

DIRECTOR ENGAGEMENT OF INDEPENDENT COUNSEL

1. INTRODUCTION

There may be instances where a committee, or the Board of Directors (the “Board”) cannot achieve consensus on a decision of importance and where an individual director(s) wishing to dissent believes that the direction being proposed is contrary to the interest of Interior Health (the “Authority”) or is otherwise concerned about his or her personal liability for the actions of the Authority.

In such circumstances a director may want to better understand the implications of the decision under consideration and the consequences of his or her dissent. The director may also want to consider alternate courses of action such as resignation as a director, or otherwise recording his/her dissenting position, etc.

There are other circumstances as well in which a director may wish to seek independent expert advice including clarification on related party transactions, concerns about the adequacy of due diligence examinations, or questions regarding the relationship between the President and Chief Executive Officer and the corporate entity for which the Board has assumed governance responsibilities.

The *Terms of Reference for the Governance & Human Resources Committee* require that the Governance & Human Resources Committee (the “Committee”) “ensure there is a system that enables a committee or director to engage separate independent counsel in appropriate circumstances, at the Authority’s expense....”

As stated, the onus is on the Committee to ensure that such independent counsel is provided “in appropriate circumstances” which can be interpreted only as when there is an evident and real justification. The Committee must also assume responsibility for ensuring that there is some discipline in respect to the Terms of Reference for, and the cost of, any resulting engagements.

2. PROCESS

- (1) A Committee of the Board or the Board will table any decision where, after a reasonable examination of the issues involved, a director(s) takes a firm position that he/she wishes to have independent counsel before participating in a vote.
- (2) The director(s) wishing to have such independent counsel will, without undue delay, address the request to the Committee, outlining in appropriate detail, the reasons therefore. The Committee may accept this request in writing or, when the issue being debated by the Board is of an urgent nature, may choose to meet in special session to hear a verbal submission. However the submission is received, the Committee will be given adequate time to consider the request and make its decision.

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- (3) The Committee will determine whether, in its view, such independent counsel is justified and, if so, develop with the director(s) involved:
 - (a) clear Terms of Reference in respect to the nature and scope of such assistance; and
 - (b) an estimate of projected costs.
- (4) In making its decision, the Committee will ensure that the proposed Terms of Reference for independent counsel will not take the Committee or the Board beyond its governance role of supervising the management. The Committee must also ensure that the requested counsel does not duplicate advice already obtained by management, except where absolutely necessary.
- (5) Where the Committee considers independent counsel to be justified and has agreed with the directors(s) involved on the Terms of Reference, etc., the Committee will authorize the engagement and inform management and the Board. The Committee will then monitor the engagement, ensuring that both the Terms of Reference and the expected cost parameters are respected.
- (6) Where the Committee decides that independent counsel is not required or justified it will report this finding to the Board Chair, leaving the Board the right to accept or reject the request by majority vote.
- (7) This policy and procedure will be reviewed from time to time or as necessary.