

## **Conflict of Interest**

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## Purpose and Application

The purpose of this Minister's Binding Policy Directive on Conflict of Interest is to enable a college board of governors to:

- Assist an individual board member in determining when his or her membership on the board has the potential to be used for personal or private benefit, financial or otherwise;
- Protect the integrity of the board as a whole and its individual members who follow conflict of interest provisions; and
- Ensure that an individual is not disqualified from being nominated for or running for a board position because of a potential for conflict of interest.

This binding policy directive is intended to protect the integrity and ethical standards of college boards and, as importantly, protect the integrity of a board member who may face a conflict of interest.

The binding policy directive is issued pursuant to the authority in the [Ontario Colleges of Applied Arts and Technology Act, 2002](#), which gives the Minister the authority to issue binding policy directives in relation to the manner in which colleges carry out their objects or conduct their affairs.

**This binding policy directive does not apply where the interest is so remote or insignificant that it cannot reasonably be regarded as likely to influence the board member 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 binding policy directive does not apply where the issue is one of general or public information.**

The intent of a conflict of interest policy is to assist individual board members to fulfill their duties in the interest of the public and to demonstrate high personal standards of moral responsibility, character, and ethics, which also protect the integrity of the board of governors as a whole.

For further information regarding this binding policy directive, click on the Contact link to consult with the appropriate [ministry contact](#), listed in the Contacts section on the web site.

## Principles

Members of the board of governors are expected to act honestly and uphold the highest ethical standards.

Members of boards of governors are obligated to perform their official duties and conduct themselves in a manner that will bear the closest public scrutiny because colleges are part of the broader public sector and subject to more public scrutiny than private organizations.

Members of boards of governors shall not have private interests, other than those permitted pursuant to this binding policy directive, laws, or statutes, that would be affected particularly or significantly by college decisions or actions in which they participate.

When appointed, members of boards of governors must arrange their private interests to prevent conflicts of interest. If a conflict does arise between the private interests of a governor and the official duties of that individual, the conflict shall be resolved in favour of the public interest.

Each governor, regardless of how he or she becomes a member, has a responsibility first and foremost to the welfare of the institution and must function primarily as a member of the board, not as a member of any particular constituency.

## Glossary

**Actual conflict of interest:** a situation where a governor has a private or personal interest that is sufficiently connected to his or her duties and responsibilities as a governor that it influences the exercise of these duties and responsibilities.

**Governor:** a member of a college board of governors.

**Internal governor:** one student, one academic staff member, one administrative staff member, and one support staff member elected to a college board of governors from their constituent group in accordance with procedures and conditions established by the board of governors in consultation with the college students and staff. The president of the college is also an internal member by virtue of his or her position in the college.

**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 the case in fact.

**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 he or she has not yet exercised that duty or responsibility.

### **Binding Policy Directive**

- A. A conflict of interest arises when a board member's private or personal interest supersedes or competes with his or her official duties and responsibilities as a member of a college board of governors. This could arise from an actual, potential, or perceived conflict of interest of a financial or other nature.**
- B. 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.**
- I. When the agenda item arises in the open portion of the board meeting, the member(s) with an actual conflict of interest may remain in the room for the duration of the discussion and not participate in the vote on this item. The minutes are to record that the member(s) in conflict of interest remained in the room for the discussion and did not vote on this item. Should the matter occur in the in camera portion of a meeting, the board member(s) should withdraw while the matter is being discussed or voted on and the minutes should reflect this.**
- II. When the conflict of interest is perceived or potential, the board of governors will determine whether the member or members remain for the discussion and vote on agenda items. The minutes should reflect what takes place.**
- C. In cases where a conflict cannot be avoided, a board member is to declare a conflict of interest at the earliest opportunity and, at the same time, should declare the general nature of the conflict. Where a conflict of interest is declared prior to a board meeting, the declaration is to be made to the chair of the board and the board is to be informed.**
- D. Where a board member is unsure whether he or she is in conflict, the said member 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 board member must refrain from voting on whether or not a conflict of interest exists.**

