

# **COUNCIL ON POST-SECONDARY EDUCATION**

## **BY-LAW NO. 1: CONFLICT OF INTEREST OF MEMBERS OF COUNCIL**

### **1. Introduction**

The Government of Manitoba established the Council on Post-Secondary Education to plan and coordinate, in consultation with universities and colleges, a strong and dynamic post-secondary education system in the Province of Manitoba that is nationally and internationally competitive.

Although the Council was established as a corporation to provide for some autonomy and independence from central government operations, all members of the Council are appointed by the Lieutenant Governor in Council and the Council and its activities are fully funded by the Government of Manitoba. As such, notwithstanding its separate corporate status, the Council acts as an extension of government. For this reason, members of Council are accountable to the public and may be vulnerable to charges of conflict of interest.

This Conflict of Interest By-law has been made by the Council, in consultation with the Minister of Advanced Education and Training, under section 8 of *The Council on Post-Secondary Education Act*.

### **2. Policy Statement**

The Council expects its members to maintain high standards of honesty, integrity, impartiality and ethical conduct. Members must be constantly aware of the need to avoid situations that might result in a conflict of interest and to conduct themselves, in their official and personal relations, in a manner that commands the respect and confidence of their fellow citizens.

### **3. Applicability**

This By-law, including the disclosure requirements in section 6, applies to all members of the Council. This By-law is in addition to, and in no way derogates from, the provisions of *The Council on Post-Secondary Education Act* (the Council's enabling legislation), *The Corporations Act* (Manitoba) where applicable, or any other statute which applies to the members of the Council.

### **4. Definitions and Interpretation**

#### 4.1 Definitions

In this By-law,

- (a) "Act" means *The Council on Post-Secondary Education Act*, C.C.S.M. c. C235;
- (b) "Council" means the Council on Post-Secondary Education, established under section 2 of the Act;

- (c) "member" means a person appointed as a member of the Council by the Lieutenant Governor in Council under section 5 of the Act;
- (d) "Minister" means the Minister of Advanced Education and Training or any other minister of the Executive Council of the Government of Manitoba assigned responsibility for administering the Act.

#### 4.2 Interpretation

Words in the singular include the plural, and words in the plural include the singular.

### 5. **Conflict of Interest**

#### 5.1 Meaning of conflict of interest

For the purpose of this By-law, a "conflict of interest" means any situation in which a member of the Council has

- (a) an actual conflict of interest with the Council. In this case, the member has a private or personal interest which may result in
  - (i) an improper personal material gain or an advantage by virtue of his or her position as a member of the Council, or
  - (ii) an interference with the objective exercise of his or her duties to the Council, or
- (b) a potential conflict of interest with the Council. In this case, the member does not have an actual conflict of interest, but changing circumstances or factors related to the situation could potentially place the member in an actual conflict of interest with the Council, or
- (c) a perceived conflict of interest with the Council. In this case, the member does not have an actual or potential conflict of interest with the Council, but a reasonable person aware of all salient facts would think there is a real possibility of the member having an actual or potential conflict of interest with the Council.

#### 5.2 Examples of conflicts of interest

Without limiting the scope of the matters that may be conflicts of interest, a member has a conflict of interest with the Council, where he or she

- (a) is a party to a contract or proposed contract with the Council, or

- (b) has a material interest in any corporation, partnership or organization that is a party to a contract or proposed contract with the Council, or
- (c) has a material interest in any corporation, partnership or organization that is receiving, has applied for, or intends to apply for, a grant or funding from the Council, or
- (d) owes a duty to any corporation, partnership or organization that is a party to a contract or proposed contract with the Council, or
- (e) owes a duty to any corporation, partnership or organization that is receiving, has applied for, or intends to apply for, a grant or funding from the Council.

### 5.3 Material interest

For the purpose of section 5.2 of this By-law, a "material interest" is a matter or situation where a member or member's spouse or dependant child has a direct or indirect financial interest or financial liability beyond the interest of an ordinary citizen.

- (a) Meaning of "direct financial interest". With the exception of the interests described in sections 5.3(d) and 5.3(g), a member has a "direct financial interest" where the member or a person on the member's behalf, is receiving or will receive a fee, commission or other compensation for representing the interests of a person, corporation, partnership or organization in a matter before the Council.
- (b) Meaning of "indirect financial interest". With the exception of the interests described in sections 5.3(d) and 5.3(g), a member has an indirect financial interest where
  - (i) the member or a person on the member's behalf,
    - holds a beneficial interest in, or a share warrant or purchase option in respect of 5% or more of the value of the issued capital stock, or
    - is a director or officer,

of a corporation or a subsidiary of a corporation, that has a direct financial interest in the matter; or
  - (ii) the member is
    - partner of, or employed by, or
    - a guarantor or surety for, or
    - a creditor of,

a person, corporation, partnership, organization or subsidiary of a corporation, that has a direct financial interest in the matter.

