approach to accumulate or set aside funds for the approved amount.<sup>651</sup>

While not all organizations have written reserve fund policies, examples abound. The Shooting Federation of Canada's ("SFC") Reserve Fund Policy<sup>652</sup> is an example of an operating reserve fund policy. It establishes that the fund serves "to provide continued funding of operations and to ensure financial stability." Its purpose is to define the reserve fund, the intention of maintaining the fund, and the methods under which the Fund is managed. The Policy quantifies the reserve requirement, falling between six months' (the minimum) and a year's (the maximum) worth of standard operating revenue needed to cover the previous year's expenses plus any contractual obligations. The quantum of the reserve is to be reviewed annually by the Board to ensure it is sufficient, and the funds are to come from unrestricted money. The Policy further explains that the reserve can only maintain the total of funds that meet its reserve requirements, and that interest is to remain in the fund. Moreover, the Policy mandates that the reserve fund offers a meaningful contribution to strategic initiatives and that the money should be managed to provide maximum long-term consistency and stability of return. It also requires that the SFC approve and review the parameters for managing the fund, that it provide the necessary oversight of the fund, and that it report annually to its members on the fund status and the value of the reserve requirement. Finally, the Policy states that Board approval is required for any transactions outside of the approved budget or reserve that affect the reserve fund.

Ontario Artistic Swimming ("OAS") includes a short policy on reserve funds within its Finance Policy.<sup>653</sup> It stipulates that the fund is meant to provide an internal source of funds for "situations such as an unanticipated loss in funding, delay in grant payment, or uninsured losses" – but not to replace a permanent loss of funds or to eliminate an ongoing budget gap. Additionally, it provides a minimum quantum of money required in the fund, and provides that the Finance Committee must review any reserve fund on an annual basis to ensure that its funds have been invested securely. Most notably, the Policy states that expenditures from the reserve fund must be approved by a two-thirds majority vote of the Board. The Executive Director must identify the need for access to the fund and confirm that the use of reserve funds is consistent with the purpose of the reserves, as set out in the Policy. The Executive Director must also examine the reason for the shortfall and the availability of other sources of funding. Finally, the Policy states that the annual budget should reflect the proposed contribution to the reserve fund and any anticipated projection of reserve fund use to cover expenses over and above identified revenues.

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<sup>651</sup> Grant Thornton, "Planning ahead: Improving financial health with reserves planning" (13 December 2017) at 6, online (pdf): Grant Thornton <<https://www.grantthornton.ca/globalassets/1.-member-firms/canada/insights/pdfs/planning-ahead-improving-financial-health-with-reserves-planning.pdf>>.

<sup>652</sup> Shooting Federation of Canada, "Policy and Procedures Manual" (11 September 2020) at 155-156.

<sup>653</sup> "Finance Policy" (November 2021) at 3, online (pdf): Ontario Artistic Swimming <<https://ontarioartisticswimming.ca/wp-content/uploads/2022/02/OAS-Finance-Policy-Approved-November-2021.pdf>>.

Another example comes from the Northern Ontario Curling Association (“NOCA”). The NOCA Operating Reserve Policy<sup>654</sup> provides that the Operating reserves provide an “internal source of funds for situations such as a sudden increase in expenses, one-time unbudgeted expenses, unanticipated loss in funding, or delay in grant payments or uninsured losses” and for “one-time, nonrecurring expenses that will build long-term capacity.” They are not intended to replace permanent losses of funds nor to replace an ongoing budget gap. Similar to the OAS Policy, the NOCA Policy prescribes the minimum balance of the fund in relation to the amount needed to maintain operations for a set period, and that the quantum is to be reviewed annually and adjusted to reflect current need. However, it also notes that the quantum, sourced from unrestricted monies, must be reported to the Finance Committee and the Board, and included in the regular financial reports. The Policy then lays out a three-step process to use the fund, comprised of 1) identifying the need for funds and assessing the appropriateness of using the reserve consistent with the Policy; 2) obtaining approval from the Board by providing a description of the analysis conducted in the previous step and a plan for replenishing the reserve; and 3) reporting and monitoring on the reserve, with the Finance Chair responsible for maintaining the balance of the fund, ensuring use complies with the Policy and reporting to the Board, and that the Executive Director must maintain records of use of funds and plans for replenishment.

These examples show how a written reserve fund policy – even a short one – can improve oversight of such a fund. Hockey Canada should establish such a policy, with a particular focus on where funds are collected, how they are and can be used, what types of approvals are needed to use the funds, and how Hockey Canada must report to the Board, Members, Participants, and the public when it uses the NEF. These restrictions will ensure that the NEF has a clear purpose, that its balance is representative of the quantum needed to serve that purpose, and that the funds are only used in ways that are consistent with that purpose.

## **F. Conclusion**

Over the course of its existence, the purpose of the NEF has changed. What began as a vehicle to fund the self-insurance Program has evolved to cover insurance premiums and to constitute a reserve to address under or uninsured claims. In recent years, a substantial portion of the NEF was transferred to the IRS Fund, which holds a “sub-fund” set aside for future under or uninsured claims. The NEF has funded 21 settlements linked to under and uninsured claims (11 of which relate to sexual misconduct) which represent between 2% and 26% of its total expenditures over the last eight years. Over that same period, between 67% and 86% of NEF expenditures covered insurance policies.

We turn to the questions posed to us in the Terms of Reference.

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

Yes. The establishment of reserve funds to address the risk of uninsured and underinsured claims is not only sound, but the failure to do so would be a serious oversight. It is appropriate to use NEF

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<sup>654</sup> “Operating Reserve Policy” in *Policy Directory* (4 August 2016) at 32-33, online (pdf): *Northern Ontario Curling Association* <<https://curlno.ca/wp-content/uploads/2019/12/Policy-Directory-121119.pdf>>.

funds to address potential uninsured and underinsured liabilities for Hockey Canada and/or any Participant for whose benefit the reserve is maintained. We will not be commenting on particular cases given that this review, under the Terms of Reference, is not an assessment of Hockey Canada's response to any particular incident or issue.

*Is there appropriate oversight concerning payments out of the NEF?*

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

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

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

Like the NEF, the IRS Fund is not governed by any written policy. Its purpose stated on the annual financial statements no longer reflects its entire purpose. While the total balance of the fund is disclosed on the financial statements, it is unclear what proportion of the fund is reserved in the "sub-fund" for under and uninsured claims, and that balance is not disclosed to Members on the financial statements. In light of the fact that the NEF balance is largely depleted, it will be particularly important for Hockey Canada to codify how the IRS Fund is to interact with the NEF in respect of under and uninsured claims.

## **IX. BOARD OVERSIGHT OF SENIOR MANAGEMENT**

As discussed above in this report, a board of directors must ensure the appropriate management of the organization, and this in turn requires the board to select the governance model for the organization best suited to that end. The available resources, the strategic vision of the organization, and a variety of other factors inform that choice.

The third item of the Terms of Reference examines whether the Hockey Canada Board exercises an appropriate degree of oversight over senior management relative to similar organizations, and asks:

- a. Is the Board's current structure, as a volunteer Board with accountability for oversight of the organization, appropriate and in the best interests of hockey in Canada?
- b. Is there a clearly defined process describing what items staff must report to the Board (policy vs. operations)?
- c. Is the reporting structure to the Board (staff and committees) comprehensive enough to ensure the work of Hockey Canada is efficient, effective, and of the highest quality?
- d. What role should the Board play in operations versus policy and strategy?

We examine below the last issue first.

Hockey Canada has undertaken several governance reviews in the past that led to a significant reduction in the size of its Board and the adoption of a governance model described by several Directors as a "policy" or "governance" structure. Our discussions with Directors and other stakeholders reveal, however, that the Board's current activities frequently extend beyond those of a policy board into operational decision-making. The shift towards operational activities partly explains why Hockey Canada's directors spend significantly more time performing their functions than their counterparts in the Comparator Associations mentioned above.

We believe that it is time for the Board to step back and re-examine the issue of what governance model best achieves Hockey Canada's strategic vision. It must then implement that model, and periodically review it to ensure it continues to serve the best interests of the organization. This will require consideration of how best to utilize the volunteer Board. At this time of significant change in the landscape of hockey and this organization, we consider that a governance model falling somewhere between a policy board and a management board would be most effective to achieve Hockey Canada's goals and to align the organization with its vision. This will require significant change to its governance structure.

As part of this process, Hockey Canada should strengthen its oversight of senior management. In particular, it needs to implement policies and procedures to ensure that senior management's reports to the Board disclose sufficient, timely, and relevant information tied directly to what the Board requires to operate efficiently and effectively. We believe these changes will both improve

the Board’s capacity for appropriate oversight while reducing the time commitment of Directors to more manageable levels.

**A. A board of directors has a legal duty to manage or supervise management**

As set out above in Chapter VI, pursuant to section 124 of the CNCA, the directors of a not-for-profit corporation shall “manage or supervise the management of the activities and affairs” of the corporation.<sup>655</sup> The term “activities” includes “any conduct of a corporation to further its purpose and any business carried on by a body corporate,” and affairs “means the relationships among a corporation, its affiliates and the directors, officers, shareholders or members of those bodies corporate.”<sup>656</sup> Reflecting this, Hockey Canada’s bylaws state that “[t]he Board shall manage, or supervise the management of, the activities and affairs of Hockey Canada, and is accountable to the Members which it serves.”<sup>657</sup>

Under the CNCA, the terms “manage or supervise” encompass “a broad spectrum of duties including: ensuring the organization adheres to and carries out the goals of the corporation; setting long-term objectives in accordance with these goals; ensuring financial stability; assessing the corporation’s performance; establishing policies; and being the public face of the corporation.”<sup>658</sup>

Directors may engage and supervise the management, rather than managing themselves, because “many corporations are too large and intricate for directors to manage the day-to-day activities of the corporation.”<sup>659</sup> The extent to which directors will delegate activities often depends on the governance model they choose and the specific organizational structure of the corporation.<sup>660</sup>

**B. What role should the Board play in operations versus policy and strategy?**

While Hockey Canada has striven towards a policy model of governance since 2016, the Board has continued to engage in many operational aspects of the organization.

In our view, a governance model situated between a policy board and a management board would best suit the organization in the current period of change. To find exactly where the Board should fall within the bounds of the two competing governance models, it must clarify its own role and that of senior management. This should include a formal statement of the role and function of the

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<sup>655</sup> *Canada Not-for-profit Corporations Act*, SC 2009, c 23, s 124.

<sup>656</sup> *Canada Not-for-profit Corporations Act*, SC 2009, c 23, s 2(1).

<sup>657</sup> “Hockey Canada By-Laws, Regulations and History” (May 2022), s 25.1, online (pdf): *Hockey Canada* <<https://cdn.hockeycanada.ca/hockey-canada/Corporate/About/Downloads/2022-23-bylaws-e.pdf>>.

<sup>658</sup> Burke-Robertson, Carter & Man, *Corporate and Practice Manual for Charities and Not-for-Profit Corporations*, (Toronto: Thomson Reuters Canada, 2022) at § 9:10 (Proview).

<sup>659</sup> Donald J Bourgeois, *The Law of Charitable and Not-for-Profit Organizations*, 5th ed (Toronto: LexisNexis Canada, 2016) at 34.

<sup>660</sup> A board’s authority to delegate is also limited by restrictions set out in the CNCA. For example, pursuant to subsection 138(2), a director cannot delegate its power to: submit to the members any question or matter requiring the approval of members, fill a vacancy among the directors or in the office of public accountant or appoint additional directors, issue debt obligations, approve financial statements, adopt, amend or repeal by-laws, nor its power to establish contributions to be made, or dues to be paid, by members. See *Canada Not-for-profit Corporations Act*, SC 2009, c 23, s 138(2).

Board as well as active monitoring and management of those roles through ongoing communication with senior management.

As described below, the chosen governance model will dictate the degree to which the Board involves itself in policy decisions vis-à-vis operational decisions. Strategic decisions are linked to the organization's strategic plan, and involve long term, big picture decisions about its growth and direction.<sup>661</sup> On the other hand, operational decisions in the short and medium term are how the organization carries out its strategic decisions in the short and medium term.<sup>662</sup> Think of policy as the captain steering the ship towards a particular destination, and the operations as the deckhands working its sails to give the ship momentum.

*i. The board chooses its governance model*

A board must “guide the corporation in meeting its objects.”<sup>663</sup> From this obligation, its directors must determine how they will govern the organization and how they will manage or supervise its management. Subject to certain constraints,<sup>664</sup> boards exercise ultimate authority to choose their governance model.<sup>665</sup> There is “no one best governance model for every not-for-profit corporation.”<sup>666</sup> Instead, the board must decide the appropriate governance model for their organization given its purposes, goals, resources, stakeholders' needs, and other variables. While many models of governance exist, the common range includes working or operational boards at one end of the spectrum, true policy governance boards<sup>667</sup> at the other, and hybrid or “management” boards in the middle.<sup>668</sup>

1. Working board model

On one end of the spectrum, boards of not-for-profit corporations may deal directly with operations, blurring the line between the roles of the staff and the board.<sup>669</sup> In this governance model, the board of directors has operational responsibilities; not only must the board plan the

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<sup>661</sup> LD Withaar, “Difference Between Strategy & Operational Decisions”, *Houston Chronicle* (3 June 2019), online: <<https://smallbusiness.chron.com/difference-between-strategy-operational-decisions-31075.html>>.

<sup>662</sup> LD Withaar, “Difference Between Strategy & Operational Decisions” *Houston Chronicle* (3 June 2019), online: <<https://smallbusiness.chron.com/difference-between-strategy-operational-decisions-31075.html>>.

<sup>663</sup> Anne Corbett & James M Mackay, *Guide to Good Governance: Not-for-Profit and Charitable Organizations*, 2nd ed (September 2013) at 70.

<sup>664</sup> Some constraints include the letters patent or articles or similar constating documents, bylaws, enabling legislation and special legislation/regulations, special members/owner declarations or agreements, affiliation or association agreements, funding and related service agreements. See Anne Corbett & James M Mackay, *Guide to Good Governance: Not-for-Profit and Charitable Organizations*, 2nd ed (September 2013) at 32.

<sup>665</sup> Anne Corbett & James M Mackay, *Guide to Good Governance: Not-for-Profit and Charitable Organizations*, 2nd ed (September 2013) at 32.

<sup>666</sup> Anne Corbett & James M Mackay, *Guide to Good Governance: Not-for-Profit and Charitable Organizations*, 2nd ed (September 2013) at 32-33.

<sup>667</sup> See John Carver, *Boards That Make a Difference: A New Design for Leadership in Nonprofit and Public Organizations*, 3rd ed (San Francisco: Jossey-Bass, 2011).

<sup>668</sup> Mel Gill, “Governance Do’s and Don’ts” (23 April 2001) at 3. In practice, most boards operate somewhere between working boards and policy boards; see also Donald J Bourgeois, *The Law of Charitable and Not-for-Profit Organizations*, 5th ed (Toronto: LexisNexis Canada, 2016) at 152.

<sup>669</sup> Anne Corbett & James M Mackay, *Guide to Good Governance: Not-for-Profit and Charitable Organizations*, 2nd ed (September 2013) at 33, 35.

organization's strategic vision and set its objectives, financial and otherwise, it must also implement that vision and take practical steps to meet those objectives.<sup>670</sup> For example, the board will perform both top-level financial planning and preparing operation budget sheets.

This working board model is typically used when an organization is formed, or when it has few or no staff to take care of the operations.<sup>671</sup> It will often consist of committed and knowledgeable directors who worked their way through the organization as volunteers.<sup>672</sup>

## 2. Management board model

A management board delegates the day-to-day operations of the organization to its staff, but retains some involvement in specific operating discussions and decisions (e.g., via committees).<sup>673</sup> Overall, the board makes significant efforts to focus primarily on strategic issues.<sup>674</sup> This style of governance is often used in periods of transition or crisis in which the organization requires the board to be more hands-on in the day-to-day operations.<sup>675</sup>

## 3. Policy governance model

At the other end of the governance spectrum from the working board, the pure policy board<sup>676</sup> focuses on strategy. Its work centres on determining the organization's goals (i.e., the mission, vision, and values); overseeing broad policy directions and the strategic plan; establishing metrics for monitoring chief executive performance; and monitoring the organization's performance.<sup>677</sup> Accordingly, the Board tasks the CEO with implementing the strategic plan, following the policies, and abiding by any executive limitations the board sets.<sup>678</sup>

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<sup>670</sup> "3 Key Differences Between a Working and Governance Board for a Nonprofit" (22 March 2022), online: *NMBL Strategies* <<https://www.nmblstrategies.com/blog/key-differences-board-of-directors>>.

