



Board and Non-Board Committee Member Conflict of Interest Policy

Policy Type: Governance Process

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1. Purpose

It is an inherent part of a fiduciary duty that conflicts of interest be avoided. It is important that all Governors understand their obligations when a conflict of interest or potential conflict of interest arises.

All Governors 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.

All Governors must comply with the Conflict of Interest Directive:

<http://www.tcu.gov.on.ca/pepg/documents/ConflictofInterestDirective.pdf>

2. Application

This policy applies to all Governors (Internal Governors and External Governors) and all non-Board members of committees.

Governors are also directed to refer to the Employment provision of the Board's Code of Conduct, which supersedes this policy on the matter of employment of Governors or their spouses.

3. Definitions

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

Examples below:

- a) **Actual conflict of interest:** a situation where a Governor has a private or personal interest that is sufficiently connected to their duties and responsibilities as a Governor that it influences the exercise of these duties and responsibilities.
- b) **Perceived conflict of interest:** a situation where reasonably well-informed persons could properly have a reasonable belief that a Governor has an actual conflict of interest, even where that is not in fact, the case.
- c) **Potential conflict of interest:** a situation where a Governor has a private or personal interest that could influence the performance of a Governor's duties or responsibilities, provided that they have not yet exercised that duty or responsibility.

4. Description of Conflict of Interest

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

a) Transacting with the College

- When a Governor transacts with the College directly or indirectly.
- When a Governor has a material direct or indirect interest in a transaction or contract with the College.

b) Interest of a Relative

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

c) Gifts

- When a Governor or a member of the Governor's household or any other person or entity designated by the Governor, accepts gifts, payments, services

or anything else of more than a token or nominal value from a party with whom the College 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 a decision of the Board.

d) Acting for an Improper Purpose

- When Governors exercise their powers motivated by self-interest or other improper purposes. Governors must act solely in the best interest of the College. Governors who are elected by a particular group must act in the best interest of the College even if this conflicts with the interests of the group which elected them

e) Appropriation of Corporate Opportunity

- When a Governor diverts to their own use, an opportunity or advantage that belongs to the College.

f) Duty to Disclose Information of Value to the College

- When Governors fail to disclose information that is relevant to a vital aspect of the College's affairs.

g) Serving on Other Corporations

- A Governor may be in a position where there is a conflict of "duty and duty". This may arise where the Governor serves as a Governor of two corporations that are competing or transacting with one another. It may also arise where a Governor has an association or relationship with another entity.

5. Immaterial Interests in Common with others

This policy and the Conflict of interest Directive does not apply where the interest is so remote or insignificant that it cannot reasonably be regarded as likely to influence the Governor or where a pecuniary or other interest is in common with a broad group of which the Governor is a member (e.g., students, support staff, academic staff, administrative staff). This policy does not apply where the issue is one of general or public information.

6. Process for Resolution of Conflicts and Addressing Breaches of Duty

Call for Conflict Declarations: At the beginning of every Board meeting, the chair of the Board of Governors is to ask and have recorded in the minutes whether any member has a conflict to declare in respect to any agenda item.

Disclosure of Conflicts: A Governor or Committee member who is in a position of actual conflict shall immediately disclose such conflict to the Board by notification to the chair who shall inform the Board. Where the chair has a conflict, notice shall be given to the vice chair. Disclosure shall be made at the earliest possible time and, where possible, prior to any discussion and vote on the matter.

Where (i) a Governor is not present at a meeting where a matter in which the Governor has a conflict is first discussed and/or voted upon, or (ii) a conflict arises for a Governor after a matter has been discussed but not yet voted upon by the Board, or (iii) a Governor becomes conflicted after a matter has been approved, the Governor 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. The disclosure shall be sufficient to disclose the general nature and extent of the interest.

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

Where a Governor is unsure whether they are in conflict, the Governor is to raise the perceived potential conflict with the Board, and the Board is to determine by majority vote whether or not a conflict of interest exists. The said Governor must refrain from voting on whether or not a conflict of interest exists.

7. Abstain from Discussions and Voting

Open Meeting: When the agenda item arises in the open portion of the Board meeting, the Governor with an actual conflict of interest may choose to be absent for the discussion and vote or may remain in the room for the duration of the discussion and not participate in the vote on this item. If the Governor chooses to

remain in the room, the minutes are to record that the Governor in conflict of interest remained in the room for the discussion and did not vote on this item.

In Camera: Where the matter is to be discussed in the in camera portion of the meeting, the Governor who has declared a conflict shall not be present during the discussion or vote in respect of the matter in which they have a conflict and shall not attempt in any way to influence the voting.

8. Perceived or Potential Conflict

When the conflict of interest is perceived or potential, the Board will determine whether the member or members remain for the discussion and vote on agenda items. The minutes should reflect what takes place.

9. Not Influence Voting

A Governor with a conflict of interest should not attempt in any way to influence the voting on the matter before, during, or after the meeting.

10. Resolutions on Issues of Conflicts and Addressing Breaches of Duty

All Governors shall comply with the requirements of the Conflict of Interest Directive. A Governor may be referred to the process outlined below in any of the following circumstances: Where any Governor believes that they or another Governor:

- a) Has breached their duties to the College;
- b) Is in a position where there is a potential breach of duty to the College;
- c) Is in a situation of 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

11. 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 any vice chair, with notice to president.
- 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 (if one has been established) 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 Governor referring the matter and the Governor 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.
- e) 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 Governor may be asked to resign or may be subject to removal pursuant to the by-laws and applicable legislation.

12. Consequences for Failure to Comply

Where there has been a failure on the part of a Governor to comply with this policy or the Conflict of Interest Directive, unless the failure is the result of a bona fide error in judgment, the Board is to:

- a) Issue a verbal reprimand; or
- b) Issue a written reprimand; and/or
- c) Request that a Governor resign; and/or
- d) Remove the Governor through processes established in Board by-laws.

13. Perceived Conflicts

It is acknowledged that not all conflicts or potential or perceived conflicts may be satisfactorily resolved by strict compliance with this policy. 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 College notwithstanding that there has been compliance with this policy and the Conflict of Interest Directive. In such circumstances, it may be in the best interests of the College that the Governor be asked to resign.