



## B – Governance Process

## Conflict of Interest

### Background

Conflict of interest arises when a Governor's private or personal interest supersedes or competes with their duties and responsibilities as a member of the Board. This could arise from an actual, potential or perceived conflict of interest of a financial nature or other nature.

### Definitions

An "actual conflict of interest" exists when a Governor has a private or personal interest that is sufficiently connected to their duties and responsibilities as a Governor that it influences the execution of those duties and responsibilities.

A "potential conflict of interest" exists when a Governor has a private or personal interest that could influence the performance of a Governor's duties and responsibilities, provided that they have not yet exercised that duty or responsibility.

A "perceived conflict of interest" exists when reasonably well informed individuals could properly have a reasonable belief that a Governor has an actual conflict of interest, even where that is not the case in fact.

Because Northern College is part of the broader public sector and subject to a high level of public scrutiny, the issue of perceived conflict will often be more problematic than the issue of actual or potential conflict. To sustain trust and confidence in the College, it is important to identify, disclose and resolve all forms of conflict of interest. This policy outlines conflict of interest guidelines intended to:

- assist a member in determining that their membership on the Board is not used for personal or private benefit, financial or otherwise;
- protect the integrity of the Board and individual Board members who follow conflict of interest provisions;
- protect the integrity of the Board and enable each Governor to carry out their fiduciary duty as it relates to any conflict or potential or perceived conflict of interest.

The issue of conflict of interest is also addressed in By-Law No 1 (Section 7) and the Ministry of Colleges and Universities (MCU) Minister's Binding Policy Directive on Conflict of Interest issued under the OCAAT Act, April 1, 2003.



## Policy

The Board of Governors of Northern College of Applied Arts and Technology will open each Board and Committee meeting with a call for disclosures of actual, potential, or perceived conflict of interest. Governors will declare any conflict of interest in compliance with the Minister's Binding Policy Directive on Conflict of Interest, Apr. 1, 2003.

### Conflict of Interest Guidelines

#### 1. Private/Personal Interests

Private/Personal interests include those relating to or involving money (pecuniary) and other interests unrelated to money (non-pecuniary). For the purpose of these guidelines, "related person" refers to a spouse, life partner, child, parent, sibling or close friend of the member as well as any business entity in which the individual has a material interest.

Generally, pecuniary (monetary) interests lead to a conflict of interest when a Governor or related person is in a position to directly or indirectly:

- i) personally benefit financially or avoid financial loss as a result of a contract or other matter of a monetary nature in which the College is involved;
- ii) use information obtained as the result of being a Governor for personal benefit.

Conflict of interest will be considered not to exist where:

- i) a pecuniary interest is so remote or insignificant in nature that it cannot be reasonably regarded as likely to influence a Governor;
- ii) the pecuniary interest of the Governor is in common with a broad group of which the Governor is a member;
- iii) and where the issue is one of general or public information.

Other private/personal interests lead to conflict of interest when a Governor has non-economic interests such as religious, political, corporate and/or institutional interests which supersede or compete with their duties and responsibilities as Governor.

A Governor's ability to place College interests first may come into question in situations where the Governor holds a position of influence in another organization which has taken positions on issues related to ones under discussion by the Board. In such situations, a Governor's loyalties may be divided between serving the best interests of two different organizations. Conflict of interest should be declared in such situations.

Careful consideration should be given to whether other private/personal interests place a Governor in conflict of interest, especially when there are matters before the Board which affect:

- i) a non-share capital corporation in which a Governor is a director or officer; and/or
- ii) any other organization in which a Governor holds a position of influence or an ownership interest.

## 2. **Internal Board Members** (Persons who are employees/students of the College)

Although internal Board members are subject to the same guidelines as external members, the following situations specific to internal Governors should be noted. Conflict of interest is considered to exist when:

- i) Decisions/motions directly affect a specific instructional program in which Board members or related persons are enrolled, or in which Board members or related persons are employed.
- ii) Decisions/motions relate to labour negotiations, for Board members who are employees of the College, including administrative staff but excluding the President; and for Board members with related persons who hold positions at other institutions who could be seen to gain benefit from information divulged on these matters.

