



BOARD MANUAL

Approved By:	Board	Number:	3-B-4
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SUBJECT:	Conflict of Interest		

General Principle

All directors have a duty to ensure that the trust and confidence of the public in the integrity of the decision-making processes of the board are maintained. This will be done by ensuring that they and other members of the board are free from real or perceived conflict in their decision-making. It is inherent in a director's fiduciary duty that conflicts of interest be avoided. It is important that all directors understand their obligations when a real or perceived conflict of interest arises.

Article 4.6 of the Corporate By-Law contains provisions regarding conflict of interest that must be strictly adhered to. In addition to the by-law, the process set out in this policy shall be followed when a conflict or potential conflict arises.

Application

This policy applies to all directors including ex-officio directors and all community members of committees.

Description of Conflict of Interest

A conflict of interest arises in any situation where a director's duty to act solely in the best interests of the corporation, and to adhere to his or her fiduciary duties, is compromised or impeded by any other interest, relationship or duty of the director. Conflict of interest is often expressed as a conflict between the personal interest of the director and the fiduciary duties the director owes the corporation. There may also be situations that are better described as a conflict between "duty and duty." These are situations in which the duties the director owes to the corporation are in conflict with duties owed elsewhere (e.g., to another corporation). Situations in which a conflict of interest may arise cannot be exhaustively enumerated but include the following:

1. *Transactions with the Corporation*

- When a director transacts with the corporation directly or indirectly.
- When a director has a material interest or indirect interest in a transaction or contract with the corporation.

The *Corporations Act* provides a "safe harbour" for a director who is in a conflict of interest by virtue of being directly or indirectly interested in a contract or proposed contract with the corporation. Provided the director has declared

the interest and refrained from voting, the director will not be accountable for any profit realized from the contract and the contract is not voidable by reason only of the director being in a fiduciary relationship with the corporation that is a party to the contract.

Under the *Not-for-Profit Corporations Act*, the “safe harbor” arises where a director or officer:

- Is a party to a material contract or transaction with the corporation; or
- Is a director or officer of, or has a material interest in, any person who is a party to a material contract or transaction or proposed material contract or transaction with the corporation.

2. *Acting for an Improper Purpose*

It is a breach of the duties of the director if the director acts in self-interest or other improper purposes. The courts will examine what was uppermost in the mind of the director when the decision was made. The director’s primary motivation must be in the best interest of the corporation.

3. *Appropriation of Corporate Opportunity*

A director will be in breach of duties owed to the corporation when the director diverts to his or her own use and benefit an opportunity in which the corporation has an interest.

4. *Duty to Disclose Information of Value to the Corporation*

When a director fails to disclose information that is relevant to a vital aspect of the corporation’s affairs.

5. *Serving on the Board of Other Corporations*

A director who is a director of two corporations that are transacting with one another will be in a conflict of interest. A director who serves as a director of more than one corporation may also be in a position where there are competing or conflicting duties.

This may arise where the director serves as a director of two corporations that are competing with one another (e.g., if two corporations are both seeking to take advantage of the same opportunity). A director may be in possession of confidential information received in one boardroom that is of importance to a decision being made in the other boardroom. The director cannot discharge the duty to maintain such information in confidence while at the same time discharging the duty to make disclosure.

6. *Confidential Information*

Refer to 3-B-3 Confidentiality Policy

7. Interest of a Relative

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

8. Gifts

When a director or a member of the director's household or any other person or entity designated by the director, accepts gifts, payments, services or anything else of more than a token or nominal value from a party with whom the corporation 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 decision of the board.

The Extent of Disclosure that Must be Made by a Director

The disclosure required will vary with the facts and circumstances of each case but must be sufficient to inform the corporation fully of the nature and extent of the director's interest.

Procedures When Conflicts Arise

The *Corporations Act* requires the director to make disclosure and refrain from voting. The process set out in the *Corporations Act* applies to a direct or indirect interest (usually a personal or financial interest) in a contract or proposed contract.

