

Directors of the Controlled Corporations Considerations and Options

INTRODUCTION

This Appendix focuses entirely on issues and options that address the Directors of the Controlled Corporations. As a result, this Appendix addresses the following primary issues:

- Appointment of Directors.
- Residency of Directors.
- Length of Appointment.
- Board Recruitment.

ISSUES AND OPTIONS

ISSUE #1: APPOINTMENT OF DIRECTORS

City Council has maintained the authority to appoint all Directors to the Boards of the Controlled Corporations. However, changes to the recruitment and appointment process of Board members were made at the commencement of the governance review process. This involved: (a) including existing Board members in the vetting process; (b) providing them with the opportunity to interview candidates; and (c) making recommendations for appointment to GPC.

The reforms are designed to generate a more collaborative process, which can enhance performance, effective interaction and decision making. Specific changes to the recruitment and appointment process were made in recognition of existing Board members' expertise and experience. They also consider the personality and abilities of candidates in light of the long-term vision of the Board and the existing skillsets of current Board members. In general, the strategy contemplates a more diligent and thorough recruitment and appointment process.

On the other hand, the reforms preserved City Council's ultimate responsibility for Board appointments. This recognizes the City's role as the single shareholder and owner of the facilities that the Controlled Corporations manage. The City's current model contemplates that City Council itself will be the final decision maker when it comes to Board appointments.

Since the adoption of the new recruitment and appointment process, concerns have been raised by existing Board members with respect to City Council's authority to accept or reject recommendations from the Boards. To address this concern, City Council could further clarify and codify its responsibility for appointments. Language could be included in the governing Corporate Bylaws as follows:

“Nominees approved by the Board will be recommended to City Council for approval. City Council may appoint Directors from the proposed list of nominees, or may appoint other persons to the position of Director at its discretion.”

If City Council's direction is to include such language, it is recommended that it be included in the Corporate Bylaw for each Controlled Corporation.

From the perspective of the sole Member of the Controlled Corporations, it violates good governance practices to delegate the appointment of Directors to others. In other words, Board appointments should remain the exclusive purview of City Council given the significance of the City assets at issue. Given that perspective, there are no reasonable options to consider or evaluate. As such, the recommendation is that City Council should maintain its ability to appoint Directors to the Controlled Corporations.

The Rемаi Modern had requested flexibility to have a "director emeritus". A director emeritus is a former member of a company's board of directors who has completed their service as a director but continues to be associated with the business as an advisor. As such, a director emeritus would be non-voting and not subject to the liabilities of a director. Traditionally, such a position has not been recognized in the governing documents of the City's Controlled Corporations. Therefore, to include such a provision for the Rемаi Modern Board would be inconsistent with the composition of TCU Place and SaskTel Centre Boards.

Further, to create such a position arguably runs contrary to the right of City Council, as the sole Member, to appoint Board members and thereby decide the persons responsible to administer significant City owned assets. In addition, in consideration of whether to create such a position, it is noted that after serving a six-year maximum a Board member is eligible for reappointment after serving a three-year absence. It is not the recommendation of the Governance Subcommittee to allow for this position.

RECOMMENDATION

That the Governance and Priorities Committee recommend to City Council that the appointments of Directors continue to be made by City Council in its sole discretion and the Corporate Bylaws of the Controlled Corporations be amended to make this clear.

ISSUE #2: RESIDENCY OF DIRECTORS

The Rемаi Modern seeks to include the appointment of Board members from outside the City or Province. None of the art gallery governance models in the comparison jurisdictions explicitly restrict board membership to local residents. Two of the comparison facilities, Museum London and the Vancouver Art Gallery, are primarily municipally funded (the remainder are established and primarily funded by the provinces).¹

¹ Musee d'art contemporain de Montreal, the Montreal Museum of Fine Arts, the Art Gallery of Ontario, and the Winnipeg Art Gallery are primarily provincially funded and are independent Crown corporations (see the galleries' respective annual financial statements, and s. 33 of the *National Museums Act*; s. 14 of *An Act Respecting the Montreal Museum of Fine Arts*; and s. 16 of the *Art Gallery of Ontario Act*). Museum London is primarily city-funded and is board-controlled (see s. 10.1 of London's By-law No. A.-

The Rемаi Modern Board's rationale for this request is tied to the significant fundraising obligations of the Board. Similar to the issues raised regarding the size of the Rемаi Modern Board, however, more diversity in membership on the Foundation Board would arguably likewise achieve the same result. Maintaining the residency requirement within the City for the Rемаi Modern Board is consistent with the composition of the other Controlled Corporation Boards.

OPTIONS

Option 1: Maintain the Status Quo: All Board Members to be Residents of the City of Saskatoon

This option proposes to maintain the status quo and require that all members of the Board be residents of the City of Saskatoon. There are no financial, legal or implementation challenges with respect to this option.

Advantages:

- Provides recognition that these are City assets and decisions should be made by City residents.
- Minimizes the costs of having to pay expenses for out of town Directors.

Disadvantages:

- Provides less flexibility to the Controlled Corporations.
- May affect the ability to recruit Directors.

Option 2: Allow Appointment of Two Non-Resident Board Members

This option would allow for two members of the Board for each Controlled Corporation to be a non-resident of the City of Saskatoon. Anyone could apply to be a Director of a Controlled Corporation, but appointments of Directors would still ultimately be up to City Council as outlined previously.

