

13



EXHIBITION PLACE

May 15, 2002

To: The Board of Governors of Exhibition Place

From: Dianne Young
General Manager & CEO

Subject: Code of Conduct for Members of the Board of Governors

Recommendation:

It is recommended that the Board adopt the Code of Conduct attached as Appendix "A".

Background:

At its meeting of September 28 and 29, 1999, City Council adopted a report entitled "Code of Conduct for Members of Council" and requested that all Agencies, Boards and Commissions also adopt this Code of Conduct.

Discussion:

Since the adoption by Council of the "Code of Conduct", the Corporate Secretary and City Legal have reviewed the City Code in light of the Board membership and By-Laws. Attached is a Code of Conduct for members of the Board of Governors which is in substance identical to the one adopted by Council but modified to address the particular nature of the Board of Governors.

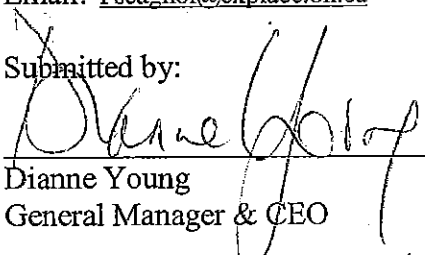
Conclusion:

This report recommends the adoption by Board of the policy entitled "Code of Conduct for Members", as requested by City Council.

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Submitted by:


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General Manager & CEO



**Code of Conduct for Members of
The Board of Governors of Exhibition Place**

APPENDIX "A"

Preamble:

Improving the quality of public administration and governance can be achieved by encouraging high standards of conduct on the part of all Members of the Board of Governors (the "Board"). To this end, adoption of Conduct for Members of the Board is one of several initiatives being undertaken. The public is entitled to expect the highest standards of conduct from the members of the Board. In turn, such standards will protect and maintain the Board's reputation and integrity. The Code of Conduct supplements and is compatible with the laws governing the conduct of members.

The key statements of principle that underline this are as follows:

- (i) Members of the Board shall serve and be seen to serve in a conscientious and diligent manner;
- (ii) No member of the Board shall use the influence of their position for any purpose other than for the exercise of his or her official duties;
- (iii) Members of the Board are expected to perform their duties and arrange their private affairs in a manner that promotes public confidence and will bear close public scrutiny; and
- (iv) Members of the Board shall seek to serve the public interest by upholding both the letter and the spirit of the laws and policies established by the Federal Parliament, Ontario Legislature, or City of Toronto Council ("Council").

I. Statutory Provisions Regulating Conduct:

This Code of Conduct is consistent with the existing statutes governing the conduct of members. In addition to the Board's Procedural By-law, three pieces of provincial legislation govern the conduct of members of the Board as follows:

- (i) *The Municipal Act;*
- (ii) *The Municipal Conflict of Interest Act;*
- (iii) *The Municipal Freedom of Information and Protection of Privacy Act.*

II. Gifts and Benefits:

No member shall accept a fee, advance, gift or personal benefit that is connected directly or indirectly with the performance of his or her duties. One example would be that no member should act as a paid agent before the Board, or a committee of the Board. Another example would be that no member should refer third parties to a person, partnership, or corporation in exchange for payment or other personal benefit.

Examples of exceptions to the non-acceptance of gifts or personal benefits by members in relation to their official duties are:

- (i) compensation authorized by law;
- (ii) such gifts or benefits that normally accompany the responsibilities of his or her position and are received as an incident of protocol, custom, or social obligations;
- (iii) services provided without compensation by persons volunteering their time;
- (iv) suitable memento of a function honouring the member;
- (v) food, lodging, transportation and entertainment provided by the Board;
- (vi) food and beverages consumed at banquets, receptions or similar events; and
- (vii) communication to the offices of a member, including subscriptions to newspapers and periodicals.

III. Confidential Information:

Confidential information includes information in the possession of the Board which the Board is either prohibited from disclosing, or is authorized to refuse disclosure of, under the *Municipal Freedom of Information and Protection of Privacy Act*, (MFIPPA) or other legislation. Generally, MFIPPA restricts or prohibits disclosure of information received in confidence from third parties of a corporate, commercial, scientific or technical nature, information that is personal, and information that is subject to solicitor-client privilege.