- E. 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.**
- F. Any board member who perceives another member to be in conflict of interest in a matter under consideration is to raise this concern with the chair of the board. The chair, in turn, is to discuss the matter with the board member who is perceived to be in conflict and, as appropriate, to hold further discussion with the reporting governor. If the discussions do not lead to a resolution, the matter is to be brought to the board and the board is to determine by majority vote whether or not a conflict of interest exists. The member perceived to be in conflict is to refrain from voting.**
- G. Where there has been a failure on the part of a board member to comply with this binding policy directive, unless the failure is the result of a bona fide error in judgment, the board is to:**
- I. Issue a verbal reprimand; or**
  - II. Issue a written reprimand; and/or**
  - III. Request that a board member resign; and/or**
  - IV. Remove the board member through processes established in board by-laws.**

### **Summary of Responsibilities**

#### **Colleges of Applied Arts and Technology**

The board of governors is responsible for:

- Opening each meeting with a call for disclosures of actual, potential, or perceived conflict of interest.

#### **Ministry of Training, Colleges and Universities**

The ministry is responsible for:

- Maintaining a current and relevant binding policy directive regarding conflict of interest.

- Reviewing, in consultation with college boards, in a regular and timely manner the effectiveness of this binding policy directive and issuing amendments as considered necessary.

## **Appendix A: Some Commonly Asked Questions**

This appendix provides some examples of situations where conflict of interest commonly occurs in the operation of a college board of governors and suggests the best practices in dealing with such situations. The appendix is not intended to be an exhaustive or complete list. It is a guideline for colleges to assist boards in managing conflict of interest situations and to ensure relative consistency in the application of this binding policy directive across colleges.

### **1. Why is the Minister introducing a binding policy directive on conflict of interest at this time?**

Conflict of interest is something all corporate boards need to address in a proactive manner. The intent of the binding policy directive is to promote a consistent approach to conflict of interest situations across the college system and to establish the standards expected for colleges as public sector institutions.

### **2. What is an example of an actual conflict of interest situation for internal governors?**

An example of an actual conflict of interest for a student governor would be when an agenda item addresses an increase in the tuition fees for the particular program in which the student is enrolled. For staff, an example would be an agenda item where a faculty member would be faced with a decision to eliminate the program in which the faculty member taught. Another example is staff being involved in a discussion about providing confidential advice to the management collective bargaining position during the negotiation of a new collective agreement for the particular bargaining unit of which the staff person is a member.

Conflict of interest would not occur when the discussion of tuition fee increases was of a general nature or when the collective bargaining position being discussed was public information such as the discussion occurring during the public part of the board meeting.

### **3. Can internal governors – faculty, support staff, and administrators – be part of the president's evaluation or performance review?**

This is an example of a perceived or potential conflict of interest, and it would be up to the board to establish how to proceed. It is recommended that college boards of governors discuss such issues in advance of the actual situation arising and establish a protocol or approach to use.



If it is the college's practice to involve college staff in the evaluation of the president through instruments such as surveys submitted anonymously and of which the results are collated electronically, it is not a conflict of interest situation to involve college staff board members in a discussion of the results of the survey, as this would fall within the area discussed in the [Purpose and Application](#) section of this binding policy directive, where it references that conflict of interest does not apply where a pecuniary or other interest is in common with a broad group of which the governor is a member.

It is not considered in the best interests of the college for staff to play a role in the actual writing or delivery of the president's evaluation.

**4. Can students be part of the president's evaluation or performance review?**

It is recommended that boards address the issue of perceived or potential conflict of interest in advance, and that similar principles, as in the response to question 3 above, be applied as they are with respect to other internal members.

**5. What is an example of an actual conflict of interest with respect to the college president's evaluation or performance review?**

The president's involvement would be considered an actual conflict of interest when matters relating either directly or indirectly to his or her compensation, perquisites, and/or benefits are being discussed and/or decided upon. The president should neither participate in any way in nor be present for any such discussions. The board may require certain information from the president to assist their deliberations, but these queries must be of a general nature or relate to providing performance-related information concerning the president's success in meeting agreed to objectives and must not in any way, either directly or indirectly, influence decisions on his or her compensation, perquisites, and/or benefits.