Under the *Not-for-Profit Corporations Act*, a director is not only required to disclose and refrain from voting but is not to attend any part of the meeting of directors during which the contract or transaction is discussed.

Not all conflicts may be addressed through the provisions in the *Corporations Act* or the *Not-for-Profit Corporations Act*. There is some case law to suggest that a corporation can approve the director's actions in connection with a corporate opportunity if the director has made full disclosure of the opportunity. Where that situation arises, both the director and the corporation should obtain independent legal advice.

In some cases, a director may have no option but to resign.

Disclosure of Conflicts

A director who is in a position of conflict or potential conflict shall immediately disclose such conflict to the board by notification to the chair or vice-chair of the board. If the chair has a conflict, notice shall be given to the vice-chair. The disclosure shall be in sufficient detail to disclose the nature and extent of the director's interest. Disclosure shall be made at the earliest possible time and, when possible, prior to any discussion and vote on the matter.

When (i) a director is not present at a meeting in which a matter that is a conflict

of interest for him/her is first discussed and/or voted upon, or (ii) a conflict arises for a director after a matter has been discussed but not yet voted upon by the board, or, (iii) a director becomes conflicted after a matter has been approved, the director 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.

Abstain from Discussions

A director may make a general declaration of the director's relationships and interests in entities or persons that give rise to conflicts.

The director shall not be present during the discussion, vote, or attempt to influence the voting in respect of the matter in which he/she has a conflict and shall not attempt in any way to influence the voting.

Process for Resolving Conflicts and Addressing Breaches of Duty

All directors shall comply with the requirements of the by-laws and this policy.

A director should be referred to the process outlined below in any of the following circumstances:

1. Circumstances for Referral

Where any director believes that he/she personally, or another director:

- a) Has breached his or her duties to the corporation;
- b) Is in a position where there is a potential breach of duty to the corporation;
- c) Is in a situation of actual or potential conflict of interest;
- d) Has behaved or is likely to behave in a manner that is not consistent with the highest standards of public trust and integrity and such behaviour may have an adverse impact on the corporation; or,
- e) Directors are encouraged to seek the guidance of the board chair if they are uncertain about whether a situation constitutes a real or perceived conflict of interest

2. Process for Resolution

The matter shall be referred to the following process:

- a) Refer matter to the chair or where the issue may involve the chair, to the vice-chair, with notice to the CEO.
- b) The chair (or vice-chair as the case may be) may either (i) attempt to resolve the matter informally, or (ii) refer the matter to the Executive Committee or to an *ad hoc* sub-committee of the board established by the chair (or vice-chair) that shall report to the board.
- c) If the chair or vice-chair elects to resolve the matter informally and the matter cannot be informally resolved to the satisfaction of the chair/ vice-chair, the director referring the matter, and the director involved, then the chair/vice chair shall refer the matter to the process in (b)(ii) above.
- d) A decision of the board by majority resolution shall determine the matter.

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 director may be asked to resign or may be subject to removal pursuant to the by-laws, the *Corporations Act and the Not-for-Profit Corporations Act*.

Perceived Conflicts

It is acknowledged that not all conflicts or potential conflicts may be satisfactorily resolved by strict compliance with the by-laws. There may be cases where the perception of a conflict of interest or breach of duty (even when non conflict exists or breach has occurred) may be harmful to the corporation, notwithstanding that there has been compliance with the by-laws. In such circumstances, the process set out in this policy for addressing conflicts and breaches of duty shall be followed.

It is recognized that the perception of conflict or breach of duty may be harmful to the corporation even where no conflict exists or breach has occurred, and it may be in the best interests of the corporation that the director be asked to resign.

References:

- Grand River Hospital's By-Law
- 2-2 Ethics Policy
- 3-B-2 Code of Conduct
- 3-B-3 Confidentiality Policy
- 3-B-3.2 Use of GRH Information and Devices
- 3-B-10 Statement of Roles and Responsibilities of the Board
- 3-B-14 Role Description: Duties and Responsibilities of a Director
- 4-A2 Decision Making Framework.
- Annual Director and Community Member Declaration and Consent