The *Municipal Act* allows information that concerns personnel, labour relations, litigation, property acquisitions, the security of the property of the Board, and matters authorized in other legislation, to remain confidential. For purposes of the Code of Conduct, "confidential information" also includes this type of information.

No member shall disclose or release by any means to any member of the public, any confidential information acquired by virtue of their position, in either oral or written form except when required by law or authorized by the Board to do so. Nor shall members use confidential information for personal or private gain, or for the gain of relatives or any person or corporation. As one example, no member should directly or indirectly benefit, or aid others to benefit, from knowledge respecting bidding on the sale of Board property or assets.

Under the Procedural By-law 1-99, where a matter that has been discussed at an in-camera (closed) meeting remains confidential, no member shall disclose the content of the matter, or the substance of deliberations, of the in-camera meeting.

The following are examples of the types of information that a member of the Board must keep confidential:

- (i) items under litigation, negotiation, or personnel matters;
- (ii) information that infringes on the rights of others (e.g., sources of complaints where the identity of a complainant is given in confidence);
- (iii) price schedules in contract tender or Request For Proposal submissions if so specified;

- (iv) information deemed to be "personal information" under the *Municipal Freedom of Information and Protection of Privacy Act*; and

IV. Use of Board Property, Services and Other Resources:

No member of the Board should use, or permit the use of Exhibition Place land, facilities, equipment, supplies, services, staff or other resources (for example, Board-owned materials, web sites, Board transportation delivery services) for activities other than the business of the Board. Nor should any member obtain financial gain from the use or sale of Board-developed intellectual property (for example, inventions, creative writings and drawings), computer programs, technical innovations, or other items capable of being patented, since all such property remains exclusively that of the Board.

V. Business Relations:

No member shall act as a paid agent before the Board or its committees except in compliance with the terms of the *Municipal Conflict of Interest Act*.

VI. Conduct Respecting Current and Prospective Employment:

No member shall allow the prospect of his or her future employment by a person or entity to detrimentally affect the performance of his or her duties to the Board.

VII. Conduct At Meetings of the Board:

Members shall conduct themselves with decorum at Board meetings in accordance with the provisions of the Board's Procedural By-Law.

VIII. Conduct Respecting Staff:

Only the Board as a whole has the authority to approve budget, policy, committee processes and other such matters. Accordingly, members shall direct requests outside of the Board approved budget, process or policy, to the General Manager & CEO.

Under the direction of the General Manager & CEO, staff serve the Board as a whole, and the combined interests of all members as evidenced through the decision of the Board. Members shall be respectful of the role of staff to advise based on neutrality and objectivity and without undue influence from any individual member or faction of the Board.

Accordingly, no member shall maliciously or falsely injure the professional or ethical reputation, or the prospects or practice of staff, and all members shall show respect for the professional capacities of the staff of the Board.

No member shall compel staff to engage in partisan activities or be subjected to threats or discrimination for refusing to engage in such activities. Nor shall any member use, or attempt to use, their authority or influence for the purpose of intimidating, threatening, coercing, commanding, or influencing any staff member with the intent of interfering with that person's duties, including the duty to disclose improper activity.

In practical terms, there are distinct and specialized roles carried out by the Board as a whole and by members when performing their other roles. The key requirements of these roles are captured in the Schedule to the Code of Conduct and include dealing with the general public, participating as Committee members, participating as Chairs of Committees, and participating as Board representatives on other bodies, if any. Similarly, there are distinct and specialized roles expected of Board staff in both the carrying out of their responsibilities and in dealing with the Board.

IX. Conduct Respecting Lobbyist:

The term "lobbyist" includes the following:

- (i) "consultant lobbyist" means a person who, for payment, lobbies on behalf of a client and includes, but is not limited to, government relations consultants, lawyers, accountants, or other professional advisors who provide lobbying services for their clients;
- (ii) "corporate in-house lobbyist" means an employee of a corporation that carries on commercial activities for financial gain and who lobbies as a significant part of their duties;
- (iii) "organization in-house lobbyist" means an employee of a non-profit organization, when one or more employees lobby public office holder and where the accumulated lobbying activity of all such employees would constitute a significant part of the duties of one employee; and
- (iv) "volunteer lobbyist" means a person who lobbies without payment on behalf of an individual, corporation, or organization.

