

## Confidential Memorandum

Date: October 10, 2022

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To: Directors of the Board of Hockey Canada

Cc: Scott Smith

From: The Honourable Thomas A. Cromwell C.C.

Cc: Nadia Effendi, Victoria Prince and Sylvie Lalonde

Subject: Independent Governance Review – Term of Reference #5

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My final independent governance review is due at the end of this month and we are continuing to work hard to ensure that we meet that deadline. However, I have reached some conclusions with respect to certain aspects of the fifth item in my Terms of Reference and I believe it to be in the best interests of Hockey Canada to share them with you now. I have decided to do this because of the current crisis that deepens daily. In my view, urgent and decisive action is necessary to address the governance issues associated with that crisis.

One of the key obligations of the Board is to ensure that the organization has continuous effective governance. The recommendations that follow are aimed at ensuring that the Board discharges this obligation as it moves to address the current situation.

### **A. Introduction**

The fifth item in my Terms of Reference calls for me to make any 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. What do we mean by “confidence?” What is the relationship between sound governance and confidence? What is the current level of confidence in Hockey Canada? What actions in relation to governance should the Board and senior management take to improve the level of confidence while ensuring that there is in place continuous, effective governance? I will address these questions in turn.

### **B. What is “Confidence” and How Does it Relate to Sound Governance?**

Confidence and good governance are directly related; both are fundamentally important to the success of the organization. Stakeholder confidence – that is belief in the powers, trustworthiness and reliability of the organization - is critically important to 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. Stakeholder confidence is established and strengthened through good governance. In short, good governance is essential to establish and strengthen stakeholder confidence and that confidence will help to ensure that the organization fulfils 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 *Canada Not-for-profit Corporations Act* ("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. 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. 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.

### **C. 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. 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 is 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 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 current leadership of Hockey Canada does not deserve their confidence.

#### **D. What Actions Should be Taken to Regain Confidence?**

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 I see it, Hockey Canada needs some significant changes to its Board composition and Board recruitment processes that I will outline in my final report due at the end of this month. 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. 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 Nomination 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.

#### **E. Conclusion**

I take no pleasure in delivering these recommendations. Nevertheless, I do so in order to further what I see as the best interests of Hockey Canada and of the sport itself. I know that all the directors are dedicated to both the sport and to the welfare of Hockey Canada and that this dedication is aligned with the legal obligation of the directors to act in the best interests of the corporation. The actions that I have recommended in my respectful view will serve the best interests of Hockey Canada and the sport to which I know all the directors are deeply committed.