

# CONFLICT OF INTEREST

Conflict of interest is a specific issue under a broader topic of Board liability. Board members owe the organization a duty of loyalty, placing the interest of the organization above other interests. Conflict of interest breaches this duty of loyalty. Likewise staff members who are in decision making roles may also occasionally find themselves in a conflict of interest situation.

## ***There is conflict when:***

A Board or Staff member's self interest, or potential for personal or financial gain, conflicts with their duty to act in the best interest of the organization.

A Board or Staff member's interest in a business corporation, or other organization, conflicts with their duty to act in the best interest of the organization.

The benefit to the Board or Staff member may be financial, but could also be a gain in reputation, or a more favorable position of some kind. As well, there may be conflict of interest when immediate family of a Board or Staff member gains some benefit.

The Board should be concerned about the appearance of conflict and not just about whether there is an actual conflict of interest. The Board has a responsibility to protect the image and reputation of the organization.

## **Preventative Steps to Avoid or Minimize Potential Conflicts of Interest**

1. Develop comprehensive policies that:

- Define and give examples of conflict that could arise
- Require board members or staff in decision making positions to declare a *potential or actual* conflict of interest to the board as a whole or, for staff, to the executive director. If the executive director has a potential conflict, s/he must declare it to the board chairperson.
- Require any board or staff member who are aware of a *potential or actual* conflict of interest of another board or staff member to bring this to the attention of the board chairperson or executive director.
- Require that a member who has a conflict to remove him/herself from and meeting (or part of the meeting) where the matter is being discussed or decided OR, if appropriate, s/he may listen to the discussion and answer questions raised by the members.
- Require the member in conflict to refrain from influencing any decisions in any way (during or outside the meeting)
- Require that a board member not vote on any matter for which s/he has a conflict. If the decision is by show of hands, or by aye or nay the board member should leave the room prior to the decision being taken.
- Direct the board to constructively address the conflict by exploring alternative solutions.
- Require accurate and complete minutes be kept of relevant discussion, so that it is clear that policies have been followed. Record for the minutes if the board member was available to answer questions, the time that the person left the meeting and returned to the meeting.

Prescribe disciplinary action for board r staff members who do not declare known conflicts, attempts to influence decisions for personal gain, or benefit from a decision where a conflict was known and not declared.

2. Educate all new and existing board members about the policies of the board. The use of case

- studies and hypothetical situations is an excellent way of helping the board explore and address “real life” conflicts of interest situations.
3. Seek legal counsel on difficult issues for which there are not obvious solutions or where a potential liability exists for the board or organization.
  4. After a situation involving conflict of interest has been resolved, review and if necessary revise the conflict of interest policies and procedures.
  5. Include a conflict of interest paragraph in your organizational (board & staff) code of conduct. Require each board member to sign a statement indicating they understand and agree to abide by the code of conduct.
  6. Create fiscal management policies that require a tendering of all contracts over a specified value.
  7. Create personnel management policies that require competitions, interviews, and reference checks for the hiring of all net employees. Any position exempted from this policy should be identified and a rationale provided.

### **Special Situations of Mutual and Equal Benefit**

Occasionally situations arise in which there is a mutual benefit to the organization and to a board or staff member. This benefit, in the board’s opinion may be fair and balanced. The board may decide the person is not receiving an unfair benefit, however: the board should be aware that the appearance of fairness in the eyes of the public or other stakeholders can be important as the actual facts of the matter. The board is charged with a duty to protect the organization’s good name and reputation. Even in situations where the board is satisfied no conflict exists, or the conflict has been satisfactorily addressed, it should consider the perception of others. In all situations when “conflict of interest” is being considered record the actions taken. The board needs to have evidence that the situation was considered with knowledge and decision made on compliance with organizational policy.

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