Lobbying is usually defined as direct or indirect efforts to solicit members' support and influence government decisions on behalf of another party or an organization, often away from public scrutiny. Lobbying is also distinguishable from matters that are the subject of Board deputation, or other processes that are a matter of public record where individuals are named and their interest and organizational affiliation identified.

Members shall be vigilant in their duty to serve public interests when faced with lobbying activity. Members can use the following as a guide to assist in identifying whether they are being lobbied:

- (i) During the past year, has the contact person attempted to influence you personally, for example, in any administrative action that would have benefited him or her or his or her employer financially?
- (ii) Does the contact person do business or seek to do business with the Board?
- (iii) Is the contact person seeking to influence outcomes outside a public forum on a matter involving, for example, a license, permit or other entitlement for use currently pending before the Board?
- (iv) Is the contact person a registered lobbyist employer or a client of a registered lobbyist? (Refer to the respective Web Sites)
- (v) Is the contact person a registered lobbyist or lobbying firm?
- (vi) Does the contact person fall within the definition provided above?

X. Discreditable Conduct:

All members of the Board have a duty to treat members of the public, one another and staff fairly and to ensure that their work environment is free from discrimination and harassment. The Ontario Human Rights Code applies, as does the Human Rights, Harassment and Hate Activity Policy Framework adopted by Council at its meeting of December 16 and 17, 1998.

XI. Compliance with the Code of Conduct:

Members of the Board are accountable to the public through their term. Between terms they may become disqualified and lose their position if convicted of an offence under the *Criminal Code* of Canada or for failing to declare a conflict of personal interest under the *Municipal Conflict of Interest Act*, for example.

This Code of Conduct is an agreement by members on their expected conduct. It is adopted by resolution, as opposed to a specific by-law with an offence provision (that could be enforced under the *Provincial Offences Act* and could result in a fine of up to \$5000.00). While they may not be prosecuted or fined under it, members acknowledge the importance of the principles contained in this Code of Conduct and agree to support and adhere to it.

As the head of the Board, the Chair has as one of his or her duties, to be vigilant and active in causing the laws and policies for the governance of the Board to be duly executed and obeyed. Complaints or concerns from any person regarding alleged non-compliance with the Code by a member may be made to the Chairman in writing.

Schedule to the Code of Conduct
Roles and Responsibilities of the Board, Members and Staff

Members of the Board and staff of the Board are both servants of the public and they are indispensable to one another. The Board directs the business of Exhibition Place and passes by-laws, or resolutions as appropriate, for decisions adopted by the Board.

The Board has delegated responsibility to the General Manager & CEO for the administration of the affairs of the Board in accordance with the by-laws adopted. This means that under the direction of the General Manager & CEO, staff have the responsibility and the authority to provide consultations, advice and direction to the Board and to implement Board approved policy. Accordingly, staff establishes the appropriate administrative policies, systems, structures and internal controls to implement the goals and objectives of the Board, and to manage implementation within the resources at their disposal.

The Board should expect a high quality of advice from staff based on neutrality and objectivity irrespective of politics, the loyalties of persons in power, or their personal opinions.

(a) The Whole Board, for example:

- (i) exercise the authority delegated by Council and the provincial legislature and does not possess authority separate to that derived from provincial statute, City of Toronto by-laws and the current management agreement with the City of Toronto;
- (ii) is the directing mind for the operation of Exhibition Place and makes by-laws governing its own procedures and the conduct and management of its affairs, allocates expenditures in accordance with its budget as approved by Council and holds Board staff accountable by providing them with direction, assigning resources and monitoring policy decisions as implemented by staff;
- (iii) must have a quorum in order to vote to amend or enact by-laws;
- (iv) meets as a Board to discuss and vote on Committee and staff recommendations;
- (v) may sub-delegate administrative authority where the delegation does not entail a power to determine or adjudicate rights; make policy; or take legislative action;
- (vi) receives all reports of all Committees and other designated bodies for their acceptance, amendment, deferral or referral as the Board deems appropriate;