<sup>671</sup> For example, in 2006, over half of all not-for-profit organizations in Ontario (53%) had no paid staff, and needed to be operational in nature. See Katherine Scott et al, "The Nonprofit and Voluntary Sector in Ontario: Regional Highlights from the National Survey of Nonprofit and Voluntary Organizations"" (2006) at 63, online (pdf): *Imagine Canada* <<https://imaginecanada.ca/sites/default/files/2019-11/Regional%20Report%20-%20Ontario.pdf>>.

<sup>672</sup> Keith Steel, *Management of Nonprofit and Charitable Organizations in Canada*, 4th ed (Toronto: LexisNexis Canada, 2018) at 197.

<sup>673</sup> Anne Corbett & James M Mackay, *Guide to Good Governance: Not-for-Profit and Charitable Organizations*, 2nd ed (September 2013) at 33.

<sup>674</sup> Keith Steel, *Management of Nonprofit and Charitable Organizations in Canada*, 4th ed (Toronto: LexisNexis Canada, 2018) at 200.

<sup>675</sup> Keith Steel, *Management of Nonprofit and Charitable Organizations in Canada*, 4th ed (Toronto: LexisNexis Canada, 2018) at 199.

<sup>676</sup> See John Carver, *Boards That Make a Difference: A New Design for Leadership in Nonprofit and Public Organizations*, 3rd ed (San Francisco: Jossey-Bass, 2011).

<sup>677</sup> Anne Corbett & James M Mackay, *Guide to Good Governance: Not-for-Profit and Charitable Organizations*, 2nd ed (September 2013) at 34.

<sup>678</sup> Anne Corbett & James M Mackay, *Guide to Good Governance: Not-for-Profit and Charitable Organizations*, 2nd ed (September 2013) at 34. This model is often referred to as a Carver policy governance model. See John Carver, *Boards That Make a Difference: A New Design for Leadership in Nonprofit and Public Organizations*, 3rd ed (San Francisco: Jossey-Bass, 2011).

Organizations operating under a policy governance model typically have highly developed policies and performance reporting for operations.<sup>679</sup> This enables the board to deal with important issues in a way that least intrudes into the CEO's role of managing operations.<sup>680</sup> Said differently, the board has its "noses in" but its "hands out" of operations; in its oversight role, the board monitors what is happening, but does not second-guess or intervene in operational management decisions.<sup>681</sup>

ii. *Hockey Canada's current governance model*

Our interviews revealed that the Hockey Canada Board was historically quite large and much involved in operations. However, the organization reduced the Board to its current range of five to nine Directors as part of its continuance under the CNCA in 2014. In relation to its continuance, Hockey Canada had commissioned a first governance review to align its structure with the requirements of the CNCA. In 2016, Hockey Canada commissioned a second governance review, in part to help the Board transition from an operational model to a policy model.<sup>682</sup> We understand that Hockey Canada did not implement all the recommendations from the 2016 review.

Our review suggests that the Board's transition to a policy board was a mixed success. Our interviews revealed that Directors had conflicting understandings of Hockey Canada's governance model. Some Directors avoided detailed operational issues on an understanding that the Board followed the policy model. Other Directors indicated that the Board was "too in the weeds" and spent too much time on operational issues, rather than strategy. Others resisted the idea of transitioning to a pure policy model, holding that the Board's bylaws, policies, and its close connection to the sport worked best with a hybrid model.

Further, our review of the Board meeting agendas and minutes from the last several years revealed a focus on operational issues, particularly in the reports made by staff to the Board. Examples include a reference to an update regarding the reformatting of a Rulebook, discussions relating to the Hockey Canada Registry (the platform used to manage Participant registration), logistics for upcoming tournaments, changes to the employee manual, and updates on the staff salary review process.<sup>683</sup>

iii. *Comparator Associations' governance models*

The COC Code recommends that "boards should perform policy-making and risk assessment functions (and conversely, not assume operational roles) with appropriate independence from

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<sup>679</sup> Anne Corbett & James M Mackay, *Guide to Good Governance: Not-for-Profit and Charitable Organizations*, 2nd ed (September 2013) at 34.

<sup>680</sup> Anne Corbett & James M Mackay, *Guide to Good Governance: Not-for-Profit and Charitable Organizations*, 2nd ed (September 2013) at 34.

<sup>681</sup> Anne Corbett & James M Mackay, *Guide to Good Governance: Not-for-Profit and Charitable Organizations*, 2nd ed (September 2013) at 34.

<sup>682</sup> Interview of Eric Sorensen, Consultant to Hockey Canada (14 September 2022).

<sup>683</sup> See e.g. Hockey Canada, Board of Directors, *Minutes of Meeting* (held on 2-3 May 2019); Hockey Canada, Board of Directors, *Minutes of Meeting* (held on 30 May 2019); Hockey Canada, Board of Directors, *Minutes of Meeting* (held on 6 September 2019).

management.”<sup>684</sup> This suggests a governance model which lies closer to the policy end of the spectrum.

Several of the Comparator Associations noted that their boards focus on policy and strategy rather than operations<sup>685</sup>. It was noted that boards on occasion become more operational, including in circumstances where staffing gaps required assistance from directors. Training, orientation processes and reminders of the boards’ role were used by Comparator Associations to help boards stay strategic rather than operational.

iv. *Considerations in choosing a governance model*

Every well-functioning organization features a “zone of accommodation” – the overlap between governance, management, and staff work.<sup>686</sup> As an organization’s priorities change, and as the landscape in which it operates evolves, the organization must remain flexible and carefully navigate this functional overlap to ensure that each rung in the organizational structure serves an optimal role. Accordingly, most boards fall somewhere along the governance spectrum, and shift within that spectrum throughout the life of the corporation.<sup>687</sup>

In our view, Hockey Canada’s current approach to its governance model is not effectively serving the organization’s interests and must be reconsidered. As it makes its way through this period of change, we consider that the Board should adopt a governance style falling between the working board and the policy board. The Board must establish clear short, medium, and long-term visions for the organization, which will require a delicate balance of policy and operational decisions. Hockey Canada’s current mission is to “lead, develop and promote positive hockey experiences”.<sup>688</sup> Its strategic plan identifies six “brutal facts” that “play an essential role in accelerating Hockey Canada’s success or serving as significant roadblocks to being great”.<sup>689</sup> As a good starting point, it will be important for the organization to weigh how it can evaluate these items – and any others that emerge – in the shorter term, and how it can leverage them in the longer term to effect change at a strategic level.

When Hockey Canada achieves more stability on the Board and in the senior management team, it can re-examine its governance structure – and should do so regularly – in light of changing internal and external circumstances, to determine whether it is still in the best interests of the organization and the Board’s strategic vision.<sup>690</sup>

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<sup>684</sup> “Canadian Sport Governance Code” (April 2021) at 2, online: *Canadian Olympic Committee – NSO Sharing Centre* <<https://nso.olympic.ca/canadian-sport-governance-code/>>.

<sup>685</sup> Curling Canada, Tennis Canada and Canada Soccer all described their boards as being strategic in nature.

<sup>686</sup> Mel Gill, “Building Effective Approaches to Governance” (21 June 2022), online: *Nonprofit Quarterly* <<https://nonprofitquarterly.org/building-effective-approaches-to-governance-models/>>.

<sup>687</sup> Mel Gill, “Governance Do’s and Don’ts” (23 April 2001) at 18.

<sup>688</sup> “Mandate & Mission – Who is Hockey Canada?” (last visited 21 August 2022), online: *Hockey Canada* <[www.hockeycanada.ca/en-ca/corporate/about/mandate-mission](http://www.hockeycanada.ca/en-ca/corporate/about/mandate-mission)>.

<sup>689</sup> These are structure, customer, competition, consistency, barriers and over-regulation/rules. See Hockey Canada, “Strategic Plan 2022-2026” at 5, 50.

<sup>690</sup> Anne Corbett & James M Mackay, *Guide to Good Governance: Not-for-Profit and Charitable Organizations*, 2nd ed (September 2013) at 219-220; see also C Sorokin et al, *Nonprofit Governance and Management*, 3rd ed (Chicago: American Bar Association, 2011) at 23.

v. *Drawing a clearer line between the board and management*

A board typically delegates the “day-to-day supervision of the affairs of the organization” to the CEO, who acts as the “administrative head” of the organization.<sup>691</sup> In accordance with their fiduciary duties, directors must always ensure these delegated acts are properly fulfilled.<sup>692</sup> But in doing so, directors run the risk of blurring the line between the board’s role (governance) and management’s role (operations).<sup>693</sup> A clear statement from the Board on its role and functions, and on those of management can mitigate that risk.<sup>694</sup> The statement can also clarify the board’s governance model.<sup>695</sup>

1. Statement of role and functions of the board

The statutory duties of a board give rise to a number of board responsibilities and functions. Although these may vary according to the chosen governance model, many form the core of the board’s contribution to the corporation’s management. The Board of Hockey Canada should have a formal statement articulating the Board’s primary functions.<sup>696</sup> This aligns with the COC Code, which advises that each NSO should “adopt a board mandate which delineates the roles and responsibilities of the board which, among other matters, includes the requirement to develop a multi-year strategic plan, and a succession plan for the CEO.”<sup>697</sup>

At least two Comparator Associations have a formal statement outlining the roles and responsibilities of their boards. Curling Canada has a “Delegation of Authorities Policy” that limits the authority designated to particular positions within the corporation.<sup>698</sup> The policy’s stated purpose is to ensure the “correct balance of responsibilities is struck between governance and management.”<sup>699</sup> It states expressly that the Board governs, and that the CEO manages. It also lists the powers expressly reserved for the Board, and describes the CEO’s role. Similarly, Canada

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<sup>691</sup> Anne Corbett & James M Mackay, *Guide to Good Governance: Not-for-Profit and Charitable Organizations*, 2nd ed (September 2013) at 34; see also Sport Canada, “Pursuing Effective Governance in Canada’s National Sport Community” (November 2011) at 6-7.

<sup>692</sup> Anne Corbett & James M Mackay, *Guide to Good Governance: Not-for-Profit and Charitable Organizations*, 2nd ed (September 2013) at 34; see also Carol Hansell, *Corporate Governance for Directors*, (Toronto: Thomson Reuters Canada, 2019) at 49.

<sup>693</sup> Anne Corbett & James M Mackay, *Guide to Good Governance: Not-for-Profit and Charitable Organizations*, 2nd ed (September 2013) at 35.

<sup>694</sup> Sport Canada, “Pursuing Effective Governance in Canada’s National Sport Organizations” (November 2011) at 6-7; “The Effective Not-for-Profit Board: A value-driving force” (2013) at 6, online (pdf): [Deloitte](https://www2.deloitte.com/content/dam/Deloitte/ca/Documents/public-sector/ca-en-public-sector-effective-npo-board.pdf)<https://www2.deloitte.com/content/dam/Deloitte/ca/Documents/public-sector/ca-en-public-sector-effective-npo-board.pdf>; see also Anne Corbett & James M Mackay, *Guide to Good Governance: Not-for-Profit and Charitable Organizations*, 2nd ed (September 2013) at 32.

<sup>695</sup> Anne Corbett & James M Mackay, *Guide to Good Governance: Not-for-Profit and Charitable Organizations*, 2nd ed (September 2013) at 34.

<sup>696</sup> Anne Corbett & James M Mackay, *Guide to Good Governance: Not-for-Profit and Charitable Organizations*, 2nd ed (September 2013) at 217.

<sup>697</sup> “Canadian Sport Governance Code” (April 2021) at 4, s B.4, online: *Canadian Olympic Committee – NSO Sharing Centre* <<https://nso.olympic.ca/canadian-sport-governance-code/>>.

<sup>698</sup> “Policy Manual” (updated May 2021) at 26-30, online (pdf): *Curling Canada* <<https://www.curling.ca/files/2021/06/POLICY-MANUAL-May-2021-edition.pdf>>.

<sup>699</sup> “Policy Manual” (updated May 2021) at 27, online (pdf): *Curling Canada* <<https://www.curling.ca/files/2021/06/POLICY-MANUAL-May-2021-edition.pdf>>.

Soccer has a “Governance Policies” document outlining the specific roles and responsibilities of the Directors.<sup>700</sup>

In our view, Hockey Canada should develop a similar policy. Not only will doing so help the Board realize its chosen governance model, but the policy will also ensure a more efficient and effective distribution of work across the organization, having key individuals performing the right tasks at the right time. In parallel with the development of such a policy, Hockey Canada should review section 37 of the By-laws (“Board Powers”), as well as the Terms of Reference for the Board (section 2.0) and the Directors (section 2.1), and incorporate any relevant principles in the new policy. Then those By-law provisions and Terms of Reference should be repealed and replaced with the new policy.

Such a policy should address the following:<sup>701</sup>

Primary function	Description
<p><b>Approving strategic goals and directions</b></p>	<p>Every not-for-profit corporation has a different purpose, mission, and vision. To achieve the corporation’s purpose, the directors, officers and staff need to clearly understand what the corporation wishes to become and how it intends to get there.<sup>702</sup> Boards are not responsible for conducting the strategic planning; however, they must ensure that strategic planning is done and the goals that come out of the process “provide a reasonable plan for the corporation and [are] in its best interests.”<sup>703</sup> The strategic plan is therefore “the foundation document that provides direction to the organization”<sup>704</sup> to reach specific goals within a specific time frame.<sup>705</sup> Planning is, for the most part, performed by management and it is instead the board’s role to “shape and oversee the process.”<sup>706</sup> Typically, the CEO and senior staff will manage the strategic planning process.<sup>707</sup></p>

<sup>700</sup> “Governance Policies” (updated January 2022) at 5-7, online (pdf): *Canada Soccer* <[https://www.canadasoccer.com/wp-content/uploads/2022/03/CSA-Governance-Policies-2022\\_EN.pdf](https://www.canadasoccer.com/wp-content/uploads/2022/03/CSA-Governance-Policies-2022_EN.pdf)>.

<sup>701</sup> List of functions drawn from Anne Corbett & James M Mackay, *Guide to Good Governance: Not-for-Profit and Charitable Organizations*, 2nd ed (September 2013) at 38.

<sup>702</sup> Sport Canada, “Pursuing Effective Governance in Canada’s National Sport Community” (November 2011) at 4.

<sup>703</sup> Anne Corbett & James M Mackay, *Guide to Good Governance: Not-for-Profit and Charitable Organizations*, 2nd ed (September 2013) at 44.

<sup>704</sup> Anne Corbett & James M Mackay, *Guide to Good Governance: Not-for-Profit and Charitable Organizations*, 2nd ed (September 2013) at 38.

<sup>705</sup> Anne Corbett & James M Mackay, *Guide to Good Governance: Not-for-Profit and Charitable Organizations*, 2nd ed (September 2013) at 39; see also Business Roundtable, “Principles of Corporate Governance” (8 September 2016), online: *Harvard Law School Forum on Corporate Governance* <<https://corpgov.law.harvard.edu/2016/09/08/principles-of-corporate-governance/>>.

<sup>706</sup> Anne Corbett & James M Mackay, *Guide to Good Governance: Not-for-Profit and Charitable Organizations*, 2nd ed (September 2013) at 44.

<sup>707</sup> Anne Corbett & James M Mackay, *Guide to Good Governance: Not-for-Profit and Charitable Organizations*, 2nd ed (September 2013) at 44.