Under this option, non-resident members of each Board would be limited to a maximum of two at any given time. Non-resident members could be prevented from voting on the budget to prevent concerns regarding use of taxpayer funds. This option would require amendment to the Corporate Bylaws of the Controlled Corporations and Policy No. C01-003, *Appointments to Civic Boards, Commissions, Authorities and Committees*. There may also be financial implications in increased expenses for those Directors of the Controlled Corporation.

6869-273, and any of London's municipal budgets. The Vancouver Art Gallery is primarily city-funded and is member-controlled (see s. 5.2 of the Association's Bylaws, and any of the Gallery's Annual Reports).

Advantages:

- Provides some flexibility to the Controlled Corporations.
- Increases the pool from which to recruit Directors.
- Still provides for a majority of each Board to be residents of Saskatoon.

Disadvantages:

- Added costs for payment of expenses for Directors of Controlled Corporations.
- Perception that only residents of the City of Saskatoon should have a say regarding City assets.

Option 3: Remove the Residency Requirement

This option would remove the residency requirement entirely. Anyone could apply to be a Director of a Controlled Corporation, but appointments of Directors would still ultimately be up to City Council as outlined previously. Non-resident members could be prevented from voting on the budget to prevent concerns requiring use of taxpayer funds. This option would require amendment to the Corporate Bylaws of the Controlled Corporations and Policy No. C01-003, *Appointments to Civic Boards, Commissions, Authorities and Committees*. There may also be financial implications in increased expenses for Directors of the Controlled Corporations.

Advantages:

- Provides the most flexibility to the Controlled Corporations.
- Increases the pool from which to recruit Directors.

Disadvantages:

- Added costs for payment of expenses for Directors of Controlled Corporations.
- Perception that only residents of the City of Saskatoon should have a say on City of Saskatoon assets.
- Boards could entirely be made of non-resident Directors.

RECOMMENDATION

That the Governance and Priorities Committee recommend to City Council that the Corporate Bylaws and Policy No. C01-003, *Appointments to Civic Boards, Commissions, Authorities and Committees* be amended to allow each Controlled Corporation to have a maximum of two non-resident members but that the non-resident members not be allowed to vote on the annual budget. (Option 2: Allow Appointment of Two Non-Resident Board Members).

RATIONALE

It is important that the Controlled Corporations have sound and qualified Boards of Directors. Allowing for a greater pool of candidates may allow for better recruitment of candidates. In addition, this option recognizes that there are many potential candidates that may work in Saskatoon, own businesses in Saskatoon or have other financial

assets in Saskatoon but live in an outlying area. This option would allow for some of these individuals to become Directors.

This option would also allow some flexibility to the Remai Modern Board in recruiting external members to sit on the Board. This practice is consistent with that of other art galleries.

City Council would still maintain ultimate control in who is appointed to the Boards and could choose resident applicants if qualified applicants exist over non-resident applicants. In addition, by limiting it to a maximum of two members, it still requires a majority of each Board to be residents of the City of Saskatoon. As these Controlled Corporations are potentially taxpayer funded, there is merit in having a rule that non-resident members of the Boards cannot vote on the annual budget. These Board members would be allowed to participate and vote in other discussions that have financial implications.

ISSUE #3: LENGTH OF APPOINTMENT

Currently, the governance documents of each of the Controlled Corporations provide for two-year terms with a maximum of six years. This is consistent with the terms of Policy No. C01-003, *Appointment to Civic Boards, Commissions, Authorities and Committees*. The Policy contemplates extensions with the express consent of City Council. The Remai Modern Board has requested the option of allowing Directors to serve a longer period of time. In addition, the Governance Subcommittee believes there is merit in having the end dates of Directors staggered in order to provide continuity on the Boards.

Six years is a lengthy period of time. After some period of time, the Governance Subcommittee believes that there is merit in having new members appointed to the Boards to bring a fresh perspective to the issues at hand.

The Governance Subcommittee recommends that the status quo be maintained and that two-year appointments to a maximum of six consecutive years remain in place. After a three-year hiatus, Board members would be eligible to sit on the Board again.

RECOMMENDATION

That the Governance and Priorities Committee recommend to City Council that the status quo of two-year appointments to a maximum of six consecutive years remain in place.

ISSUE #4: BOARD RECRUITMENT

The previously mentioned *OECD Guidelines* emphasize that it is important for boards to conduct detailed annual self-evaluations, and indicate that this may be a useful form of non-financial reporting:

"SOE boards should, under the Chair's oversight, carry out an annual, well-structured evaluation to appraise their performance and efficiency.

[...]

The outcomes of board evaluations can also serve as a helpful source of information for future board nomination processes. However, a balance needs to be struck: board evaluations may be used to alert the ownership entity to a need to recruit future board members with specific skills that are needed in a given SOE board. But they should generally not be used as a tool for “deselecting” individual existent directors which could discourage them from playing an active, and perhaps critical, role in the board’s discussions.”²

This reporting function appears to be fulfilled by the City's newly adopted Board Recruitment Process, which includes procedures for identifying skill gaps, and conducting performance reviews of past Directors.³ So long as City Council's ability to appoint and remove Directors is maintained, it is recommended that no further change be made on this point.

RECOMMENDATION

That the Governance and Priorities Committee recommend to City Council that the Board Recruitment Process remain status quo.

² *Guidelines, supra* note 6, page 75.

³ See City Council Revised Agenda for August 28, 2017, online: <https://pub-saskatoon.escribemeetings.com/FileStream.ashx?DocumentId=37697>, pages 562-568.