- (vii) holds regular and special meetings of the Board in open session; a Board meeting in open or closed session for legal, personnel or property matters of a sensitive nature; and
 - (viii) follows the procedures it establishes in the Board Procedural By-law.
- (b) The Chair, for example:
- (i) sees that the by-laws of the Board are duly executed and obeyed;
 - (ii) oversees the conduct of the subordinate officers and administration and sees that all proven negligence, carelessness and violation of duty are dealt with;
 - (iii) communicates information and recommendations to the Board from time to time that will tend to the improvement of the Board's governance of Exhibition Place;
 - (iv) presides at all meetings of the Board and ensures that all proceedings and conduct are enacted in accordance with the Board's Procedural By-Law;
 - (v) is the ex-officio member of all other Committees of the Board and entitled to vote as a member;
 - (vi) may summon a special meeting of the Board within a specified time period, as well as when requested to do so in writing by a majority of members;
 - (vii) represents the views and interest of Exhibition Place at a variety of official, public, ceremonial and intergovernmental events; and
 - (viii) signs all By-laws and may sign promissory notes on behalf of the Board, where borrowing has been approved in advance by City Council.
- (c) Members Generally, for example:
- (i) represent the views of the public and exercise judgements to make decisions on behalf of them;
 - (ii) respond to public inquiries or refer such inquiries to the General Manager & CEO;
 - (iii) participate in Board meetings and undertake the activities within the authority, operations and procedures of the Board as outlined in (a) above;

- (iv) choose among alternatives and reconcile conflict among competing priorities;
- (v) stay informed and keep up to-date;
- (vi) in Board meetings, correct deficiencies in the system; and
- (vii) in Board meetings, determine the overall system and structure of Exhibition Place.

(d) Committees as a Whole, for example:

- (i) recommend policy and program development and advice, service targets, priorities and budget requirements of the respective area to the Board;
- (ii) explain the requirements, purpose and rationale of respective program areas;
- (iii) request reports as required to aid in their decisions on recommendations to the Board;
- (iv) report and make recommendations to the Board on policy matters referred to them;
- (v) provide access to public communication and deputation on matters within their purview;
- (vi) participate in joint meetings of Committees as required; and
- (vii) examine all accounts connected with discharging its duties or under its supervision in accordance with the Board's Procedural By-law and other by-laws.

(e) Committee Chairs, for example:

- (i) review, identify and prepare agenda items and priorities with the General Manager & CEO;
- (ii) ensure program policies and priorities are established by the Committee;
- (iii) may be called upon at Board meetings to answer questions on Committee recommendations;
- (iv) conduct meetings, provide direction, ensure fair and open discussion of agenda items in accordance with established procedures (Board Procedural By-law);

- (v) may call special meetings of the Committee when the Chair or members feel it is necessary to do so; and
 - (vi) participate in and may chair, joint meetings of Committees.
- (f) Staff of the Board, for example:
- (i) provide timely and useful advice to the Board and its Committees:
 - (ii) carry out specific directives, motions and policies approved or delegated to them by the Board;
 - (iii) follow the intent of Board directions;
 - (iv) alert the Board to legal limitation of proposals, or changes in legislation, or unintended impacts of decisions;
 - (v) administer the organization and are responsible for day-to-day tasks in operations management;
 - (vi) recommend policies, programs and budgets to Committees and the Board;
 - (vii) respond to public inquiries and advise on Board-approved policies;
 - (viii) use allocated resources appropriately;
 - (ix) stay informed and up to-date;
 - (x) undertake research and review and report on findings;
 - (xi) evaluate staff assigned and correct any performance as required; and
 - (xii) encourage the development of staff under their supervision.

APPENDIX 1

Descriptive Categories of Conduct across Acts

Certain aspects for member conduct are referred to in more than one piece of legislation. In order to assist the Board in understanding and referencing the requirements across these pieces of legislating Acts, descriptive categories of conduct have been developed as presented below. References are made to the legislation that regulate them as summarized in Appendix 2.

(1) General:

- (i) General standard of conduct of members of the Board; and
- (ii) Declaration of conflict of interests.

No member of the Board should engage in any financial or other activity, which would tend to impair the member's independence of judgement or decision, or that is incompatible with the proper discharge of his or her official duties in the public interest. No member should use his or her position to seek to influence a decision, made or to be made by another person, so as to further the member's personal interest or improperly to further another person's personal interest.

When a member is called upon by official duties to deal with any matter in which the member has a direct or indirect personal pecuniary interest, the member must declare that interest and refrain from any discussion or voting on the matter.