Primary function	Description
	<p>Once a strategic plan is in place, it should be reviewed by the board as a part of a regular annual planning cycle.<sup>708</sup> The strategic planning review should shape operational planning and budgeting.<sup>709</sup> There should be regular reports (e.g. quarterly, or at each board meeting) from senior management on the implementation of the strategic plan.<sup>710</sup></p> <p>The Sport Canada Report Card recommends that strategic planning be incorporated into all aspects of an organization’s operations, and that it be clearly connected and articulated to the everyday aspects of that organization.<sup>711</sup> Further, the Key Performance Indicators should inform decision-making and planning, and there should exist opportunities for the organization to connect to future opportunities associated with the strategic plan.<sup>712</sup> Further still, members and stakeholders of the organization should have ongoing opportunities to provide input that the organization may consider as part of its strategic planning process.<sup>713</sup></p>
<p><b>Establishing a framework for performance oversight</b></p>	<p>Determining how the organization will measure its success is a key component of effective governance.<sup>714</sup> In order to govern without becoming too involved in operations, a board should create an integrated overall performance reporting system.<sup>715</sup> This should be a “simple and clear performance reporting system to monitor overall organizational performance” and key performance areas, such as quality of services/outcomes, financial condition and performance, community engagement and organizational development.<sup>716</sup></p> <p>The system should establish “measures and indicators that quantify the performance objectives as a basis for planning targets and monitoring actual results.”<sup>717</sup> This requires that staff provide regular performance reports to the board, which allow the board to assess how well the corporation is accomplishing its objectives and determine areas needing</p>

<sup>708</sup> Anne Corbett & James M Mackay, *Guide to Good Governance: Not-for-Profit and Charitable Organizations*, 2nd ed (September 2013) at 46.

<sup>709</sup> Anne Corbett & James M Mackay, *Guide to Good Governance: Not-for-Profit and Charitable Organizations*, 2nd ed (September 2013) at 46.

<sup>710</sup> Anne Corbett & James M Mackay, *Guide to Good Governance: Not-for-Profit and Charitable Organizations*, 2nd ed (September 2013) at 44, 46.

<sup>711</sup> Sport Canada, Report Card Phase 2 Matrices and Glossary, Government of Canada (undated), at 2.5.1.

<sup>712</sup> Sport Canada, Report Card Phase 2 Matrices and Glossary, Government of Canada (undated), at 2.5.1.

<sup>713</sup> Sport Canada, Report Card Phase 2 Matrices and Glossary, Government of Canada (undated), at 2.5.1.

<sup>714</sup> Sport Canada, “Pursuing Effective Governance in Canada’s National Sport Community” (November 2011) at 2.

<sup>715</sup> Anne Corbett & James M Mackay, *Guide to Good Governance: Not-for-Profit and Charitable Organizations*, 2nd ed (September 2013) at 47.

<sup>716</sup> Anne Corbett & James M Mackay, *Guide to Good Governance: Not-for-Profit and Charitable Organizations*, 2nd ed (September 2013) at 47-48.

<sup>717</sup> Anne Corbett & James M Mackay, *Guide to Good Governance: Not-for-Profit and Charitable Organizations*, 2nd ed (September 2013) at 47; see also Sport Canada, “Pursuing Effective Governance in Canada’s National Sport Community” (November 2011) at 2.

Primary function	Description
	attention. <sup>718</sup> Although directors should not become experts in program effectiveness and quality, directors must understand the complexities of the organization’s operations for proper evaluation. <sup>719</sup>
<b>Overseeing the financial condition and resources</b>	<p>The sustained success of a not-for-profit corporation depends on its ongoing viability, which the Board must regularly monitor. To accomplish this, directors should oversee the financial performance and viability of the not-for-profit corporation, ensure the resources and assets are available to carry out its mission and are used effectively, and oversee and protect assets from risk.<sup>720</sup></p> <p>While many directors “do not have the expertise to provide meaningful oversight to the financial area [...] [e]ach [d]irector has a legal and moral responsibility to oversee the finances.”<sup>721</sup> Consequently, orientation for directors “should include training in financial literacy [...] and the] financial reporting should be done in a clear and simple manner.”<sup>722</sup></p> <p>A board must remain wary not to involve itself excessively in operational decision-making, but should take certain actions to fulfill its role. For instance, boards should approve operating and capital budgets, monitor financial performance, ensure the sufficiency and integrity of information,<sup>723</sup> and ensure that the financial management conforms to generally accepted accounting principles.<sup>724</sup> Additionally, a board “should assure itself that insurance programs are adequate [...] and maintained at appropriate levels.”<sup>725</sup> Finally, boards “should be satisfied that there is an effective policy framework for managing the procurement of goods and services,” for managing contracts, and for managing investment programs.<sup>726</sup></p>

<sup>718</sup> Anne Corbett & James M Mackay, *Guide to Good Governance: Not-for-Profit and Charitable Organizations*, 2nd ed (September 2013) at 47-48.

<sup>719</sup> Anne Corbett & James M Mackay, *Guide to Good Governance: Not-for-Profit and Charitable Organizations*, 2nd ed (September 2013) at 51.

<sup>720</sup> Anne Corbett & James M Mackay, *Guide to Good Governance: Not-for-Profit and Charitable Organizations*, 2nd ed (September 2013) at 53.

<sup>721</sup> Sport Canada, “Pursuing Effective Governance in Canada’s National Sport Community” (November 2011) at 8.

<sup>722</sup> Sport Canada, “Pursuing Effective Governance in Canada’s National Sport Community” (November 2011) at 8.

<sup>723</sup> Anne Corbett & James M Mackay, *Guide to Good Governance: Not-for-Profit and Charitable Organizations*, 2nd ed (September 2013) at 54-55; see also Business Roundtable, “Principles of Corporate Governance” (8 September 2016), online: *Harvard Law School Forum on Corporate Governance* <<https://corpgov.law.harvard.edu/2016/09/08/principles-of-corporate-governance/>>.

<sup>724</sup> Sport Canada, “Pursuing Effective Governance in Canada’s National Sport Community” (November 2011) at 8.

<sup>725</sup> Anne Corbett & James M Mackay, *Guide to Good Governance: Not-for-Profit and Charitable Organizations*, 2nd ed (September 2013) at 55.

<sup>726</sup> Anne Corbett & James M Mackay, *Guide to Good Governance: Not-for-Profit and Charitable Organizations*, 2nd ed (September 2013) at 55.

Primary function	Description
	<p>Lastly, the board should “obtain support from one or more committees,”<sup>727</sup> such as a Finance Committee, to help fulfil its oversight role and to provide for an appropriate level of scrutiny.<sup>728</sup></p>
<p><b>Overseeing risk management for the corporation</b></p>	<p>Assessing and managing risk involves a broad view of risk, incorporating organizational risks related to liabilities and losses, business viability risks, and reputational risks.<sup>729</sup></p> <p>A board should concern itself with risk in three ways. First, it must involve itself in “identifying and assessing potential risks, as well as determining how to respond to each risk, and in doing so, establish the corporation’s tolerance for risk.”<sup>730</sup> Second, the board should ensure that the organization takes steps to mitigate the effects of risks, for example, by purchasing insurance, establishing contractual protections against contingencies and risks, and/or establishing contingency plans.<sup>731</sup> Lastly, the board “needs to assure itself that management has put in place the appropriate policies, processes and programs to prepare for, prevent, and protect the corporation from foreseeable and material risks.”<sup>732</sup></p> <p>Some boards may choose to establish a Risk Management Committee to work with management to identify and address the risks to the corporation broadly, while others may leave the task to individual standing committees working together.”<sup>733</sup></p> <p>The Report Card recommends that risk management and proactive mitigation be a regular and recurring feature of the Board’s operations and discussion.<sup>734</sup> Ideally, the proactive risk mitigation strategy considers and incorporates business continuity planning. Moreover, the risk management strategy should focus on reducing organizational uncertainty, with an</p>

<sup>727</sup> Anne Corbett & James M Mackay, *Guide to Good Governance: Not-for-Profit and Charitable Organizations*, 2nd ed (September 2013) at 56.

<sup>728</sup> Sport Canada, *Pursuing Effective Governance in Canada’s National Sport Organizations* (November 2011) at 8.

<sup>729</sup> Anne Corbett & James M Mackay, *Guide to Good Governance: Not-for-Profit and Charitable Organizations*, 2nd ed (September 2013) at 57-58.

<sup>730</sup> Anne Corbett & James M Mackay, *Guide to Good Governance: Not-for-Profit and Charitable Organizations*, 2nd ed (September 2013) at 59; Business Roundtable, “Principles of Corporate Governance” (8 September 2016), online: *Harvard Law School Forum on Corporate Governance* <<https://corpgov.law.harvard.edu/2016/09/08/principles-of-corporate-governance/>>.

<sup>731</sup> Anne Corbett & James M Mackay, *Guide to Good Governance: Not-for-Profit and Charitable Organizations*, 2nd ed (September 2013) at 59.

<sup>732</sup> Anne Corbett & James M Mackay, *Guide to Good Governance: Not-for-Profit and Charitable Organizations*, 2nd ed (September 2013) at 59.

<sup>733</sup> Anne Corbett & James M Mackay, *Guide to Good Governance: Not-for-Profit and Charitable Organizations*, 2nd ed (September 2013) at 60-61.

<sup>734</sup> Sport Canada, *Report Card Phase 2 Matrices and Glossary*, Government of Canada (undated), at 2.5.2.

Primary function	Description
	<p>overall intent of helping the organization achieve strategic outcomes.<sup>735</sup> In addition to having a risk registry, which is regularly maintained, the registry and the risk management practices should align and connect to strategic, operational and financial plans.<sup>736</sup></p> <p>The Report Card further recommends that members and stakeholders have viable channels to communicate potential concerns, and that they have ongoing opportunities to provide input or bring potential risks to the Board’s attention.<sup>737</sup></p>
<p><b>Supervising leadership</b></p>	<p>The CEO is the senior manager responsible to the board. The board is responsible for hiring the CEO – the organization’s senior manager – and overseeing their performance to “ensure there is effective leadership in place to manage the organization”<sup>738</sup>, and to ensure that the acts delegated to the CEO are properly fulfilled. The board should clearly define the CEO’s role and the board’s expectations, oversee the CEO’s annual evaluation based on established criteria, and approve a CEO succession plan.<sup>739</sup> It is important for the board to develop and nurture “a productive working relationship with the CEO.”<sup>740</sup></p> <p>As part of the CEO’s annual evaluation process, the Board should set annual goals, review reports on performance vis-à-vis these goals, obtain feedback on performance, consider it and discuss it with the CEO.</p> <p>The Sport Canada Report Card recommends that the Board clearly document the roles and responsibilities of the Board and those of the organization’s leadership, and that they have a process in place to manage their relationship.<sup>741</sup> Indeed, the performance of the most senior staff should be regularly monitored and maintained through the use of ongoing knowledge performance indicators (KPI) development and tracking.<sup>742</sup></p>

<sup>735</sup> Sport Canada, Report Card Phase 2 Matrices and Glossary, Government of Canada (undated), at 2.5.2.

<sup>736</sup> Sport Canada, Report Card Phase 2 Matrices and Glossary, Government of Canada (undated), at 2.5.2.

<sup>737</sup> Sport Canada, Report Card Phase 2 Matrices and Glossary, Government of Canada (undated), at 2.5.2.

<sup>738</sup> Anne Corbett & James M Mackay, *Guide to Good Governance: Not-for-Profit and Charitable Organizations*, 2nd ed (September 2013) at 61; see also Business Roundtable, “Principles of Corporate Governance” (8 September 2016), online: *Harvard Law School Forum on Corporate Governance* <<https://corpgov.law.harvard.edu/2016/09/08/principles-of-corporate-governance/>>.

<sup>739</sup> “Canadian Sport Governance Code” (1 September 2021) at 4, s B.4, online: *Canadian Olympic Committee – NSO Sharing Centre* <https://nso.olympic.ca/canadian-sport-governance-code/>; see also Anne Corbett & James M Mackay, *Guide to Good Governance: Not-for-Profit and Charitable Organizations*, 2nd ed (September 2013) at 61-66; see also Business Roundtable, “Principles of Corporate Governance” (8 September 2016), online: *Harvard Law School Forum on Corporate Governance* <<https://corpgov.law.harvard.edu/2016/09/08/principles-of-corporate-governance/>>.

<sup>740</sup> Sport Canada, “Pursuing Effective Governance in Canada’s National Sport Community” (November 2011) at 6.

<sup>741</sup> Sport Canada, Report Card Phase 2 Matrices and Glossary, Government of Canada (undated), at 2.3.2.

<sup>742</sup> Sport Canada, Report Card Phase 2 Matrices and Glossary, Government of Canada (undated), at 2.3.2.

Primary function	Description
<p><b>Overseeing stakeholder relationships</b></p>	<p>The board must ensure that the corporation “develops effective stakeholder relationships so that it has stakeholder support for its objectives.”<sup>743</sup> Stakeholders have an interest in the activities of the corporation and can impact the corporation’s well-being.<sup>744</sup> The board should develop a framework and plan for managing stakeholder relations —an “overall policy direction for discharging its accountability, engagement, and communications efforts with stakeholders.”<sup>745</sup></p> <p>The board generally only provides policy direction on stakeholder relationships.<sup>746</sup> Management and the board share the implementation of this direction.<sup>747</sup> Typically, the board chair acts as the external spokesperson for the board, and shares the responsibility of engaging external stakeholders with the CEO.<sup>748</sup> The two must work together closely to maintain consistent messaging.<sup>749</sup> The board should also receive periodic reports about stakeholder relationships, so that it can monitor their status.<sup>750</sup> Some boards choose to use committees (e.g. Community Relations or Communications Committee) to provide support for this board function.<sup>751</sup></p> <p>Given the current state of affairs, the Board should pay close attention to its relationship with stakeholders. It should not ignore the importance of salvaging existing relationships. As it makes the necessary changes to its structure, purpose and functioning, the Board should work with senior management to seek out new partnerships that align with and promote the values Hockey Canada will feature at the heart of its strategic vision.</p>
<p><b>Managing the board’s own governance</b></p>	<p>In addition to choosing its governance model and articulating its role and functions, the board should establish policies and practices that “promote a quality board”, and define the structure and processes for how the board</p>

<sup>743</sup> Anne Corbett & James M Mackay, *Guide to Good Governance: Not-for-Profit and Charitable Organizations*, 2nd ed (September 2013) at 67.

<sup>744</sup> Anne Corbett & James M Mackay, *Guide to Good Governance: Not-for-Profit and Charitable Organizations*, 2nd ed (September 2013) at 67.

<sup>745</sup> Anne Corbett & James M Mackay, *Guide to Good Governance: Not-for-Profit and Charitable Organizations*, 2nd ed (September 2013) at 68.

<sup>746</sup> Anne Corbett & James M Mackay, *Guide to Good Governance: Not-for-Profit and Charitable Organizations*, 2nd ed (September 2013) at 69.

<sup>747</sup> Anne Corbett & James M Mackay, *Guide to Good Governance: Not-for-Profit and Charitable Organizations*, 2nd ed (September 2013) at 69.

<sup>748</sup> Anne Corbett & James M Mackay, *Guide to Good Governance: Not-for-Profit and Charitable Organizations*, 2nd ed (September 2013) at 69.

<sup>749</sup> Anne Corbett & James M Mackay, *Guide to Good Governance: Not-for-Profit and Charitable Organizations*, 2nd ed (September 2013) at 69.

<sup>750</sup> Anne Corbett & James M Mackay, *Guide to Good Governance: Not-for-Profit and Charitable Organizations*, 2nd ed (September 2013) at 69.

<sup>751</sup> Anne Corbett & James M Mackay, *Guide to Good Governance: Not-for-Profit and Charitable Organizations*, 2nd ed (September 2013) at 69.

Primary function	Description
	conducts its business. <sup>752</sup> In turn, it should develop a mechanism to evaluate its own effectiveness and the appropriateness of its governance approach. <sup>753</sup>

Beyond developing a statement of roles and policies, the Board must actively manage and reinforce the line between itself and management through clear and consistent communication with senior management.<sup>754</sup> This can also be done via comprehensive training and orientation. Indeed, following the last election cycle, the Hockey Canada Board received comprehensive orientation in which the role of the Board was distinguished from that of senior management.<sup>755</sup> We recommend that Hockey Canada continue this practice, particularly as the Board re-evaluates its governance structure and its relationship with senior management.

