

# Board Conflict of Interest Policy Sample

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# Board Conflict of Interest Policy Sample

## 1.0 Purpose

All Directors have a duty to ensure that the integrity of the decision-making processes of the Board are maintained by ensuring that they and other members of the Board are free from conflict or potential conflict in their decision-making. It is inherent in a Director's fiduciary duty that conflicts of interest be avoided. It is important that all Directors and Officers understand their obligations when a conflict of interest or potential conflict of interest arises.

## 2.0 Application

This policy applies to all Directors and Officers, including ex-officio Directors, and all non-Board members of committees.

"Officers" means Officers appointed by the Board including the Chair, a Vice-chair, Secretary, Treasurer and others who perform functions for the organization similar to those normally performed by such Officers.

## 3.0 Policy

Directors, Officers and non-Board committee members shall avoid situations in which they may be in a position of conflict of interest or perceived conflict of interest. The bylaws contain provisions with respect to conflict of interest that must be strictly adhered to.

In addition to the bylaws, the process set out in this policy shall be followed when a conflict or potential conflict arises.

## 4.0 Description of Conflict of Interest

A conflict of interest arises in any situation where a Director's duty to act solely in the best interests of the organization and to adhere to the Director's fiduciary duties is compromised or impeded by any other interest, relationship or duty of the Director. A conflict of interest also includes circumstances where the Director's duties to the organization are in conflict with other duties owed by the Director such that the Director is not able to fully discharge the fiduciary duties owed to the organization.

The situations in which potential conflict of interest may arise cannot be exhaustively set out. Conflicts generally arise in the following situations:

**1. Transacting with the Organization**

When a Director transacts with the organization directly or indirectly. When a Director has a material, direct or indirect, interest in a transaction or contract with the organization.

**2. Interest of a Relative**

When the organization conducts business with suppliers of goods or services or any other party of which a relative or member of the household of a Director is a principal, officer or representative.

**3. Gifts**

When a Director or a member of the Director's household or any other person or entity designated by the Director, accepts gifts, payments, services or anything else of more than a token or nominal value from a party with whom the organization may transact business (including a supplier of goods or services) for the purposes of (or that may be perceived to be for the purposes of) influencing an act or decision of the Board.

**4. Acting for an Improper Purpose**

When Directors exercise their powers motivated by self-interest or other improper purposes. Directors must act solely in the best interest of the organization. Directors who are nominees of a particular group must act in the best interest of the organization even if this conflicts with the interests of the nominating party.

**5. Appropriation of Organization Opportunity**

When a Director diverts to the Director's own use, an opportunity or advantage that belongs to the organization.

**6. Duty to Disclose Information of Value to the Organization**

When Directors fail to disclose information that is relevant to a vital aspect of the organization's affairs.

**7. Serving on the Board of Other Organizations**

A Director may be in a position where there is a conflict of "duty and duty". This may arise where the Director serves as a Director of two organizations that are competing or transacting with one another. It may also arise where a Director has an association or relationship with another entity. For example, if two organizations are both seeking to take advantage of the same opportunity. A Director may be in possession of confidential

information received in one boardroom or related to the matter that is of importance to a decision being made in the other boardroom. The Director cannot discharge the duty to maintain such information in confidence while at the same time discharging the duty to make disclosure. The Director cannot act to advance any interests other than those of the organization.

## 5.0 Disclosure of Conflicts

A Director, Officer or committee member who is in a position of conflict or potential conflict shall immediately disclose such conflict to the Board by notification to the Chair or Vice-chair of the Board. Where the Chair has a conflict, notice shall be given to the Vice-chair. The disclosure shall be sufficient to disclose the nature and extent of the interest. Disclosure shall be made at the earliest possible time and, where possible, prior to any discussion and vote on the matter.

Where (i) a Director is not present at a meeting where a matter in which the Director has a conflict is first discussed and/or voted upon, or (ii) a conflict arises for a Director after a matter has been discussed but not yet voted upon by the Board, or (iii) a Director becomes conflicted after a matter has been approved, the Director shall make the declaration of the conflict to the Chair or Vice-chair as soon as possible and at the next meeting of the Board.

If an Officer becomes interested in a contract or transaction after it is made or entered into, the disclosure shall be made as soon as possible after the Officer becomes so interested.

A Director or Officer may make a general declaration of the Director's relationships and interests in entities or persons that give rise to conflicts.

## 6.0 Abstain from Discussions

The Director or Officer who has declared a conflict shall not be present during the discussion or vote in respect of the matter in which the Director or Officer has a conflict and shall not attempt in any way to influence the voting.

## 7.0 Process for Resolution of Conflicts and Addressing Breaches of Duty

All Directors shall comply with the requirements of the bylaws.

A Director may be referred to the process outlined below in any of the following circumstances:

### 1. Circumstances for Referral

Where any Director believes that that Director or another Director:

- a. Has breached the Director's duties to the organization;

- b. Is in a position where there is a potential breach of duty to the organization;
- c. Is in a situation of actual or potential conflict of interest; or
- d. Has behaved or is likely to behave in a manner that is not consistent with the highest standards of trust and integrity and such behaviour may have an adverse impact on the organization.

## 2. Process for Resolution

The matter shall be referred to the following process:

- a. Refer matter to Chair or where the issue may involve the Chair, to the Vice-chair, with notice to Executive Director.
- b. Chair (or Vice-chair as the case may be) may either (i) attempt to resolve the matter informally, or (ii) refer the matter to either the Executive Committee or to an ad hoc sub-committee of the Board established by the Chair (or Vice-chair, as the case may be) which sub-committee shall report to the Board.
- c. If the Chair or Vice-chair elects to attempt to resolve the matter informally and the matter cannot be informally resolved to the satisfaction of the Chair (or Vice-chair as the case may be), the Director referring the matter and the Director involved then the Chair or Vice-chair shall refer the matter to the process in (b) (ii) above.
- d. A decision of the Board by majority resolution shall be determinative of the matter.

It is recognized that if a conflict, or other matter referred cannot be resolved to the satisfaction of the Board (by simple majority resolution) or if a breach of duty has occurred, a Director may be asked to resign or may be subject to removal pursuant to the bylaws and applicable legislation.

## 8.0 Perceived Conflicts

It is acknowledged that not all conflicts or potential conflicts may be satisfactorily resolved by strict compliance with the bylaws. There may be cases where the perception of a conflict of interest or breach of duty (even where no conflict exists or breach has occurred) may be harmful to the organization notwithstanding that there has been compliance with the bylaws. In such circumstances, the process set out in this policy for addressing conflicts and breaches of duty shall be followed.

It is recognized that the perception of conflict or breach of duty may be harmful to the organization even where no conflict exists or breach has occurred and it may be in the best interests of the organization that the Director be asked to resign.

## 9.0 Amendment

This policy may be amended by the Board.

Approved by Board of Directors: [insert date]

Reviewed by Board of Directors: [insert date]

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