- (d) Exceptions to direct or indirect financial interest. A person, corporation, partnership or organization does not have a direct or indirect financial interest in any matter involving a program, service or contract, where
- (i) the person, corporation, partnership or organization that benefits from the program, service or contract represents less than 1% of all persons, corporations, partnerships or organizations that benefit from a similar program, service or contract; and
  - (ii) the value of the program, service or contract to the person, corporation, partnership or organization represents less than 1% of the total value of similar programs, services or contracts provided to other persons, corporations, partnerships or organizations.
- (e) Meaning of "indirect financial liability". With the exception of the interests described in sections 5.3(f) and 5.3(g), a member has an "indirect financial liability" to another person, or to a corporation, partnership or organization where
- (i) the member or a person on the member's behalf,
    - holds a beneficial interest in, or a share warrant or purchase option in respect of 5% or more of the value of the issued capital stock, or
    - is a director or officer,

of a corporation or a subsidiary of a corporation, that has a direct financial liability to the other person or to the corporation, partnership or organization; or
  - (ii) the member is
    - a partner of, or employed by, or
    - a guarantor or surety for, or
    - a creditor of,

a person, corporation, partnership, organization or subsidiary of a corporation, that has a direct financial liability to the other person or to the corporation, partnership or organization.
- (f) Exceptions to direct or indirect financial liability. Where
- (i) a member with a direct or indirect financial liability to another person or to a corporation, partnership or organization represents less than 1% of all persons who have a similar direct or indirect financial liability to the other person or to the corporation, partnership or organization, and

- (ii) the value of the member's direct or indirect financial liability to the other person or to the corporation, partnership or organization represents less than 1% of the total value of similar direct or indirect financial liabilities owing by other persons to the other person or to the corporation, partnership or organization;

the member does not have a direct or indirect financial liability to the other person or to the corporation, partnership or organization.

- (g) No member has a direct or indirect financial interest or financial liability to another person, corporation, partnership or organization, unless the value of the financial interest or liability is \$500 or more.

## **6. Requirement for Disclosure of Conflict of Interest**

### 6.1 Disclosure of Conflict of Interest

A member who believes that he or she has a conflict of interest with the Council must disclose the nature and extent of the interest in writing to the Council immediately on becoming aware of the conflict with the request that the nature and extent of his or her interest be entered in the minutes of the meetings of the Council.

### 6.2 Clarification

Where a member is unsure about whether he or she has a conflict of interest with the Council, the member must seek clarification from the Council.

### 6.3 Decision as to Interest

Where a member seeks clarification from the Council or another person asks the Council to consider a matter that he or she believes to be a conflict of interest between a member and the Council, the Council will determine by a vote of the other members at the meeting, provided that the remaining members constitute a quorum of the Council, or at a subsequent meeting if a quorum is not present, whether the member has a conflict of interest with the Council.

### 6.4 Participation of Members

No member may be present at a meeting of the Council at which the matter on which the member has declared a conflict of interest or the Council has determined him or her to have a conflict of interest with the Council, is discussed or voted on.

In addition, no member may participate in his or her official capacity as a member of the Council in any analysis, discussion, decision or recommendation of the Council at a subcommittee of the Council or otherwise outside Council meetings, on any matter on which he or she has declared himself or herself to have a conflict of interest or the Council has determined him or her to have a conflict of interest with the Council.

## **7. Guidelines for Avoiding Conflict of Interest Situations**

The following guidelines are not exhaustive, but provide general principles and minimum standards to assist members in avoiding conflict of interest situations.

7.1 A member must not engage directly or indirectly in any personal business transaction or private arrangement for personal profit which accrues from or is based upon his or her position as a member of the Council or upon confidential or non-public information to which he or she gains access by reason of his or her position as a member of the Council.

7.2 A member must not divulge confidential or restricted information received as a member of the Council to any unauthorized person or release such information before being authorized to do so.

7.3 A member must not have a financial or other interest that could conflict in any manner with the discharge of his or her duties as a member of the Council. Involvement or employment outside the Council or a financial or other interest which reduces or demonstrates the potential to reduce the member's ability to give the Council impartial or disinterested service must be clearly avoided.

7.4 No conflict should exist or appear to exist between the private interests of a member and his or her duties and responsibilities on the Council. A member must arrange his or her private affairs in a manner that will prevent conflicts of interest from arising.

7.5 In order that his or her honesty and impartiality may be beyond doubt, a member should not place himself or herself in a position where he or she is under an obligation to any person who might benefit from special considerations or favours on his or her part or seek in any way to gain special treatment from the member.

## **8. Appeals**

8.1 A member who disputes the manner of application of the rules and guidelines set out in this By-law may appeal to the Minister.

8.2 A member is entitled to make representations on an appeal, or may do so using a representative.

## **9. Revocation of Appointment to Council**

A member must not depart from any of the above rules respecting disclosure of, and guidelines for avoiding, conflict of interest situations, without the specific prior written approval of the Council. Departure by a member from these rules and guidelines may be sufficient cause for the Council to recommend to the Minister that the Lieutenant Governor in Council be asked to revoke the member's appointment to Council.

ENACTED this 13<sup>th</sup> day of February 2004.

Original Signed by Muriel Smith

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**Chairperson**

Original Signed by David Turner

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**Vice-Chairperson**

This Conflict of Interest By-law has been reviewed and approved by the Minister of Advanced Education and Training or the Minister's authorized representative.

**Manitoba Advanced Education and Training**

Original Signed by Pat Rowantree

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**Deputy Minister of Advanced Education and Training**

March 11, 2004

**Date**