**C. Is the Board’s current structure, as a volunteer Board with accountability for oversight of the organization, appropriate and in the best interests of hockey in Canada?**

Nearly all not-for-profit corporations in Canada operate successfully with volunteer boards. However, our discussions with Hockey Canada have revealed that the Board requires significant and even unreasonable time commitments from its Directors and this must be addressed to ensure that a volunteer Board is appropriate for Hockey Canada. Additionally, the Board should clarify its role and that of senior management, and should reconsider how frequently and to what extent it delves into operations, instead of deferring to the remunerated staff.

*i. Reducing the time commitment for Hockey Canada’s Directors*

Comparator Associations estimated that their directors each commit approximately 150-200 hours annually to their organization.<sup>756</sup> In contrast, Hockey Canada’s Directors reported spending

<sup>752</sup> Anne Corbett & James M Mackay, *Guide to Good Governance: Not-for-Profit and Charitable Organizations*, 2nd ed (September 2013) at 70.

<sup>753</sup> Anne Corbett & James M Mackay, *Guide to Good Governance: Not-for-Profit and Charitable Organizations*, 2nd ed (September 2013) at 70-71.

<sup>754</sup> Anne Corbett & James M Mackay, *Guide to Good Governance: Not-for-Profit and Charitable Organizations*, 2nd ed (September 2013) at 35.

<sup>755</sup> For example, the presentation explains that a “clear division of the roles/responsibilities of the Board and Senior Management should be set out in writing (i.e. Terms of Reference)”, that the “Board’s role is to govern the organization, not to manage it”, and that “Directors should stay focused on strategic governance, not on management and operational delivery”. Hockey Canada, “Board of Directors Orientation Sessions” (21 November 2020).

<sup>756</sup> The National Association of Corporate Directors found that directors of a not-for-profit average about 166 hours of board work a year; similarly, the National Center for Nonprofit Boards found an average of 120 hours per year. See Chris Taylor, “Your Money: Why you need time, money to serve on a volunteer board” (26 July 2017), online: *Reuters* <<https://www.reuters.com/article/us-money-volunteer-board-idUSKBN1AB2J5>>; BoardSource, “Nonprofit Governance Index – 2007” (2007) at 10, online (pdf): <[https://leadingwithintent.org/wp-content/uploads/2017/09/Governance-Index\\_2007.pdf](https://leadingwithintent.org/wp-content/uploads/2017/09/Governance-Index_2007.pdf)>.

anywhere from 400 to 500 hours annually on Board work<sup>757</sup>, including up to 80 days spent away from home, in addition to dozens of hours spent on various committees.<sup>758</sup>

Several Directors indicated that this large time commitment prevented the Hockey Canada Board from attracting a broader range of skilled Directors. The time commitment precluded individuals with inflexible, full time jobs from applying and is a potential barrier to achieving further diversity of the Board.

We make two observations on what may be contributing to the large time commitments required of Hockey Canada Directors. First, as described above, the Board's increased involvement in day-to-day operations adds unnecessary work that should be handled by staff and senior management.

Second, the Board meetings and processes could be more efficient. Directors reported that considerable time was devoted during Board meetings to routine tasks such as approving Board minutes from previous meetings. The Board should examine its processes and how it runs its meetings to reduce unnecessary time spent on simple or routine tasks. Canada Soccer, for example, has incorporated consent agendas in its Governance Policies, allowing directors to approve routine or non-controversial items together without discussion or individual motions, and thus devoting more time to strategic matters the board should be addressing.<sup>759</sup> The same applies to Hockey Canada committees: members should streamline committee processes and participation such that time spent on committee matters not exceed what is reasonably necessary.

In our view, the Hockey Canada Board can become more effective and efficient by taking the following steps:

- Clarifying their governance model, and clarifying roles and responsibilities of the Board, staff and committees;
- Increasing the number of Directors on the Board (as discussed in Chapter VII);
- Reducing Director involvement in operational matters that do not require Board input; and
- Streamlining Board and committee processes to reduce time spent on routine or non-controversial matters (e.g., by requiring that all Board meeting agenda items relate to one or more of Hockey Canada's goals/objectives, or requiring that each agenda item have an "action required")

By taking these steps, Hockey Canada will reduce the time commitments required of Directors, thereby increasing the likelihood of attracting and retaining a competent and diverse Board of Directors. Hockey Canada will also reduce unnecessary overlap between various functions,

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<sup>757</sup> Multiple Directors noted that their directorship is nearly as or more demanding than a full-time job in terms of hours.

<sup>758</sup> For instance, one Director reported meeting 27 times over two and a half months on a specific topic, with each meeting lasting several hours.

<sup>759</sup> "Governance Policies" (updated January 2022) at 8, online (pdf): *Canada Soccer* <[https://www.canadasoccer.com/wp-content/uploads/2022/03/CSA-Governance-Policies-2022\\_EN.pdf](https://www.canadasoccer.com/wp-content/uploads/2022/03/CSA-Governance-Policies-2022_EN.pdf)>.

ensuring that the right people are doing the right work to advance the organization’s objectives, thereby increasing the quality of its work.

ii. *Hockey Canada’s Board should remain a volunteer board*

Directors of not-for-profit corporations are entitled to “reasonable remuneration” under the CNCA, provided such remuneration is permitted by the articles, by-laws, and any unanimous member agreement.<sup>760</sup> Yet, volunteer boards run nearly all Canadian not-for-profit corporations –including Hockey Canada. Hockey Canada’s By-laws and Articles of Continuance mandate that Directors shall serve without remuneration and preclude Directors from receiving any profit from their position.<sup>761</sup>

Generally, the limited resources of not-for-profit corporations not only make voluntary boards a standard practice, but also in the corporation’s best interests, as those resources can be focused on advancing the corporation’s objectives rather than compensating directors.<sup>762</sup> Indeed, the COC Code notes that “Directors may not be remunerated for serving as director,”<sup>763</sup> and all of the Comparator Associations operate with volunteer boards.

We do not recommend moving to a board that is compensated.

**D. Is there a clearly defined process describing what items staff must report to the Board (policy vs. operations)?**

i. *Best practices for board reports by senior management*

To perform its role effectively, a board must receive accurate, relevant, sufficient, and timely information.<sup>764</sup> Beyond effectiveness, a board needs key information to meet its fiduciary obligations relating to acts it delegates to management.<sup>765</sup> Accordingly, a board must provide clear directions to senior management on the information it requires. It can effectively do so by creating clear policies and procedures regarding reports from senior management, detailing points such as:

- report formats (e.g. written or verbal);
- when and how often the reports should be delivered;
- who is responsible for what topic (e.g. the CEO, CFO, COO, and members of staff);

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<sup>760</sup> *Canada Not-for-profit Corporations Act*, SC 2009, c 23, s 143(1).

<sup>761</sup> “Hockey Canada By-Laws, Regulations and History” (May 2022), s 39.1, online (pdf): *Hockey Canada* <<https://cdn.hockeycanada.ca/hockey-canada/Corporate/About/Downloads/2022-23-bylaws-e.pdf>>; Industry Canada, “Hockey Canada Association Articles of Continuance” (10 June 2014).

<sup>762</sup> Carol Hansell, *Corporate Governance for Directors*, (Toronto: Thomson Reuters Canada, 2019) at 38.

<sup>763</sup> “Canadian Sport Governance Code” (1 September 2021) at 6, s B.14, online: *Canadian Olympic Committee – NSO* <Sharing Centre <https://nso.olympic.ca/canadian-sport-governance-code/>>.

<sup>764</sup> Carol Hansell, *Corporate Governance for Directors*, (Toronto: Thomson Reuters Canada, 2019) at 49, 130.

<sup>765</sup> Carol Hansell, *Corporate Governance for Directors*, (Toronto: Thomson Reuters Canada, 2019) at 49.

- what topics the reports should address;<sup>766</sup> and
- how senior management will follow up on action items.

Creating clear policies for reporting ensures that a board has access to relevant information in a timely manner and promotes efficient and effective decision-making. Conversely, gaps in key information from management hinder a board’s ability to avoid and address problems down the line, and make it difficult for the organization to adapt to changing circumstances. The same can be said for overly lengthy reports filled with unnecessary operational details, which may cloud or hide the information a board should focus on.

Not only can clarity in senior management’s reports to a board increase organizational performance, but it can also lead to more efficient board meetings and decision-making. For example, written reports on particular topics provided ahead of board meetings can allow the board to prepare for each meeting with questions for senior management, thereby recouping time that might otherwise be spent on verbal reports. The COC Code suggests it is best practice that certain reports be delivered quarterly, in writing, that:

- all required remittances and all other payments for which directors are personally liable have been made;
- describes any breach of a material agreement, the status of any threatened or initiated claims or lawsuit, and a status update of each;
- confirms that all insurance coverage approved by the board is in full force and effect and that all premiums have been paid; and
- describes any material risks (financial or otherwise) to the NSO.<sup>767</sup>

The Board may decide that senior management should deliver reports on other topics quarterly, or request more frequent reports to the Board on the items listed above, in order to fulfill their duty to oversee the activities of senior management. Hockey Canada has advised that the Audit and Finance Committee currently provides quarterly reports to the Board on the required remittances and payments for which directors are personally liable that have been paid. Similarly, they advised that the Board receives a formal financial report at each Board meeting. We recommend that the Board evaluate its needs from each area of senior management and implement a reporting practice commensurate with the quantity and type of information needed from each area.

Lastly, Hockey Canada advised that the Executive Assistant to the Board maintains a list of action items from Board meetings. Having a process in place to follow up on action items flagged in relation to senior management’s reports is indeed essential. We recommend that the Board continue this practice, and that it adopt a practice or procedure of following up on items regularly

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<sup>766</sup> For example: matters requiring Board approval; risk and compliance updates; progress on goals/strategic plan implementation; organizational performance; key accomplishments; financial management updates; and staff turnover and staff morale information.

<sup>767</sup> “Canadian Sport Governance Code” (1 September 2021) at 7-8, s E.4, online: *Canadian Olympic Committee – NSO Sharing Centre* <<https://nso.olympic.ca/canadian-sport-governance-code/>>.

(for example, noting action items from one Board meeting to the agenda for the following meeting).

*ii. Reporting practices*

Some Comparator Associations had policies governing senior management’s obligation to report to the board, though without any standard practice. Curling Canada’s Delegation of Authorities Policy emphasizes the importance of the board receiving adequate and timely reports regarding senior management’s use of delegated authority, particularly involving unbudgeted items or the use of discretionary authority.<sup>768</sup>

Some examples of the types of reporting requirements contained in the Comparator Associations’ policy documents include:

- Requiring that reports to the Board on “important policy matters” to be in written form with background information and a description of the issues for discussion;<sup>769</sup>
- Outlining the specific items senior management must present on at regular board meetings;<sup>770</sup>
- Creating specific reporting obligations for the CEO where there is a breach of delegated authority;<sup>771</sup>
- Making risk management a standing item on the agenda so that staff (if applicable) can provide updates, as required;<sup>772</sup> and
- Implementing reporting requirements for operational committees, which also have terms of reference requiring that they submit reports semiannually as a part of the CEO’s report to the Board.<sup>773</sup>

Although not all Comparator Associations had comprehensive reporting policies and procedures, the policies outlined above align with the best practices noted in the preceding section.

As far as Hockey Canada is concerned, the By-laws require that:

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<sup>768</sup> “Policy Manual” (updated May 2021) at 28, online (pdf): *Curling Canada* <<https://www.curling.ca/files/2021/06/POLICY-MANUAL-May-2021-edition.pdf>>.

<sup>769</sup> “Governance Policies” (updated January 2022) at 7, online (pdf): *Canada Soccer* <[https://www.canadasoccer.com/wp-content/uploads/2022/03/CSA-Governance-Policies-2022\\_EN.pdf](https://www.canadasoccer.com/wp-content/uploads/2022/03/CSA-Governance-Policies-2022_EN.pdf)>.

<sup>770</sup> “Governance Policies” (updated January 2022) at 7-8, online (pdf): *Canada Soccer* <[https://www.canadasoccer.com/wp-content/uploads/2022/03/CSA-Governance-Policies-2022\\_EN.pdf](https://www.canadasoccer.com/wp-content/uploads/2022/03/CSA-Governance-Policies-2022_EN.pdf)>.

<sup>771</sup> “Policy Manual” (updated May 2021) at 30, online (pdf): *Curling Canada* <<https://www.curling.ca/files/2021/06/POLICY-MANUAL-May-2021-edition.pdf>>.

<sup>772</sup> Canada Basketball, “Risk Management Policy” (2019), s 20, online (pdf): <[https://assets.website-files.com/5d24fc966ad064837947a33b/5e25e16e0482df4cd643b52e\\_Risk%20Management%20Policy.pdf](https://assets.website-files.com/5d24fc966ad064837947a33b/5e25e16e0482df4cd643b52e_Risk%20Management%20Policy.pdf)>.

<sup>773</sup> “Athletics Canada Bylaws” (January 2022), s 113, online: *Athletics Canada* <<https://athletics.ca/wp-content/uploads/2022/01/Athletics-Canada-Bylaws-January-2022.pdf>>.

- the CEO “report to the Board through the Chair of the Board”<sup>774</sup> and “[report] operational outcomes to the Board”;<sup>775</sup>
- the CFO “render an account of all transactions and of the final condition of Hockey Canada to the Board and the President and Chief Operating Officer, at such other times as the Board and the President and Chief Operating Officer may request”;<sup>776</sup> and
- the CFO must provide an annual report on the financial status of Hockey Canada to be delivered at the annual meeting, unless otherwise determined by the Board;<sup>777</sup> this report must include the complete list of Members’ Board of Directors or similar executive body, which must be submitted annually to the CFO of Hockey Canada.<sup>778</sup>

In practice, these requirements provide little to no instruction to senior management on what, when and how they should report to the Board. Indeed, while Hockey Canada’s senior management informed us that the Board instructed them to provide written reports, Directors explained that it is standard practice for senior management to provide an oral report at most Board meetings. Directors also shared that they wished they received written reports in advance of meetings.

Typically, the CEO, and COO provide separate oral reports at Board meetings, covering a variety of topics, which may be accompanied by written reports. The CFO invariably provides oral reports supplemented with written reports. However, these reports do not necessarily invite dialogue between the presenters and the Board. Moreover, Directors informed us that these reports can take several hours to review and are too granular or operational.

It would therefore serve the interests of Hockey Canada for the Board to adopt a more detailed policy on senior management-Board relations that identifies the key information the Board needs to monitor the organization’s strategic vision and success. As noted below, this ultimately affects the effectiveness and efficiency of the Board, and the quality of its work.

We understand that Hockey Canada has begun implementing key alignment tools for Board reporting and discussion, including an Initiative Tracker, a Calendar of Commitments, and the Hockey Canada Scorecard (to track the organization’s progress across all areas of business, including organizational development, continued financial stability and Member engagement).<sup>779</sup> We also understand that Hockey Canada has developed a number of templates for Board reporting, including the Initiative Charter (all initiatives must be chartered and approved), an approved PowerPoint Template, approved Task Team and Working Group templates, and an upcoming

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<sup>774</sup> “Hockey Canada By-Laws, Regulations and History” (May 2022), s 40.2, online (pdf): *Hockey Canada* <<https://cdn.hockeycanada.ca/hockey-canada/Corporate/About/Downloads/2022-23-bylaws-e.pdf>>.

<sup>775</sup> “Hockey Canada By-Laws, Regulations and History” (May 2022), s 40.3(c), online (pdf): *Hockey Canada* <<https://cdn.hockeycanada.ca/hockey-canada/Corporate/About/Downloads/2022-23-bylaws-e.pdf>>.

<sup>776</sup> “Hockey Canada By-Laws, Regulations and History” (May 2022), s 40.9, online (pdf): *Hockey Canada* <<https://cdn.hockeycanada.ca/hockey-canada/Corporate/About/Downloads/2022-23-bylaws-e.pdf>>.

