

Conflict of Interest

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POLICY

Governors owe a fiduciary duty to the College. This obligates them to act in the best interests of the organization as a whole and to put the organization's interests ahead of any personal interests (i.e. to avoid conflicts of interest).

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

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

This Conflict of Interest Policy 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, academic staff, and non-academic staff). The Policy also does not apply where the issue is one of general or public information.

DEFINITIONS

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.

Board meeting: any reference to Board meeting includes both Board and Committee meetings.

Governor: a member of the NBCC Board of Governors.

Internal Governor: One student, one academic staff member, one non-academic staff member nominated by the NBCC Board of Governors through an election process by their constituent group in accordance with the process established by the Board.

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 the Governor’s duties or responsibilities, provided that he or she has not yet exercised that duty or responsibility.

PROCEDURE

1. Board members will annually sign a Leadership Covenant which will be collated by the Executive Assistant to the Board of Governors.
2. In addition to the annual signing of the Leadership Covenant, at the beginning of every Board meeting, the Chair will ask and have recorded in the minutes whether any member has a conflict to declare in respect to any agenda item.
 - 2.1. When the agenda item giving rise to the conflict of interest arises during a Board meeting, the Governor(s) with an actual conflict of interest should withdraw while the matter is being discussed or voted on and the minutes should reflect this.
 - 2.2. When the conflict of interest is perceived or potential, the Board will determine whether the Governor or Governors should remain for the discussion and vote on agenda items. The minutes should reflect what takes place.
3. In cases where a conflict cannot be avoided, a Governor 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 and the Board is to be informed.
4. Where a Governor is unsure whether he or she is in conflict, the said Governor is to raise the perceived potential conflict with the Chair. The Governor and the Chair may be able to resolve the issue. The Chair, if time permits, may also refer the matter to the Governance Committee for advice. If there is no informal resolution of the issue, the Governor concerned and/or the Chair will bring the circumstances to the attention of the Board and the Board will determine by majority vote whether or not a conflict exists. The said Governor must refrain from voting on whether or not a conflict of interest exists.
5. 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 Governor influenced the decision of the matter, the Board is to re-examine the matter and may rescind, vary, or confirm its decision.
6. Any Governor who perceives another Governor to be in a conflict of interest in a matter under consideration is to raise this concern with the Chair. The Chair, in turn, is to discuss the matter with the Governor 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 Governor perceived to be in conflict is to refrain from voting.

7. Where there has been a failure on the part of a Governor to comply with this Conflict of Interest policy, unless the failure is the result of a bona fide error in judgment, the Board will:
 - 7.1. Issue a verbal and written reprimand; and/or
 - 7.2. Request that a Governor resign; and/or
 - 7.3. Remove the Governor through processes established in Board By-laws or the Act.

EXAMPLES

This section of the Conflict of Interest policy 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 for handling such situations. This section is not intended to be exhaustive or complete. It is merely illustrative to assist the Board in managing conflict of interest situations and to ensure relative consistency in the application of this policy.

1. Conflicts of Interest for Internal Governors

- 1.1. 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.
- 1.2. 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. However, a conflict of interest could reasonably be considered to exist in the following circumstances:
 - 1.2.1. Decisions directly affecting a specific instructional program in which Governors and/or persons related to them are enrolled or employed
 - 1.2.2. Decisions related to labour negotiations and labour relations for Governors with related persons who hold academic or non-academic staff positions at the College
- 1.3. In terms of the participation of Internal Governors in 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. This should be discussed in advance of the actual situation and a protocol established.
- 1.4. If it is the College's practice to involve College staff or students 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 or student Governors in a discussion of the results of the survey, as this would be a situation

where the staff or student Governors' pecuniary or other interest is in common with a broad group of which the Governor is a member.

2. Governors as Suppliers

- 2.1. A Governor or his/her company/employer 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. The situation could lead to either a perceived or actual conflict of interest, as the Governor might have information not available to competitors in the tending process. The Board of Governors will need to consider how to proceed to ensure an open, fair, and transparent process.
- 2.2. Should the Governor's company actually submit a tender, the situation would then need to be treated as an actual conflict of interest should the Board be involved in a decision relating to the tender.

3. Applications for Employment

- 3.1. If a Governor should apply for employment with the College, that person's position as a Governor could be perceived as being of benefit in the competition for a position with the College. A Governor 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.

Of course, Governors must not use their positions to obtain employment within the organization for themselves, family members or close associates.

4. Personal Benefits

It would not be appropriate for the College to allow Governors or members of their families to take courses or programs without paying tuition as Governors are not entitled to any personal benefits from their participation on the Board.

5. Retirement Gifts

Small incidental gifts are appropriate in recognition of the services provided by Governors. These gifts 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.

6. Politicians as Governors

Politicians are not disqualified from appointment to the NBCC Board. However, as there may be instances in which the person may 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 Governor's input and vote from time to time.

7. Personal Relationships

If the Board happened to be discussing the nomination of a person to the Board of Governors and that person was a neighbour of two Governors, those Governors would not have a conflict of interest in discussing the merits of the appointment. This is because any personal interest the Governors might have is remote and generally cannot be regarded as likely to influence their decision-making. The situation would, however, be different if the person being considered for nomination were a close family member or business partner of the identified Governors.

8. Service on Other Boards

A conflict of interest situation can also exist where private interests and Governor's duties coincide. For example, many Governors are active in their community and may sit on several Boards. If the College and a community organization are considering a joint venture of some sort, Governors will have at least the appearance of a conflict of interest if not an actual conflict of interest if they are members of both Boards and the Boards are involved in any decision-making related to the joint venture.