References: The *Municipal Act*, s.94 (1) declaration of office of member or council, etc. and s. 100 investigation by judge of charges of malfeasance. The *Municipal Conflict of Interest Act*, s.2 indirect pecuniary interest; s. 3 interest of certain relatives deemed that of member; s. 4, where s.5 does not apply; and s.5 when present at meeting at which matter considered.

(2) Specific Types of Prohibited Conduct:

(a) Breach of Trust Conduct:

- (i) Breach of (public) trust; and, fraud.

A member of the Board is held to a higher standard than is a private person for the same activity. A breach of trust occurs when there is an abuse of the public trust by an act (including an omission) done to further or promote private ends or to obtain, directly or indirectly, a benefit.

Fraud involves intentional deception, where one individual obtains an advantage over another by false suggestions or suppressions of the truth.

References: The *Criminal Code*, s.122 breach of trust by public officer (this section has been applied in cases where the facts did not support a charge for municipal corruption under s. 123). The *Municipal Act*, s.94 (1) declaration of office of member of Council, etc. and s. 100 investigation by judge of charges of malfeasance.

(g) "Influence Peddling":

- Undue influence upon the Board; and
- Offering and acceptance of extra benefits and gifts.

A member of the Board demands, accepts or offers or agrees to accept a loan, reward or other economic benefit for their vote, assistance in having a proposal adopted or defeated, or performing or omitting to perform an official act. These actions must relate to a member's responsibilities respecting voting on resolutions or performing official acts.

References: The *Criminal Code*, s. 123(1) municipal corruption. The *Municipal Act* s. 94(1) Declaration of office of member of Council, etc.

(h) Secret commissions.

A member of the Board "corruptly" demands, accepts or offers or agrees to accept from any person, a benefit as consideration for doing or not doing anything in relation to the business of the Board. The term "corruptly" means secretly, or without timely and adequate disclosure of the benefit to the Board.

Reference: The *Criminal Code*, s. 426 secret commissions.

(i) Misuse of information

This conduct includes the:

- (i) use of insider information for a personal benefit;
- (ii) disclosure of confidential information; and
- (iii) disclosure of personal information and other contravention of the *Municipal Freedom of Information and Protection Privacy Act*.

References: The *Criminal Code*, s. 122 breach of trust by public officer. The *Municipal Freedom of Information and Protection of Privacy Act*, s. 48 offences.

APPENDIX 2

Summary of Each Legislative Act Governing the Conduct of Board Members

Three pieces of Provincial legislation govern the conduct of members of the Board as follow:

- (i) the *Municipal Act*;
- (ii) the *Municipal Conflict of Interest Act*; and
- (iii) the *Municipal Freedom of Information and Protection of Privacy Act*.

Part I: The Municipal Act, R.S.O. 1990 ("MA")

Canadian municipalities are often described as "creatures of statute" as they have no separate constitutional existence. Their powers are limited to what is set out in Provincial legislation. The *Municipal Act* is the general Provincial Act under which municipal corporations are created and which sets out the general powers, duties and responsibilities of municipalities. The *Municipal Act* includes provisions that specifically regulate the conduct of members of the Board.

Conduct:

- (1) General standard of conduct of members – declaration of office [MA s. 94(1)]:
 - (a) to truly, faithfully and impartially, to the best of the member's knowledge and ability;
 - (b) to have not received, nor to receive, any payment or reward, or promise thereof, for the exercise of any partiality or other undue execution of such position; and
 - (c) to disclose any pecuniary interest, direct or indirect as required by and in accordance with the *Municipal Conflict of Interest Act*.
- (2) Non-compliance with *Municipal Act* requirements re office or absence from meetings – *Penalty, seat declared vacant* [MA s. 38(b) and (c), s. 95 (1)]

Part II: The Board's Procedural By-law ("PB"):

The Board may adopt a procedural by-law regulating its proceedings. The Board may also pass by-laws for governing the conduct and management of its affairs.

Part III: *The Municipal Conflict of Interest Act, R.S.O. 1990 (“MCIA”)*:

The *Municipal Conflict of Interest Act* sets out a prescribed code of conduct for members of the Board to follow when they have a “pecuniary interest, direct or indirect in any matter”.