<sup>777</sup> “Hockey Canada By-Laws, Regulations and History” (May 2022), s 40.9, online (pdf): *Hockey Canada* <<https://cdn.hockeycanada.ca/hockey-canada/Corporate/About/Downloads/2022-23-bylaws-e.pdf>>.

<sup>778</sup> “Hockey Canada By-Laws, Regulations and History” (May 2022), s 11.2, online (pdf): *Hockey Canada* <<https://cdn.hockeycanada.ca/hockey-canada/Corporate/About/Downloads/2022-23-bylaws-e.pdf>>.

<sup>779</sup> Hockey Canada, “The A,B,C’s - Three Leadership Processes Focusing on Results” (15-17 April 2019) at 13-18.

Word Template.<sup>780</sup> We recommend that Hockey Canada continue to develop and use tools of these kinds to improve the flow of key communication to the Board in all areas. Further, we recommend that the Board formalize the use of these tools across the organization (e.g., through a policy) for increased consistency in Board reporting, which is intimately linked to transparent, effective and efficient decision-making.

**E. Is the reporting structure to the Board (staff and committees) comprehensive enough to ensure the work of Hockey Canada is efficient, effective, and of the highest quality?**

No. As we discussed above, Hockey Canada lacks a clearly defined reporting structure, which at times causes the Board to step into the operational areas that senior management should handle. Moreover, senior management have insufficient guidance on the type of information the Board needs, when they need it, and in what format it should be presented. This can unduly lengthen meetings and make it more difficult for the Board to hone in on information directly affecting the strategic objectives. In other words, the Board may fail to see the forest for the trees.

From another perspective, the Board and board committees often work inefficiently, causing unnecessary use of time and resources (e.g. meeting too frequently, devoting excessive time to routine matters meetings).

Both of these dimensions add to the large time commitment of Directors, which may act as a barrier to attracting and retaining qualified and diverse candidates to Board positions.

**F. Conclusion and summary of recommendations in light of observations and best practices**

Terms of Reference Question	Response
<p>3. Does the Board exercise an appropriate degree of oversight of senior management as compared to similar organizations?</p>	<p>- No. The roles of senior management and the Board are not clearly defined nor distinguished. This, at times, leads to the Board involving itself too deeply in day-to-day operations. Moreover, the reporting relationship, particularly regarding the transfer of key information, is informal and unstructured. The Board should follow the example of the Comparator Associations by putting in place policies to formalize and clarify these gaps, and should look to increase efficiencies in its Board and Committee processes.</p>

<sup>780</sup> Hockey Canada, “The A,B,C’s - Three Leadership Processes Focusing on Results” (15-17 April 2019) at 19.

Terms of Reference Question	Response
<p>a. Is the Board’s current structure, as a volunteer Board with accountability for oversight of the organization, appropriate and in the best interests of hockey in Canada?</p>	<p>Yes and No. Volunteer boards (rather than compensated boards) are standard practice in the not-for-profit sector.</p> <ul style="list-style-type: none"> <li>- With more clearly defined roles and functions, increasingly efficient Board and committee processes, and an increase in the number of Directors sitting on the Board, Hockey Canada can reduce the time commitment required of its directors, and thus attract even more qualified and diverse candidates. This, in turn, will help Hockey Canada maintain and pursue its strategic vision.</li> <li>- We recommend that board training include the role of the board vis-à-vis the role of management, with a focus on the governance style adopted by the board and examples of what that means in practice</li> </ul>
<p>b. Is there a clearly defined process describing what items staff must report to the Board (policy vs. operations)?</p>	<ul style="list-style-type: none"> <li>- No. Hockey Canada lacks policies and procedures governing what senior management is required to report to the Board, when, and in what format. The Board should work to create clear reporting guidelines and policies to ensure the upward flow of information key to the Board’s role, while filtering out information of an operational nature.</li> </ul>
<p>c. Is the reporting structure to the Board (staff and committees) comprehensive enough to ensure the work of Hockey Canada is efficient, effective, and of the highest quality?</p>	<ul style="list-style-type: none"> <li>- No. See above under “b.” respecting the need to develop a reporting policy.</li> </ul>
<p>d. What role should the Board play in operations versus policy and strategy?</p>	<ul style="list-style-type: none"> <li>- The Board must choose a governance model that allows the corporation to implement its strategic plan. Though the governance model best suited for</li> </ul>

Terms of Reference Question	Response
	<p>Hockey Canada may change over time, and the Board is responsible for determining what model works best for the organization, we recommend for the time being a model that falls somewhere between a management board and a policy board.</p> <ul style="list-style-type: none"> <li>- The Board must reassess its governance model regularly in order to ensure it remains the most effective to implement the corporation's strategic vision. In doing so, it must reinforce the roles of management and of the Board through communication, policies and training/orientation.</li> </ul>

## **X. STRUCTURE OF THE SENIOR MANAGEMENT OF HOCKEY CANADA**

The fourth item in the Terms of Reference asks whether “the Senior Management Team [is] properly structured and constituted to oversee the operations of Hockey Canada, from the grassroots level to the high-performance level.”

### **A. Criteria for assessment and best practices**

Generally, the senior management team of an organization is responsible for the effective execution of the organization’s operations in accordance with the strategic plan that has been approved by the board of directors. With this in mind, we have developed the following criteria in order to evaluate the current structure and constitution of Hockey Canada’s senior management:

- (i) Are the roles, responsibilities and expectations of the Senior Management Team clearly articulated?
- (ii) Does the senior management structure conform to Hockey Canada’s By-Laws?
- (iii) Is there good alignment between the objects and strategic plan of Hockey Canada and the leadership resources devoted to their pursuit, as well as between the major challenges facing the organization and the leadership resources being devoted to addressing them?

In analyzing these criteria, we have considered what we have learned in our interviews, our other research and our study of the practices of Comparator Associations.

### **B. Current structure and constitution of Hockey Canada’s Senior Management Team**

Hockey Canada’s management is currently divided into two levels: (i) the Executive Leadership Team and (ii) the Senior Leadership Team.

#### *i. The Executive Leadership Team*

The Executive Leadership Team is composed of the President/Chief Executive Officer (the “**President/CEO**”), the Chief Financial Officer (“**CFO**”), the Senior Vice President Hockey Operations & Development (“**SVP Hockey Operations & Development**”), the Senior Vice President Legal/General Counsel (“**General Counsel**”) and the Vice President, People Culture & Inclusion (“**VP PC&I**”).

We note that Hockey Canada’s current organizational chart does not reflect what the By-laws provide for the composition of the Corporate Officers. According to the By-laws, the Officers of Hockey Canada include the CEO, the President and Chief Operating Officer (“**COO**”), the CFO

and the Chief Business Development Officer (“**CBDO**”).<sup>781</sup> In addition, “President” is defined as “the President and Chief Operating Officer of Hockey Canada”.<sup>782</sup>

We were advised by Hockey Canada that the CBDO position was vacated in the spring of 2020 and a decision was made by the CEO and President/COO at the time not to fill this position.

As for the COO position, it has not been filled since July 1, 2022. In fact, when the former CEO retired on July 1, 2022, he was replaced by the person who then held the title of President/COO, and both roles were merged to become President/CEO. We understand that this may have only been a transitional measure as there was an intention to eventually fill the COO position.

Below is a description of the current Executive Leadership Team based on the job descriptions and information provided by Hockey Canada.

### 1. President & Chief Executive Officer

The CEO’s functions and responsibilities are identified in the By-laws, which notably provide that “the CEO of Hockey Canada shall, subject to oversight by the Board, be responsible for the general supervision and direction of the business and affairs of Hockey Canada”.<sup>783</sup> As for the President, he is responsible “for overall management of Hockey Canada’s day-to-day activities, subject to the oversight of the CEO and the Board, and shall exercise such additional authority as may from time to time be assigned by the CEO”.<sup>784</sup>

The most recent employment agreement that was applicable to Hockey Canada’s President/CEO did not provide for any specific duties other than “to follow the directions of the Board, and [...] to assume such titles and responsibilities as may be directed by the Board with respect to any subsidiaries or affiliates of [Hockey Canada].” In addition, the agreement provided that the President/CEO “shall have the general duties and responsibilities of previous chief executive officers of [Hockey Canada], and such other duties as may be determined from time to time by the Board, to the best of [the President/CEO’s] ability.”

### 2. Chief Financial Officer

The CFO is responsible for developing a financial strategy with metrics tied to that strategy and the ongoing development and monitoring of control systems designed to preserve the organization’s assets and for reporting accurate financial results. The CFO also has primary day-

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<sup>781</sup> “Hockey Canada By-Laws, Regulations and History” (May 2022), s 40.1, online (pdf): *Hockey Canada* <<https://cdn.hockeycanada.ca/hockey-canada/Corporate/About/Downloads/2022-23-bylaws-e.pdf>>.

<sup>782</sup> “Hockey Canada By-Laws, Regulations and History” (May 2022), s 1v), online (pdf): *Hockey Canada* <<https://cdn.hockeycanada.ca/hockey-canada/Corporate/About/Downloads/2022-23-bylaws-e.pdf>>.

<sup>783</sup> “Hockey Canada By-Laws, Regulations and History” (May 2022), s 40.3, online (pdf): *Hockey Canada* <<https://cdn.hockeycanada.ca/hockey-canada/Corporate/About/Downloads/2022-23-bylaws-e.pdf>>.

<sup>784</sup> “Hockey Canada By-Laws, Regulations and History” (May 2022), s 40.7, online (pdf): *Hockey Canada* <<https://cdn.hockeycanada.ca/hockey-canada/Corporate/About/Downloads/2022-23-bylaws-e.pdf>>.

to-day responsibility for planning, implementing, managing and controlling all financial-related activities.<sup>785</sup>

### 3. Senior Vice President Hockey Operations & Development

The SVP Hockey Operations & Development is responsible for two main areas: national teams and development.<sup>786</sup> With respect to the first area, the SVP Hockey Operations & Development leads the planning, preparation and organization of Women's, Men's and Para Hockey National Teams and ensures professional representation of Hockey Canada at all international events.<sup>787</sup> With respect to the second area, this SVP is responsible for advancing the vision and strategic direction of Hockey Canada, including planning, coordinating and driving accountability for Hockey Development content in the areas of coaching, officiating and players.<sup>788</sup>

There used to be two positions for these areas: one Senior Vice President, National Teams, and one Vice President, Hockey Development. When this latter position became vacant in September 2020, the two areas were placed under one SVP.

Three directors report to the SVP Hockey Operations & Development: Director, Hockey Operations, Women's National Team, Director, Hockey Operations, Player Personnel, Men's National Team, and Director, Hockey Operations, NextGen Development.

### 4. Senior Vice President Legal/General Counsel

The General Counsel acts as principal legal officer responsible for directing all legal actions for the organization and providing legal advice for Executive/Senior Leadership and the Board on corporate matters as required.<sup>789</sup>

The job description associated with this position provides that the General Counsel must oversee and ensure identification and management of insurable or hazard risks, generate department staff reports and plans, analyze insurance/risk management issues and assist with defining and overseeing risk solutions.

Three employees report to the General Counsel: two associate counsel (one supporting the National Appeals Committee, one handling the insurance and general litigation files), and the VP Sport Safety (as described below).

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<sup>785</sup> Hockey Canada, Job Description, "Chief Financial Officer (CFO)" (November 2020).

<sup>786</sup> Hockey Canada currently has no job description for the SVP Hockey Operations & Development. This position was created when the Senior Vice President, National Teams, who assumed the portfolio of the Vice President, Hockey Development when this position became vacant, was promoted to the position of SVP Hockey Operations & Development. Since this role is a combination of these two other positions, we relied on their job descriptions.

<sup>787</sup> Hockey Canada, Job Description, "Senior Vice President National Teams" (December 2018).

<sup>788</sup> Hockey Canada, Job Description, "Vice President, Hockey Development" (December 2018).

<sup>789</sup> Hockey Canada, Job Description, "SVP Legal/General Counsel" (January 2022).

## 5. Vice President, People Culture & Inclusion

The VP PC&I is the head of the human resources department. As part of the Executive Leadership Team, this person works to develop and drive comprehensive workforce talent strategies designed to position Hockey Canada as a leader in sport. According to the job description, the VP PC&I is responsible for playing a key role in aligning workforce and talent attraction strategies to the corporate strategy. The person occupying this role is notably responsible for ensuring a workplace that supports diversity and inclusion.<sup>790</sup>

### ii. *The Senior Leadership Team*

The Senior Leadership Team is composed of the Executive Director, Hockey Canada Foundation (“**ED HCF**”), the Vice President Business Development & Partnerships (“**VP BD&P**”), the Director, Financial Services (“**Director of Finance**”), the Vice President Events & Properties (“**VP Events & Properties**”), the Senior Vice President Strategy, Operations & Brand (“**SVP Operations**”), the Vice President Member Engagement (“**VP Member Engagement**”), and the Vice President of Sport Safety (“**VP Sport Safety**”). Below is a description of each of these roles based on the job descriptions and information provided by Hockey Canada.

### 1. Reporting to the President/CEO

#### 1.1 Vice President Events & Properties

The role and responsibility of the VP Events & Properties is to promote Hockey Canada in the communities through world-leading events. This is done by leading the bid process to identify Canadian communities to host International Ice Hockey Federation (IIHF) and Hockey Canada events in Canada, and by developing key relationships with Members and a thorough understanding of their hosting strategies and needs.<sup>791</sup>

#### 1.2 Senior Vice President Strategy, Operations & Brand

The SVP Operations is responsible for two main areas: operations and marketing.<sup>792</sup> First, this position is responsible for advancing the vision and strategic direction of Hockey Canada; including planning, coordinating and driving accountability for overall operational strategies.<sup>793</sup> Second, the SVP Operations is in charge of developing and implementing Hockey Canada’s communication strategy including media relations and brand marketing.<sup>794</sup>

We were advised by Hockey Canada that although the SVP Operations appears in the Senior Leadership Team of the organizational chart, this person is an integral part of the Executive

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<sup>790</sup> Hockey Canada, Job Description, “VP, People, Culture & Inclusion” (August 2019).

<sup>791</sup> Hockey Canada, Job Description, “Vice President, Events and Properties” (November 2016).

<sup>792</sup> Hockey Canada currently has no job description for the SVP Operations. This position was created when the Vice President, Operations, who assumed the portfolio of the Vice President, Marketing & Communication when this position became vacant, was promoted to the position of SVP Operations. Since this role is a combination of these two other positions, we relied on their job descriptions.

<sup>793</sup> Hockey Canada, Job Description, “Vice President, Operations” (June 2018).

<sup>794</sup> Hockey Canada, Job Description, “Vice President, Marketing & Communications” (November 2016).

Leadership Team. In fact, as a result of the COVID-19 pandemic, the SVP Operations was invited to join the meetings with the Executive Leadership Team in order to receive updates that would affect this person’s responsibilities. This evolved over time, and now the SVP Operations attends the entire meetings, including any in-camera discussions.<sup>795</sup>

### 1.3 Vice President Member Engagement

The VP Member Engagement is the primary liaison between Hockey Canada and the Members regarding the delivery of their strategic objectives, with a view to ensuring that strong, dynamic, long-term professional relationships are formed and managed successfully within all levels of hockey, and all departments within Hockey Canada.<sup>796</sup>

Eight employees report directly to the VP Member Engagement: the four regional directors for each of the West, Ontario, Quebec, and the Atlantic region; one Director, Women & Girls Hockey (“**Director Women & Girls**”); and three managers.<sup>797</sup> We discuss below the role of the Director, Women & Girls Hockey.

Similarly to the SVP Operations, the VP Member Engagement was invited to join the Executive Leadership Team meetings because of the implications that resulted from the COVID-19 pandemic. However, we were advised that contrary to the SVP Operations, the VP Member Engagement does not attend the entire meetings.<sup>798</sup>

## 2. Reporting to the CFO

### 2.1 Executive Director of the Hockey Canada Foundation

The ED HCF is the senior officer of the Hockey Canada Foundation, in charge of overseeing the operations of the Foundation.<sup>799</sup> Since this review does not address the role or operation of the Hockey Canada Foundation, we will not review the functions and duties associated with this position.