**6. What am I supposed to do if I think a fellow governor is in a conflict of interest but he or she has not declared it?**

It is the responsibility of the chair to ask and record in the minutes whether any governor has a conflict of interest to declare with respect to the agenda.

It is the responsibility of each governor to declare a conflict of interest and its general nature at the earliest opportunity. If a conflict is declared prior to a board meeting, the declaration should be made to the chair of the board. It is the responsibility of the governor with the conflict or the chair to declare the conflict at the board meeting.

If a governor does not declare a conflict when other board members believe one does exist, Section F of the binding policy directive makes it the responsibility of those who perceive that there is a conflict of interest to raise the issue with the board chair. It is the chair's responsibility to discuss the conflict of interest with the governor perceived to be in conflict. If the chair and the governor in question cannot resolve the issue, the matter must be brought to the full board for resolution and the issue be decided by a majority vote.

**7. Does the board have to record declarations of conflict of interest in the minutes?**

Yes, as recording declarations of conflict of interest protects both the integrity of the individual member and the board as a whole and is a matter of public record. As well, the board minutes should record that the member in conflict did not participate in any discussions or voting and, if applicable, left the room.

**8. If a governor declares a conflict of interest, does he or she have to leave the room?**

As outlined in [Section B](#) of the binding policy directive, the governor's presence or absence will depend on the nature of the conflict and whether the board is in closed or open session. Where there is an actual conflict (a situation where a governor has a private or personal interest that is sufficiently connected to his or her duties as a governor that it influences the exercise of these duties and responsibilities) and the board meeting is in camera or is a closed session, the binding policy directive requires that the board member not participate in the discussion by leaving the room. In the open portion of the meeting, the governor may stay but not participate in the discussion. Where a perceived or potential conflict of interest arises in a closed session, the board will decide whether the individual should remain in the room.

**9. Can a member of a board of governors who owns a company submit a tendering proposal to the college?**

Yes, a governor may submit a tendering proposal to the college. However, at the point in time when a governor becomes aware that his or her 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.

**10. Can a governor apply for any position within the college?**

The individual's position as a board member could be perceived as being of benefit in the competition for a position with the college. A board member would need to resign from the board before applying for a position at the college. He or she cannot apply as an active member of the board in the hopes of protecting his or her position on the board if he or she is not the successful candidate.

**11. Is it appropriate for colleges to allow governors or members of their families to take courses or programs without paying tuition?**

Governors are not entitled to any personal benefits from their participation on a board.

**12. Can a board allow funds to be spent on special mementoes to governors retiring from the board?**

Small incidental gifts may be appropriate in recognition of the services provided by governors. These mementoes should be appropriate as a common expression of courtesy, within the normal standards applicable to the use of public funds and acceptable upon public scrutiny.

**13. Can a politician sit on a college board?**

Yes, in fact, when the colleges were first established, one seat was reserved for municipal politicians. However, as there may be instances in which the person may be in an actual, potential, or perceived conflict of interest, the board would

need first to carefully consider whether the benefits outweigh the costs of losing one board member's input and vote from time to time.

- 14. There is a quorum at the beginning of a board meeting, but due to an actual conflict of interest a governor has to withdraw, leaving the board without the designated number of members present for a quorum. Are the remaining members able to pass a motion?**

Each college is responsible for seeking its own legal advice on legal issues of board governance. However, it is noted that the general rule is that quorum is required for voting purposes.

- 15. The board of governors is discussing an external appointment to be made to a subcommittee. Two governors declare that they know the person being discussed because the person is a neighbour and question whether this is a conflict of interest?**

There is no conflict of interest here because the interest is remote and generally cannot be regarded as likely to influence the board member. The situation would be different if the person being discussed were a close family member or business partner of the identified governors.