The purpose of the MCIA is to ensure that members of the Board make decisions based on the public interest and not based on the personal economic interest of the members. The MCIA seeks to achieve this purpose by requiring any member who has a pecuniary interest in a matter to disclose that interest and to not participate in the discussion and decision on the matter. By taking these actions the member has removed the conflict of interest that would otherwise occur if the member failed to make the required disclosure or, with or without disclosure, participated in the decision making process.

Conduct:

Specifically, a member having a pecuniary interest in a matter under the *Municipal Conflict of Interest Act* must:

- (a) disclose their interest and the general nature of that interest prior to any consideration of the matter at the meeting, or if absent from the meeting, disclose that interest at the next meeting they attend;
 - (b) not take part in any vote or discussion of the matter;
 - (c) not attempt to influence the vote on the matter; and
 - (d) leave any “in camera” meeting (a meeting not open to the public) during which the matter is under consideration; or
 - (e) risk the following penalties – forfeiture of office, disqualification from holding office for up to seven years, and restitution. [MCIA, ss. 1 to 15]
- (1) Determination of Pecuniary Interest under the Act [MCIA ss. 1 to 5]:

Pecuniary interest is not defined in the *Municipal Conflict of Interest Act* but it includes any economic interest, as opposed to a philosophical, ideological or political interest, of the member. Motive, and the extent of a member’s interest involved, are irrelevant to the question of whether or not there is a pecuniary interest under the MCIA. Whether or not the subject matter before the Board would result in an advantage or disadvantage to the member, it is the presence of the pecuniary interest that requires a declaration in order to remove any presumption of bias.

Direct Pecuniary Interest:

An indirect pecuniary interest is one involving another legal person where the person or corporation having a financial relationship with the member might experience an economic benefit or avoidance of economic loss. Thus, the direct and indirect pecuniary interests of the parents, spouses and children of member, if known to the member, are deemed to also be the pecuniary interests of the member [MCIA ss. 1(definitions) and 3]. A member has an indirect pecuniary interest in a matter [MCIA ss. 1(definitions) and 2] if:

- (a) he or she, or his or her nominee, is a shareholder, director or senior officer of a private corporation;
- (b) has a controlling interest in, or is a director, or senior officer of a public corporation; or
- (c) he or she is a member of a body that has pecuniary interest in the matter.

Exceptions:

The MCIA contains some practical exceptions to what is a pecuniary interest for the purposes of section 5 of the MCIA. For example, a member is not required to disclose a pecuniary interest arising only by reason of an interest held in common with electors generally. This exception also applies where the member's interest is not different from that of the community in general. Interests are excepted which are so remote or insignificant that they cannot reasonably be regarded as likely to influence the member [MCIA ss. 1(definitions) and 4].

Determination as to whether an individual member of the Board has a conflict of interest in a matter is an issue that the member must determine with independent legal advice if necessary. The Board's solicitor may be required to provide the Board as a whole with legal advice on a matter before it and is not in a position, therefore, to advise an individual member.

Part V: The Municipal Freedom of Information and Protection of Privacy Act, R.S.O. 1990 ("MFIPPA"):

A municipal corporation and its local boards (e.g. the Board of Governors) are "institutions" under the *Municipal Freedom of Information and Protection of Privacy Act*. MFIPPA provides a right of access to information under the control of an institution. MFIPPA also requires that the institution protect the privacy of an individual's personal information existing in the institutions' records and sets out rules regarding the collection, retention, use disclosure and disposal of personal information in the institution's custody or control. MFIPPA does not have any special provisions that deal with access to the records of a member of the Board or a member's access to the Board's records. However orders of the Provincial Information and Privacy Commissioner and a court decision have dealt with these matters as noted below.

Disclosure of records containing personal information by the Board to a member of the Board must be in accordance with the disclosure rules under MFIPPA. For example, in an order of the Information and Privacy Commissioner, the disclosure to a member of the Board of certain mailing lists, general property data information that was not a public record, and information on a zoning infraction matter, were found to be disclosures of personal information in contravention of MFIPPA.

Conduct: "Willfully" discloses or maintains personal information in contravention of the *Municipal Freedom of Information and Protection of Privacy Act*, obstructs or misleads the Information and Privacy Commissioner, or fails to comply with an order of the Commissioner – *Penalty, fine of up to \$5000* [MFIPPA 48].