### 2.2 Vice President Business Development & Partnerships

The VP BD&P is responsible for growing and maximizing Hockey Canada’s revenue through new and existing streams including sponsorships, digital assets, events and licensing, as well as to develop key relationships with Members and a thorough understanding of their sponsorship strategies and opportunities.<sup>800</sup>

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<sup>795</sup> Email from Denise Pattyn (24 October 2022).

<sup>796</sup> Hockey Canada, Job Description, “Vice President – Member Engagement” (June 2018).

<sup>797</sup> The organization chart shows that although there are five manager positions, two of these are currently vacant. See Hockey Canada, “Organization Chart - Member Engagement” (June 2022).

<sup>798</sup> Email from Denise Pattyn (24 October 2022).

<sup>799</sup> Hockey Canada, Job Description, “Executive Director, Hockey Canada Foundation” (November 2016).

<sup>800</sup> Hockey Canada, Job Description, “Vice President, Business Development & Partnerships” (November 2016).

### 2.3 Director, Financial Services

The Director of Finance’s functions and duties include the supervision of Hockey Canada’s overall financial matters (including Operations, the Health and Benefit Trust, the National Equity Fund, the Pillar Funds and the Hockey Canada Foundation) and the development and control of financial policies and procedures.<sup>801</sup>

### 3. Reporting to the General Counsel

#### 3.1 Vice President of Sport Safety

The VP Sport Safety is a newly created position that was filled for the first time in May 2022. The position provides leadership and expertise in safeguarding best practices, and risk management considerations in the hockey ecosystem through leading and engaging the development of quality sport safety strategies that ensure organizational compliance to its safe sport policies, protocols and relevant legislation. The VP Sport Safety responds to the needs of the Members in the identification and delivery of safe sport training, policies and processes in order to foster a safe environment within which Participants and all those involved have positive hockey experiences.<sup>802</sup>

### C. Assessment of the Structure and Constitution of Hockey Canada’s Senior Management Team

i. *Are the roles, responsibilities and expectations of the Senior Management Team clearly articulated?*

#### 1. General comments

Other than for the President/CEO, discussed below, we believe that the roles and responsibilities of the Senior Management team are generally well articulated. That being said, we have noted some inconsistencies in the job descriptions that were provided to us.

Some documents are not finalized (i.e. are still in draft) and/or have not been recently updated to reflect the current management structure. For example, as detailed above, Hockey Canada currently has no job description for the SVP Hockey Operations & Development; this person needs to rely on the job description of the former roles of Senior Vice President, National Teams and Vice President, Hockey Development, which have been merged together. Some job descriptions still refer to the CBDO even though this position no longer exists.

Since organizations, like Hockey Canada, continuously evolve, we recommend that the job descriptions be updated regularly, and that members of the Senior Management team be reminded of their roles and responsibilities on a regular basis. In addition, these roles and responsibilities must be properly understood at the board level to enable the Board to provide appropriate oversight of the affairs and affairs of the organization through their supervision of the CEO, as discussed in Chapter IX.

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<sup>801</sup> Hockey Canada, Job Description, “Director, Financial Services” (September 2022).

<sup>802</sup> Hockey Canada, Job Description, “Vice President Sport Safety” (October 2021).

In addition, as was suggested to us by former senior staff, it would be appropriate to ensure that, as staff is hired, sufficient onboarding is provided to them. We understand that Hockey Canada is a complex organization that can become quite technical in some areas. For this reason, we believe that, for the staff to properly understand their roles and responsibilities, they need to acquire some broader background knowledge regarding the organization at an early point in their time with the organization.

## 2. President/CEO

Defining the organization's leadership requirements is an important early step in the process of selecting a new CEO.<sup>803</sup> There are basic characteristics that are expected from the president of an organization, such as leadership, self-awareness, and influence. Other specific qualities and skills have to be identified based on the current and anticipated future needs of the organization. Indeed, these qualities and skills will likely vary over time.

This exercise of identifying the competencies, skills, attributes and experience sought in a new CEO is "a key board responsibility that should not be delegated to the organization's human resources staff or external consultants (although both can offer useful input)".<sup>804</sup> In developing their new CEO leadership profile, a board should:

- "consider the organization's mission, strategy, strategic challenges, stage of maturity, depth of talent, history, stakeholders and culture;
- explicitly address the impact of the current CEO's style and legacy;
- consider engaging staff to build morale and support for the next CEO (by interviewing employees for their opinions on the current state of the [organization] and the characteristics needed in the next CEO)".<sup>805</sup>

In light of the above, Hockey Canada's Board should identify what is important for the organization and the skills and qualities that the President/CEO must have in order to pursue those important matters successfully. This exercise is particularly important in the current context. It is of great importance that Hockey Canada regain the trust of its stakeholders and the broader public and it needs a CEO who can successfully lead the organization's efforts to do so.

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<sup>803</sup> Dr. Peter Stephenson & Dr. Guy Beaudin, "20 Questions Directors of Not-for-Profit Organizations Should Ask About CEO Succession" (2016) at 6, online (pdf): *Chartered Professional Accountants of Canada* <<https://www.cpacanada.ca/en/business-and-accounting-resources/strategy-risk-and-governance/not-for-profit-governance/publications/nfp-directors-20-questions-on-ceo-succession>>.

<sup>804</sup> Dr. Peter Stephenson & Dr. Guy Beaudin, "20 Questions Directors of Not-for-Profit Organizations Should Ask About CEO Succession" (2016) at 7, online (pdf): *Chartered Professional Accountants of Canada* <<https://www.cpacanada.ca/en/business-and-accounting-resources/strategy-risk-and-governance/not-for-profit-governance/publications/nfp-directors-20-questions-on-ceo-succession>>.

<sup>805</sup> Dr. Peter Stephenson & Dr. Guy Beaudin, "20 Questions Directors of Not-for-Profit Organizations Should Ask About CEO Succession" (2016) at 7, online (pdf): *Chartered Professional Accountants of Canada* <<https://www.cpacanada.ca/en/business-and-accounting-resources/strategy-risk-and-governance/not-for-profit-governance/publications/nfp-directors-20-questions-on-ceo-succession>>.

Does the CEO need strong hockey experience? The three immediate past CEO's had such experience and it is no doubt one of the attributes that would be useful to Hockey Canada's CEO. However, we have observed that other NSOs, such as Tennis Canada, have CEOs who have no background in the sport but bring other important skills and qualities to the role. In our view, a significant history in the sport is a desirable but not necessary qualification for the position.

We also know that the organization's culture starts at the top. Not only does the CEO need to lead by example, they need to have the courage and determination to steer the organization in a new direction if the Board decides that is necessary.

Lastly, we believe that the duties and responsibilities of the role should be better defined and communicated in the position description and the employment contract. This will be of assistance in recruiting, in guiding the CEO as to the key responsibilities of the role and in performance evaluation by the Board.

*ii. Does the senior management structure conform to Hockey Canada's By-Laws?*

As detailed above, Hockey Canada's senior management structure does not conform to the By-laws, which provide that the Officers of Hockey Canada include the CEO, the COO, the CFO and the CBDO,<sup>806</sup> but in fact the COO and CBDO positions are not currently in the management structure. Accordingly, we recommend that the By-laws be amended to remove the reference to these two positions.

We believe the By-laws, as amended, would give the CEO and the Board the flexibility to add or remove the COO and the CBDO positions (and/or any other Officer level positions) as they deem necessary. In fact, as currently drafted, the By-laws provide that the Officers of Hockey Canada include "any other individual holding an Officer position created under By-Law 40.11". By-Law 40.11 indicates that "[the] CEO, with the approval of the Board, may create additional Officer level positions to perform such duties and to have such powers as the CEO and the Board mutually agree."<sup>807</sup>

We are of the view that the need for some officer positions, such as the COO, may depend on the circumstances (such as the people already in place in the organization, or the needs of the organization at a particular point in time) and that the By-laws should not restrict the organization in this regard. For this reason, and especially considering that a new CEO has not been appointed at the time of the submission of this report, we believe that the determination of which officer positions are appropriate is a decision best made by the organization once a CEO is in place.

The By-laws should be further amended so that the term "President" is defined as "the President and Chief Executive Officer of Hockey Canada".

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<sup>806</sup> "Hockey Canada By-Laws, Regulations and History" (May 2022), s 40.1, online (pdf): *Hockey Canada* <<https://cdn.hockeycanada.ca/hockey-canada/Corporate/About/Downloads/2022-23-bylaws-e.pdf>>.

<sup>807</sup> "Hockey Canada By-Laws, Regulations and History" (May 2022), ss 40.1 and 40.11, online (pdf): *Hockey Canada* <<https://cdn.hockeycanada.ca/hockey-canada/Corporate/About/Downloads/2022-23-bylaws-e.pdf>>.

- iii. *Is there good alignment between the objects and strategic plan of Hockey Canada and the leadership resources devoted to their pursuit, as well as between the major challenges facing the organization and the leadership resources being devoted to addressing them?*

As previously mentioned in Chapter IV, Hockey Canada’s main operations and business lines are composed of four categories: regulating amateur hockey in Canada, growing and developing the game, representing Canada on the world stage, and business development. Hockey Canada’s mission statement is to “lead, develop and promote positive hockey experiences” and its vision is to be “world sport leaders.”<sup>808</sup> Hockey Canada’s values include “making hockey more than scoring goals and winning games.”<sup>809</sup>

We heard several times in the course of our review that Hockey Canada’s senior management team would benefit from additional positions, including a Vice President Women & Girls, and a Vice President Hockey Development. These suggestions are supported by Hockey Canada’s 2022-26 Strategic Plan. It sets out initiatives relating to the implementation of a women and girls hockey plan, support of local hockey in a variety of ways, and expanding to new audiences.<sup>810</sup> Each of these initiatives would benefit from enhanced leadership at the senior level of Hockey Canada. We support the addition of these Vice President roles; each would assist Hockey Canada in achieving its mission to “lead, develop and promote positive hockey experiences”.<sup>811</sup> These two senior management positions would work hand in hand given that Hockey Canada’s goal is to connect grassroots to the national team, inspire the young generation and make them feel like they are part of something bigger.<sup>812</sup>

The individuals in these VP positions will require assistance to fulfill their mandates. However, we have not been asked to comment on staffing below the senior management team and we have therefore focused our recommendations on that level.

#### 1. Vice President Women & Girls

Women’s hockey is a critical part of the Hockey Canada mandate.

As noted in Chapter VII, the Female Hockey Policy Committee (“**FHP Committee**”), which was established in 2019, is responsible, among other things, for monitoring the needs of female hockey players. Our discussions with members of the FHP Committee emphasized that the committee looks at females in hockey, not just female-only hockey but also females in mixed hockey. One of its key themes is that representation matters, in all roles and in all levels, and that Hockey Canada should lead in that regard. One of the goals of the FHP Committee is to remove barriers to a

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<sup>808</sup> “Mandate & Mission – Who is Hockey Canada?” online: *Hockey Canada* <[www.hockeycanada.ca/en-ca/corporate/about/mandate-mission](http://www.hockeycanada.ca/en-ca/corporate/about/mandate-mission)>.

<sup>809</sup> “Hockey Canada 2020-21 Annual Report” at 8, online (pdf): *Hockey Canada* <<https://cdn.hockeycanada.ca/hockey-canada/Corporate/About/Downloads/2020-21-annual-report-e.pdf>>.

<sup>810</sup> Hockey Canada, “Strategic Plan 2022-2026” at 21–22.

<sup>811</sup> “Mandate & Mission – Who is Hockey Canada?” online: *Hockey Canada* <[www.hockeycanada.ca/en-ca/corporate/about/mandate-mission](http://www.hockeycanada.ca/en-ca/corporate/about/mandate-mission)>.

<sup>812</sup> Interview of Hockey Canada Senior Staff (Pat McLaughlin, Darren Cossar, Dana Gladstone, Natasha Johnston, Scott Salmond, Sean Kelley) (7 September 2022).

positive experience for females in the sport. This includes looking at leadership both at Hockey Canada and across the Members. While the FHP Committee has worked diligently, as discussed in Chapter VII, there are limitations on what it can achieve as a volunteer committee.

At about the same time that Hockey Canada created the FHP Committee, it also created the position of Director Women & Girls, described above. This was partly in response to submissions made by stakeholders as well as Hockey Canada's internal analysis.<sup>813</sup> The Director Women & Girls is responsible for leading the delivery of strategic recruitment, retention objectives, continued sustainability and growth of women and girls hockey programs nationally. This position leads a collaborative approach within the hockey ecosystem for the advancement of women in key roles (such as players, coaches, officials and leaders). The Director Women & Girls must work closely with others at Hockey Canada, its Members and external stakeholders to assist in understanding the existing environment and barriers to participation and to make recommendations to create a more inclusive space. In addition, the Director is responsible for incorporating recommendations from the Female Hockey Policy Committee and the Female CDM (Canadian Development Model) Task Team.<sup>814</sup>

We understand from our interviews that the intent was to elevate the Director Women & Girls to a senior leadership role when the timing was right.<sup>815</sup> Based on our conversations with stakeholders, including Hockey Canada staff and former staff, FHP Committee members, Directors and other stakeholders, that time has arrived.

Having a dedicated individual at the senior leadership table would enhance opportunities and future growth. It would also send a strong message to all Participants about the importance of female hockey. The Director Women & Girls was the first step towards this. We note that at least two Comparator Associations, namely Tennis Canada and Basketball Canada, have a person within their senior management who is solely responsible for women's sport. This step also aligns with the 2022-26 Strategic Plan that includes suggestions to increase the visibility and growth of women and girls hockey.

We thus recommend that the Director Women & Girls position be elevated to a Vice President position, as part of the Senior Leadership Team, reporting to the President/CEO.

## 2. Vice President Hockey Development

As indicated in Chapter IV, we heard in several interviews that Hockey Canada needs to focus on both high performance and grassroots hockey. Many stakeholders noted a perception that the grassroots element did not receive sufficient attention.

Historically, Hockey Canada separated the VP role related to hockey development, with a focus on grassroots, and the VP role related to hockey operations. As noted above, these roles were combined in 2020. The SVP Hockey Operations & Development is currently responsible for both

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<sup>813</sup> Interview of Female Hockey Policy Committee (Stephanie White, Chair, and Barry Reynard, Board Liaison) (17 October 2022).

<sup>814</sup> Job Description, Hockey Canada Director, Women & Girls Hockey (February 2022).

<sup>815</sup> Interview of Tom Renney, former CEO of Hockey Canada (20 October 2022).

national teams (and therefore on ensuring Canada's representation on the world stage) and for hockey development. At present, the functions that would be performed by a new VP Hockey Development position are spread between the departments of Member Engagement and Hockey Operations. These arrangements contribute to a lack of consistent focus on grassroots issues. We believe that creating a position dedicated to the development of hockey at the grassroots level within the senior management team would be an important step to correct this. This position would bolster the management resources directed to a core object of Hockey Canada: "growing and developing the game." The 2022-26 Strategic Plan emphasizes the need to be customer focused and to support local hockey.

The new VP Hockey Development would need to continue working in close partnership with the Member Engagement department, given that the sharing of information and the implementation of programs to the grassroots level is done via the Members.

We note that almost all the Comparator Associations have someone within their senior management whose main mandate is concerned with players and program development, and/or grassroots.

#### **D. Conclusion**

*Is the Senior Management Team properly structured and constituted to oversee the operations of Hockey Canada, from the grassroots level to the high-performance level?*

We believe that some changes are needed. We recommend that:

- The job descriptions be regularly updated to reflect the current management structure, and that each member of the Senior Leadership team be reminded of their roles and responsibilities on a regular basis;
- As it recruits the CEO, the Board identify the most important needs of the organization in order to engage a President/CEO who can successfully pursue those matters;
- The duties and responsibilities associated with the role of President/CEO be better defined;
- The By-laws be amended to remove the reference to the COO and CBDO positions, and to modify the definition of President;
- Hockey Canada replace the Director Women & Girls position with a senior leadership position which would be responsible for women's hockey (VP Women & Girls); and
- Hockey Canada divide the SVP Hockey Operations & Development position in order to have one position responsible for hockey development (VP Hockey Development) and one person responsible for national teams (VP Hockey Operations).