## 3. **Governors Bidding on Procurement Contracts with the College**

The Minister's Binding Policy Directive specifically addresses the issue of whether a Governor who owns a company may submit a tendering proposal to the College. The answer to that question is reprinted below:

“Yes, a Governor may submit a tendering proposal to the College. However, at the point in time when a Governor becomes aware that their company might submit a tender, the Governor should make the intention to do so known to the Board Chair. This situation could lead to either a perceived or actual conflict of interest, as the Governor might have information not available to competitors in the tendering process. The Board of Governors will need to consider how to proceed to ensure an open, fair, and transparent process.

Should the Governor's company actually submit a tender, the situation would then need to be treated as an actual conflict situation should the Board be involved in a decision relating to the tender.”

To expand and clarify the requirements in these circumstances, a Governor must disclose to the Board Chair as soon as possible if the Governor, or any related person of that Governor, is proposing to bid on any contract to provide goods or services to the College, regardless of the size or perceived materiality of the contract, **before submitting a bid on the contract**. (For clarity, the Governor or related person may submit an intention to submit a bid to meet a deadline for stating any such intention under the procurement process.)

The Board (or the Executive Committee, where the Board cannot achieve quorum within the timeframes dictated by the competitive procurement process) will consider whether it is appropriate for the Governor or related person to bid on the contract. The Board (or Executive Committee, as the case may be) may determine that it is inappropriate for the bid to be accepted by the college for various reasons, including (without limitation) a perception of favoritism or a perception that the College may be operationally bound to the Governor or the related person should the bid be successful. The Board may disqualify any such bid from proceeding or may attach conditions to the bid if it proceeds.

Any bid that is allowed to proceed must indicate prominently the association between the bidder and the Governor.

#### **4. Declaration of Conflict**

Board members are expected to arrange their private affairs and conduct themselves in a manner to avoid conflict of interest. The following guidelines should be followed in situations where conflict cannot be avoided.

At the beginning of every Board/committee meeting, the Chair should ask and have recorded in the minutes whether any member has a conflict to declare concerning any agenda item.

##### **i) Disclosure by a Board Member in a Conflict of Interest Situation**

When conflict cannot be avoided, a Board member must declare conflict of interest at the earliest opportunity, and at the same time, declare the general nature of the conflict. When conflict of interest is declared before a meeting, the declaration should be made to the Board Chair.

If a Board member is unsure whether they are in conflict, the member should raise the perceived potential conflict with the Board who will determine by majority vote whether a conflict exists. The Board member raising the issue should refrain from voting on the conflict of interest issue.

When a conflict of interest is discovered after consideration of the matter, it must be declared to the Board and appropriately recorded at the first opportunity. If the Board determines that involvement of the member with the conflict influenced the decision of the matter, the Board must re-examine the matter, and may rescind, vary or confirm its original decision.

##### **ii) Disclosure by any other Board member who perceives another member to be in Conflict of Interest**

Any Board member who perceives another member to be in conflict of interest in a matter under consideration must raise this concern with the Board Chair. The Chair, in turn, must discuss the matter with the Board member who is perceived



to be in conflict, and, as appropriate, hold further discussions with the first Governor. If the discussions do not lead to a resolution, the matter must be brought to the Board. The Board must determine by majority vote whether a conflict of interest exists. The member perceived to be in conflict must refrain from voting.

## 5. Board Procedures Where Conflict Exists

The Chair should record any declared conflict of interest on the part of a Board member in the minutes, and, if relevant, indicate that the Governor withdrew from the discussion and did not vote. The Board member who has declared a conflict of interest will not be included in the count for a quorum, in accordance with the Minister's Binding Policy Directives.

When a Board member has declared or has been found to be in a conflict of interest, the member must:

- not attempt in any way before, during or after the meeting to influence the voting on the related matter;
- in the open portion of the meeting, refrain from participating in any discussions of the related matter by the Board or a committee of the Board; and refrain from voting on any motion in relation to the matter;
- in the in-camera portion of the meeting, withdraw from a Board meeting or a Board committee meeting while the matter is being discussed or voted upon.

## 6. Sanctions

When a Board member has failed to comply with these conflict of interest guidelines, unless the failure is the result of a bona fide error in judgment, the Board is to:

- issue an oral reprimand;
- issue a written reprimand;
- request the resignation of the Board member; and/or
- remove the Board member through processes outlined in By-Law No. 1.

## Monitoring System

All Board members have a responsibility to declare their own actual, potential or perceived conflicts of interests and to draw the Board's attention to actual, potential or perceived conflict of interest on the part of other Board members.

The Board Chair has responsibility for ensuring that opportunity exists at each meeting for members of the Board to declare a conflict of interest.