## **XI. GOVERNANCE TO IMPROVE CONFIDENCE**

The fifth item in the Terms of Reference calls for other recommendations for actions that the Board of Directors and senior management could take in the area of governance to improve the confidence Canadians have in Hockey Canada. This invites consideration of the relationship between the organization's governance and the confidence of its stakeholders. That, in turn, raises several questions:

- a. What is "confidence? And how does it relate to sound governance?
- b. What is the current level of confidence in Hockey Canada?
- c. What actions in relation to governance would improve the level of confidence while ensuring that there is in place continuous, effective governance?

We will address these questions in turn.

### **A. What is "confidence" and how does it relate to sound governance?**

Confidence and good governance are directly related; both are fundamental to the success of the organization. Stakeholder confidence – that is belief in the powers, trustworthiness and reliability of the organization – is critical for the organization's ability to pursue its vision and to fulfill its purposes. This is particularly the case with respect to not-for-profit corporations such as Hockey Canada that have important public interest mandates. Good governance establishes and strengthens stakeholder confidence. That confidence helps to ensure that the organization fulfills its public interest mandate.

The importance of confidence is reflected in the purposes of the corporation's legislation and in key principles of good governance. The CNCA provides a framework for accountable and transparent governance. These elements are especially important for corporations in the not-for-profit sector because they must establish and maintain a high level of public confidence in order to succeed. It follows that accountability and transparency are not just important within the organization's internal governance; they are also key elements of the organization's relationship with stakeholders and the broader public. They include responsibility to understand and be effective in meeting the community's needs – the needs that the organization exists to serve.

The directors of a not-for-profit corporation therefore have responsibilities that transcend providing oversight of the organization's day-to-day operations. They also must ensure that the organization has effective relationships with its stakeholders to secure their support for its objectives. Boards need to consider accountability, transparency and engagement because these provide a foundation for building and maintaining healthy and productive relationships with stakeholders. The ultimate end of all of this is to ensure that the organization is, and is perceived to be, fulfilling its societal purposes in the public interest.

Given the loud and repeated calls for dramatic change of culture in hockey, these qualities of accountability, transparency and engagement and these healthy and productive relationships with stakeholders are especially important for Hockey Canada. As Minister Pascale St-Onge has put it,

there is a systemic problem of sexual violence and toxic masculinity in Canada's hockey culture.<sup>816</sup> As the national governing body for hockey in Canada, Hockey Canada is rightly expected to play an important role in helping to change this culture. It must ensure that it has the knowledge, skills and resources to do so. It will also have to demonstrate the sort of accountability and transparency that make for healthy and productive relationships with stakeholders.<sup>817</sup> Those relationships must be based on confidence in the capacity of Hockey Canada to lead this change.

Confidence is concerned with both reality and reasonable perception. In this respect, there is a useful parallel between confidence and impartiality. Impartiality, like confidence, is not only concerned with an actual state of mind but also with the perception of a reasonable and properly informed person. Decision-makers, for example, must not only be, in fact, impartial. They must also be *perceived* to be impartial by reasonable and informed people. Similarly, confidence must be justified in fact, but also in perception.

## **B. What is the current level of confidence in Hockey Canada?**

Confidence is an intangible quality that is constantly in flux. As a result, assessing the extent to which people have confidence in organizations or institutions is notoriously difficult. However, there can be no serious debate that the level of confidence in Hockey Canada on the part of government, sponsors, some Members and the broader public has sunk to dangerously low levels. The leadership of the organization has lost the confidence of important stakeholders. Elected officials, including the Prime Minister, the Minister of Sport and some parliamentarians along with some Members, sponsors and many other parties, have called for a wholesale change of leadership.<sup>818</sup> The number, profile and intensity of these calls are such that it is unrealistic to think that they are just a passing media frenzy. To ensure effective and continuous governance, these calls must be answered.

Whether the concerns with the current leadership are objectively justified is not the point and it is not part of my mandate to address that issue. There is no doubt that Hockey Canada has been served by directors who are passionate about hockey, deeply committed to the organization's mission, vision and values and who donate large amounts of time and energy – often unreasonably

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<sup>816</sup> Ashley Burke, "Hockey culture suffers from a 'systemic problem' of sexual violence, minister says" (29 September 2022): online: *CBC* <<https://www.cbc.ca/news/politics/hockey-culture-systemic-problem-minister-of-sport-says-1.6601431>>.

<sup>817</sup> See Chapter VI of this Report.

<sup>818</sup> Graeme Bruce, "Tracking the fallout of the Hockey Canada scandal" (8 October 2022), online: *CBC* <<https://www.cbc.ca/news/canada/hockey-canada-leadership-change-pressure-1.6608506>>; "Canadian Tire ends Hockey Canada partnership; PM Justin Trudeau suggests starting a new federation" (6 October 2022), online: *The Athletic* <<https://theathletic.com/3664547/2022/10/06/canadian-tire-hockey-canada-sponsorship/>>; "Which corporate sponsors have paused or pulled their support for Hockey Canada?" (12 October 2022), online: *CTV News* <<https://www.ctvnews.ca/sports/which-corporate-sponsors-have-paused-or-pulled-their-support-for-hockey-canada-1.6098822>>; "Nike suspending sponsorship relationship with Hockey Canada" (7 October 2022), online: *Sportsnet* <<https://www.sportsnet.ca/hockey/article/nike-suspending-sponsorship-relationship-with-hockey-canada/>>; "A list of the Hockey Canada sponsors pulling their support" (11 October 2022), online: *The Globe and Mail* <<https://www.theglobeandmail.com/canada/article-hockey-canada-sponsors/>>; Bianca Bharti, "Canadian Tire permanently cuts ties with Hockey Canada over sexual assault allegations," (6 October 2022), online: *Financial Post* <<https://financialpost.com/news/retail-marketing/canadian-tire-cuts-ties-hockey-canada>>.

large amounts – to the organization’s governance. However, confidence is not only a matter of objective fact, but of reasonable perception and there is an overwhelming perception on the part of important stakeholders that the leadership of Hockey Canada does not deserve their confidence.

**C. What actions should be taken to regain confidence?**

*i. Current Directors of Board not to seek re-election*

It is easy to call for significant change, but much harder to bring it about. It is harder still to do so in an orderly and thoughtful manner that allows the organization to function while this significant change occurs. As we see it, Hockey Canada needs some significant changes to its Board composition and Board recruitment processes as outlined earlier in this report. These changes, however, will take time because they require careful deliberation by the Members and the Board and a number of technical steps before they could be implemented.

For that reason, on October 10, 2022, we issued a further interim report, in the form of a memorandum to the Board of Directors of Hockey Canada recommending the following:

It is not realistic to think that these sorts of changes can be properly considered and put into effect in the next few weeks. The need for change, however, is urgent. For that reason, I recommend that Hockey Canada in the current election cycle and with the assistance of the nominating committee put in place a Board and Board Chair who agree to serve for only one year. The idea is that those new directors will serve as a transition Board. They will have four main tasks to accomplish during their year in office. First, they should respond, in conjunction with the Members, to the suite of governance changes that I will be recommending in my final report. Second, they should address the many public concerns about the senior management team of the organization. Third, they should begin to repair the fractured relationships with stakeholders. Finally, they should ensure operational stability. While I acknowledge the dedication and tireless work of the current members of the Board, my view is that the best interests of Hockey Canada would be served if all directors retired from office when their current terms expire at the December 17<sup>th</sup> annual meeting of Members and not put their name forward for re-election. I am not recommending that all of the directors immediately retire for the following reasons. The corporation would not be able to act without a board. Their immediate resignation would also trigger the board vacancy provisions of the By-laws and the CNCA, which provide for a process that would nonetheless take time to implement; in other words, that would not offer a quicker way to get new individuals on the board of directors. In addition, the next director recruitment and election cycle is well underway, allowing the Nominating Committee to immediately identify suitable candidates for nomination at the December 17<sup>th</sup> election.

The new directors and the Members should as soon as possible revise the Board structure and nominations process in line with my recommendations so that the new structure is in place for the 2023 election year. As part of this process, the

Board should retain a top-notch board-recruiting firm. That firm should assist Hockey Canada with revising the skills matrix for directors and the Chair of the Board, revising the constitution and mode of appointment of the Nominating Committee and assist with populating both that committee and the Board. All of this should be in place for elections for the full Board and the Chair of the Board in 2023. As a first step towards rebuilding confidence in Hockey Canada, it will be critical for the transition Board to conduct the recruitment process for new Directors in a transparent and independent manner.

On October 11, 2022, the Hockey Canada Board of Directors announced that none of the current Directors would seek re-election allowing for an entirely new board of directors to be elected at the upcoming election on December 17, 2022.

Following a meeting of the Members, on October 11, 2022, Hockey Canada asked for clarification with respect to the following items:

1. Should the Nominating Committee be presenting the Members with a slate of candidates equal to the number of available positions on the Board, or should they be providing a list that exceeds the number of available positions, so that the Members may choose which shortlisted candidates to elect?
2. Does your recommendation that the By-Laws provide that no more than 60% of the Directors are of the same gender fall within the scope of the “process” changes referenced in your report that should be implemented immediately, or is it one that should wait to be considered by the Members following receipt of your Final Report?

We advised as follows:

1. This is something for the Members to address, but we do have some views. There would be value in having the Nominating Committee select and put forward a recommended slate of only 9 candidates that the Members would then be asked to vote on or approve as part of the election process. We will be recommending that the organization use the services of a board recruiting firm for the 2023 election and onward (and we would recommend that one be retained to assist this cycle if there is time), working, of course, with the matrix that the members would support. Then the nominating committee, working with such a firm, should be able to come up with high-quality candidates. Our concern is that, especially now, many of the sorts of directors the organization needs might not agree to serve unless they know who else will be on the Board. Similarly, they might not want to take the risk of not getting elected if the Members get to select the directors from a list of candidates that exceeds the number of vacancies on the Board. So we would like to see the Members get to the point that they have sufficient confidence in the nomination process that a slate of high-quality candidates recommended by the Nominating Committee could be approved.

We think that this approach however would need to be carried out thoughtfully and in consultation with the Members. The Nominating Committee should give some thought to honing the list of skills, competencies and qualities that are currently needed on the Board and sharing it with the Members to get their input on it; that list would be more comprehensive than the one that currently appears in the call for nominations. We feel strongly that the Members ought to be engaged and consulted as part of the current nominations process not only because there has been a call for greater engagement and transparency, but also because of the need for the Members and the broader public to begin rebuilding their trust in the organization and the director recruitment and nominations process.

2. We agree that having not more than 60% of one gender on the board was part of the recommendation that were meant for the longer term. That being said, given Hockey Canada is starting with a clean slate, we expect that enhanced diversity in all its aspects can be part of the Nominating Committee review process.

On October 15, 2022, at a special meeting, the Members adopted By-Law amendments giving the Nominating Committee the authority to evaluate all candidates proposed for election and to create a short list of nominees based on skills, competencies and current needs of the Board.<sup>819</sup> They also adopted the following amendments to the By-Law:

27.2 All nominations for the position of elected Director must be submitted to the Chair of the Nominating Committee, at least sixty (60) days prior to the commencement of the Annual Meeting, and shall include a resume of the candidate's credentials and a written statement by the candidate expressing a willingness to serve as a Director. The Nominating Committee shall forward the materials of all shortlisted candidates to the Members at least thirty (30) days prior to the commencement of the Annual Meeting. For the 2022 elections only, the dates described above shall be reduced to thirty-seven (37) days and nineteen (19) days respectively.

30.1 Elected Directors shall serve a two (2) year term unless otherwise specified in the By-Laws. The term shall commence at the end of the Annual Meeting at which they were elected and terminates at the end of the Annual Meeting occurring approximately two (2) consecutive years thereafter. Directors elected at the 2022 Annual Meeting shall serve a one (1) year term, terminating at the end of the Annual Meeting occurring approximately one year thereafter.

31.1 The Members shall elect the Chair of the Board for a two (2) year term at each Annual Meeting where elections occur using the procedure generally described in By-Law 28. For the 2022 elections only, the Chair shall serve a one (1) year term, terminating at the end of the Annual Meeting occurring approximately one year thereafter.

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<sup>819</sup> Hockey Canada, "Approved By-Law Changes (October 2022 Special Meeting)".

31.2 Nominations for the position of Board Chair must be submitted to the Nominating Committee who will create a short list of candidates to be placed on the election ballot for the Chair position.

31.3 The Nominating Committee shall send the shortlist of candidates for the Chair of the Board position, along with any supporting documentation, to the Members at least thirty (30) Days prior to the commencement of the Annual Meeting. For the 2022 elections only, such short list shall be provided to the Members at least nineteen (19) days prior to the commencement of the Annual Meeting.

31.5 Following the election of the Chair of the Board at the Annual Meeting, elections for the remaining vacant positions on the Board shall proceed, using the procedure generally described in By-Law 28. Candidates who ran for the Board Chair position unsuccessfully, but who were also shortlisted by the Nominating Committee under By-Law 27, shall be included on the ballot for those vacant positions.

We welcome these amendments. We note that the one-year term provision for the current election cycle does not preclude the Chair and Directors elected this year from being nominated and elected in the next electoral cycle, provided they meet the needs and selection criteria identified by the Nominating Committee for the 2023 election cycle.

*ii. Change to voting structure*

During our review, another change that was called for by some Members and stakeholders related to the voting structure for members.

Hockey Canada has had a system of weighted voting for Members for some time, whereby Hockey Québec and the OHF get more votes than the other Members. We understand that, historically, this was meant to reflect the number of Participants registered with each Member. Hockey Canada’s 2020-21 Annual Report<sup>820</sup> sets out the following information regarding player<sup>821</sup> numbers nationally; the percentage numbers were calculated using that information:

<b>Members</b>	<b>Players Number</b>	<b>Players % of Total</b>	<b>Current Votes<sup>822</sup></b>
Hockey North	3,474	0.90	2
Hockey Northwestern Ontario	4,418	1.08	2

<sup>820</sup> “Hockey Canada 2020-21 Annual Report” at 25, online (pdf): *Hockey Canada* <<https://cdn.hockeycanada.ca/hockey-canada/Corporate/About/Downloads/2020-21-annual-report-e.pdf>>.

<sup>821</sup> An analysis on Participant numbers per Member could also be done.

<sup>822</sup> Two votes represents approximately 6% of the total votes; Five votes represents approximately 16% of the total votes.

<b>Members</b>	<b>Players Number</b>	<b>Players % of Total</b>	<b>Current Votes<sup>822</sup></b>
Hockey PEI	5,557	1.45	2
Hockey Newfoundland and Labrador	10,052	2.62	2
Hockey New Brunswick	14,418	3.75	2
Hockey Nova Scotia	15,751	4.10	2
Hockey Eastern Ontario	19,285	5.02	2
Hockey Manitoba	20,910	5.44	2
Hockey Saskatchewan	27,134	7.06	2
BC Hockey	39,056	10.17	2
Hockey Québec	39,265	10.22	5
Hockey Alberta	62,778	16.34	2
Ontario Hockey Federation	122,383	31.85	5
<b>Total</b>	<b>384,211</b>	<b>[100%]</b>	<b>32</b>

Currently, assuming all 32 votes are cast at a meeting, a resolution requiring a simple majority to pass would necessitate at least 17 votes.<sup>823</sup>

During the period 2011-2012, Hockey Canada took several steps to bring the corporation into compliance with the new requirements of the CNCA. As part of that process, Hockey Canada’s Governance Committee examined the voting rights of Members. In November 2012, the Committee asked the Board, which at the time included the 13 Member Presidents, to complete a survey on a variety of governance reform topics, including voting rights. The Board was presented with options that included equal voting, weighted voting (status quo), and weighted voting based on registration.<sup>824</sup> The survey results were split almost equally between equal voting and the status quo weighted voting system. Following further discussion with the Board at the 2012 Semi-Annual Meeting,<sup>825</sup> the matter was brought forward for a final decision at a Board meeting in April 2013,

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<sup>823</sup> Under the CNCA, an ordinary resolution means a resolution passed by a majority of the votes cast on that resolution. If not all of the Members are present at a meeting, passing an ordinary resolution would require a majority of the votes cast by the Members actually at the meeting.

<sup>824</sup> The possibility of making all five national leagues members and giving them each one vote was also considered: Hockey Canada, “Governance Committee PowerPoint” (September 2012).

<sup>825</sup> Hockey Canada, “Governance Committee Report and Recommendations” (November 2012); “Hockey Canada Governance Committee Report and Recommendations on Governance Structure” (16 November 2022).

at which time the Board decided to maintain the weighted voting model (i.e. five votes for each of Hockey Québec and OHF and two votes for the other Members).<sup>826</sup>

That voting structure was and continues to be reflected in the Articles of Continuance, which provide: “Quebec and Ontario Hockey Federation member Branches are entitled to five votes each at meetings of the Members and the other member Branches are entitled to two votes each at such meetings.”<sup>827</sup> Hockey Canada’s By-laws provide that Hockey Québec and the OHF are each entitled to cast five votes “on any matter” on which Members are entitled to vote.<sup>828</sup>

Some Members have observed that by virtue of having three Members from the province of Ontario, including the OHF, Ontario potentially gets nine votes. As mentioned above, Hockey Quebec has five votes and each of the other Members get two votes. That being said, we were advised during our interviews that the three Ontario Members did not tend to vote as a block.

As mentioned above, the total number of votes available in the current system is 32. To take a concrete example of the implications of this system, we note that if Hockey Québec and the three Members from Ontario vote the same way, they can, collectively, exercise a total of 14 votes, which is only three votes shy of a majority.<sup>829</sup> Only two additional Members would need to vote with that group (for a total of six members) to get a simple majority. However, if, by way of further example, the three Members from Ontario and Hockey Québec did not vote in favour of a matter, in order to get a simple majority, all of the remaining Members (nine) would need to vote in favour of the resolution. Similarly, if, for example, the OHF and Hockey Québec did not vote in favour of a matter, in order to get a simple majority, nine of the remaining Members would need to vote in favour of the resolution. This results, at least theoretically, in significant control resting with just two provinces.

By contrast, if each Member were entitled to the same number of votes, again assuming all Members voted at a meeting, only seven Members would need to vote in favour of a resolution for it to pass by simple majority.

During our interviews, some Members raised concerns about the impact of weighted voting, particularly as it relates to the election of Directors. They noted the significant influence that the OHF and Hockey Québec can exercise and that the current system may have impeded the Board leadership changes required for the organization.

The CNCA provides that “unless the articles otherwise provide, each member is entitled to one vote at a meeting of members.”<sup>830</sup> While weighted voting is allowed if the articles so provide, the default rule under the CNCA suggests that weighted voting is intended to be the exception to the rule.

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<sup>826</sup> Hockey Canada, April Board of Directors’ Meeting Summary (held on 7 April 2013) at 2.

<sup>827</sup> Industry Canada, “Hockey Canada Association Articles of Continuance” (10 June 2014).

<sup>828</sup> “Hockey Canada By-Laws, Regulations and History” (May 2022), s 24.2, online (pdf): *Hockey Canada* <<https://cdn.hockeycanada.ca/hockey-canada/Corporate/About/Downloads/2022-23-bylaws-e.pdf>>.

<sup>829</sup> The examples assume all of the Members are voting at the relevant meeting.

<sup>830</sup> *Canada Not-for-profit Corporations Act*, SC 2009, c 23, s. 154(5).

There are varying views on what is the best practice with respect to member voting, with some advocating for weighted voting and others for equal voting, and some a combination of both. Indeed, this is evidenced by the Comparator Associations, which have a variety of voting structures. Curling Canada has a one member one vote approach. Athletics Canada has a weighted voting system based on the population of each province/territory and the number of individuals registered with each member, except for the purpose of electing directors, in which case each member is entitled to only one vote. Canada Basketball, which has several classes of members, has weighted voting for member associations based on the individuals registered within each association. Tennis Canada also has a weighted voting system based on the percentage that the population of the member is of the total population of Canada. Canada Soccer has a weighted voting system as well with some member associations (such as Ontario and Quebec) having more votes than others.

As noted by some authors, the concern for NSOs is that their affairs should not be controlled by just one or two provincial bodies. Virtually all sports have varying capacities and sizes across provinces and territories. Depending on the sport, Ontario, Quebec, British Columbia and sometimes Alberta often have the greatest number of participants. Care needs to be taken to ensure that they do not have the capacity through the voting structure to dominate the business of the national body.<sup>831</sup>

The decision as to whether all members have the same number of votes is essentially a political or philosophical one: is the voting model driven by proportionality tied to fees, players or participants, or is it driven by a focus on the national organization and its mission? The answer will depend on the organization and its particular circumstances. At the same time, in an organization such as Hockey Canada, one wants to structure membership voting so that all groups have a meaningful voice in the operation of the umbrella organization.<sup>832</sup>

We believe that, given the recent events at Hockey Canada, shifting to a model where each Member gets the same number of votes, at least for the election of the Directors, would assist in rebuilding the confidence of the public and stakeholders in Hockey Canada for the following reasons.

First, a system where each member of an organization has the same number of votes ensures decisions are made with a view to the members collectively, and thus all participants, not just the largest members. This is particularly important with respect to the election of the Hockey Canada Directors, which as discussed above requires a significant overhaul in order to ensure that Hockey Canada is able to effect the change it needs. By contrast, weighted voting for electing directors creates incentives for large Members to form coalitions with a view to controlling the board. When such coalitions are successful, there is a real risk that the individuals who are elected to the Board will make decisions that favour the Members who formed part of that coalition rather than the best interests of the corporation. In our view, a voting structure that might have the practical effect of

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<sup>831</sup> Rachel Corbett & Kevin Lawrie, “Snapshot of Voting Structures of National Sport Organizations” (9 May 2012), online: *Sport Law* <<https://sportlaw.ca/snapshot-of-voting-structures-of-national-sport-organizations/>>.

<sup>832</sup> Burke-Robertson, Carter & Man, *Corporate and Practice Manual for Charities and Not-for-Profit Corporations*, (Toronto: Thomson Reuters Canada, 2022) at § 7:11 (Proview).

fettering the duty of the directors to act in the best interests of a corporation as a whole should be discouraged.

Second, allowing larger Members to have more control over board elections undermines membership consensus and creates a potential barrier to developing new solutions to problems.

Third, each Member would have an equal voice and share equally with the other Members responsibility for the quality and diversity of the Directors that they elected. Each Director has the same fiduciary duty to do what is in the best interests of the corporation as a whole. Decision-making must be made through that lens, and not with a view to what is best for a specific member or “constituency.” Where all Members have the same voting rights for the election of Directors, there is less of a risk that an individual Director will feel beholden to a specific Member or group of Members. This is further assisted by implementing the nomination process discussed earlier in the report.

Finally, as mentioned above, it is important to ensure that there is a perception of fairness and consistency in order to rebuild confidence in Hockey Canada. The current system of weighted voting, like the current nominating process, has not produced the sort of Board that Hockey Canada needs. In addition, as is demonstrated in the chart above, the current voting structure does not appear to be based on a factor such as number of players. We believe that shifting to a system where each Member has the same number of votes, for the election of the Directors, coupled with the changes to the nominating process that we have recommended, will provide the most likely path to meaningful change. This will require the approval by both the Board and the Members at duly constituted meetings, and the filing of Articles of Amendment and revisions to the By-laws. We therefore recommend that the Board recommend to the Members this amendment to the voting structure and then make necessary changes to the governing documents if the amendments are approved.

### *iii. Risk management*

Another key to rebuilding confidence in Hockey Canada as the national regulator of amateur hockey relates to risk management. Every venture, including not-for-profit corporations, comes with risks. Some risks materialize, and others do not: that is inevitable. Vital for any organization faced with risks is a thorough understanding of what constitutes risk, where it comes from, and perhaps most importantly, what can be done to mitigate the potential fallout of the risk.

Risk management is a core function of the Board of Directors. Normally, the Board will focus on the risk to the organization, that is, the risk arising directly from the activities of the organization itself. Yet, we consider that this focus alone is inadequate for an organization such as Hockey Canada, which is the umbrella organization in charge of Canadian amateur hockey. Beyond concerning itself with the risks arising from its own activities, Hockey Canada should support and enhance the risk management, prevention and education, of all of the organizations and Participants under its umbrella. Just as it plays an important role in ensuring that the local organizations and Participants have insurance coverage, Hockey Canada should also help ensure that the organizations have robust risk management practices in place and proper programs to educate Participants and prevent the risk, particularly in relation to the sorts of behaviours permeating the current public discourse about hockey.

We believe that this role should fall on both the Board to spearhead with the assistance of the Risk Management Committee and the Senior Vice President Legal/General Counsel. Acquiring an expanded understanding of risk management and bringing significant enhancements to Hockey Canada Board of Directors risk management capacity and orientation represents another step in the path to restoring confidence in the organization as a national sport governing body. In Chapter VII, we discussed the important role of the Risk Management Committee. The Committee ought to consider risk management more broadly, not only as it relates to the organization, but the sport more generally and how it can work with Members and Participants to make it a priority, which it will regularly report to the Board about. In Chapter X, we discussed how the Senior Vice President Legal/General Counsel is responsible for identifying and managing risks. We recommend that Hockey Canada consider expanding the duties of the Senior Vice President Legal/General Counsel to include those of a Chief Risk Officer, who would also be responsible for identifying, considering and assisting in mitigating risks the organization, and the sport generally, are facing.

**APPENDIX “A” - LIST OF INDIVIDUALS/ORGANIZATIONS INTERVIEWED**<sup>833</sup>

Marianne Bolhuis, General Counsel & Corporate Secretary, Canadian Olympic Committee  
Michael Brind’Amour, Former Chair and Director, Hockey Canada  
Mike Bruni, Chair of Hockey Canada Nominating Committee; Former Chair (2011-2013), Hockey Canada  
Jared Butler, Vice-President and Chief Medical Officer, Hockey Newfoundland and Labrador  
Brian Cairo, Chief Financial Officer, Hockey Canada  
Sam Ciccolini, Advisor to Risk Management Committee, Hockey Canada  
Earl Cochrane, General Secretary, Canada Soccer  
Darren Cossar, Vice President Member Engagement, Hockey Canada  
Geoff Courtnall, Former NHL Player; Head Coach, Victoria Grizzlies, BCHL; Head Coach, Victoria Vikes, BCIHL  
Gilles de Blois, Vice-President, Hockey Québec  
Paul Delparte, Former Chief Financial Officer, Hockey Canada  
Michael Downey, President & Chief Executive Officer, Tennis Canada  
Joe Drago, Former Chair (2014-2018), Hockey Canada  
Terry Engen, Director, Hockey Canada  
Tony Foresi, Former President/Chair, Ontario Hockey Federation  
Claude Fortin, President, Hockey Québec  
Graham Fraser, Chairman of the Board, British Columbia Hockey League  
Normand Gascon, Vice-President, Hockey Québec  
Mathieu Gentès, Chief Executive Officer, Athletics Canada  
Karen Gibb, Senior Vice President, Alliance Hockey  
Jeannot Gilbert, Vice-President and Secretary, Hockey Québec  
Benoit Girardin, Lawyer, Owner, LBB Sport  
Dana Gladstone, Vice President Partnership Strategy and Licensing, Hockey Canada  
Amanda Harbus, Senior Manager Finance Department, Hockey Canada  
Chris Hebb, Commissioner & Chief Executive Officer, British Columbia Hockey League  
Katherine Henderson, Chief Executive Officer, Canada Curling

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<sup>833</sup> This list is in alphabetical order. It does not include individuals who have requested their identity remain confidential. Some of these individuals were interviewed in groups rather than individually, and some more than once. Several of these individuals provided us with additional information and documents, which were considered in the course of the review. Additionally, we also received and considered submissions from individuals who we did not interview.

Victor Henriquez, Co-opted Board Member, Hockey Québec  
Marin Hickox, Director, Women & Girls Hockey, Hockey Canada  
Nic Jansen, Executive Director, Hockey New Brunswick  
Natasha Johnston, Vice-President of Sport Safety, Hockey Canada  
John Kastner, Chair of the Board, Ontario Hockey Federation  
Sean Kelly, General Counsel, Hockey Canada  
Arnold Kelly, President, Hockey Newfoundland and Labrador  
Adam Klevinas, Lawyer, Sportlex  
Christian Labbé, Vice-President, Hockey Québec  
Kirk Lamb, Director, Hockey Canada  
Craig Lane, President, Ontario Minor Hockey Association  
Daniel Lanteigne, BNP Philanthropic Performance  
Dave Leger, Executive Director, Ontario Hockey Association  
Justin Lemay, Vice-President and Treasurer, Hockey Québec  
Barry Lorenzetti, President and Chief Executive Officer and Founder, BFL Canada  
Helen Manning, Chair, Athletics Canada  
Jason Marchand, Executive Director, Northern Ontario Hockey Association  
Tony Martindale, Executive Director, Alliance Hockey  
Glen McCurdie, Former Vice President of Insurance and Risk Management, Hockey Canada  
Phil McKee, Executive Director, Ontario Hockey Federation  
Richard McLaren, Richard H. McLaren, Innovative Dispute Resolution Ltd.  
Pat McLaughlin, Vice-President Strategy, Operations and Brand, Hockey Canada  
Marc Mercier, Chair, Ontario Hockey Association  
Will Metske, Operations Director, Ontario Hockey Federation  
JD Miller, President and Co-Founder, B2ten  
Isabelle Mondou, Deputy Minister of Canadian Heritage, Sport Canada  
Eric Myles, Chief Sport Officer, Canadian Olympic Committee  
John Neville, Director, Hockey Canada  
Pat Nicholls, Director of Operations, Ontario Women's Hockey Association  
Bob Nicholson, Former President and Chief Executive Officer (1998-2014), Hockey Canada  
Scott Oakman, Executive Director and Chief Operating Officer, Greater Toronto Hockey League  
Geneviève Paquette, Co-opted Member of the Board of Directors, Hockey Québec

Todd Pye, President, Hockey New Brunswick  
Alain Régnier, Vice-President, Hockey Québec  
Tom Renney, Former Chief Executive Officer (2014-2022), Hockey Canada  
Barry Reynard, Director, Hockey Canada  
Fran Rider, President and Chief Executive Officer, Ontario Women's Hockey Association  
Michel Ruest, Senior Director, Programs, Sport Canada  
Will Russell, Lawyer, Sport Law  
Bobby Sahni, Director, Hockey Canada  
Emmanuelle Sajous, Assistant Deputy Minister, Sport, Major Events and Commemorations, Sport Canada  
Scott Salmond, Senior Vice President of Hockey Operations and National Teams, Hockey Canada  
Stephen J. Shamie, Lawyer at Hicks Morley, Lawyer for Tennis Canada  
Sue Shepherdson, President, Northern Ontario Hockey Association  
David Shoemaker, Chief Executive Officer, Canadian Olympic Committee  
Andrea Skinner, Former Interim Chair and Director, Hockey Canada  
Scott Smith, President & Chief Executive Officer, Hockey Canada  
Eric Sorensen, Retired Executive, and Governance Consultant  
Tim Sothern, Partner, BDO  
Jeff Stewart, Technical Director, Ontario Hockey Federation  
Ian Taylor, Executive Director, Ontario Minor Hockey Association  
Jocelyn Thibault, Executive Director, Hockey Québec  
Craig Tulk, Executive Director, Hockey Newfoundland and Labrador  
Mary Anne Veroba, Director, Hockey Canada  
Vicki Walker, Director General, Sport Canada  
Don West, President, Greater Toronto Hockey League, Partner at Aird & Berlis LLP  
Stephanie White, Chair of the Board, BC Hockey; Chair, Hockey Canada Female Hockey Policy Committee  
Goops Wooldridge, Director, Hockey Canada