

Conflict of Interest Policy

Guiding Principle

The Lower Thames Valley Conservation Foundation shall ensure that it fulfills its mission with integrity and to a high ethical standard. This requires that, as a general rule, directors, employees, trustees, or agents of the Foundation avoid situations in which they may represent interests which are, or may be perceived to be, in conflict with the interests of the Foundation. The Foundation and its agents seek to develop and implement its policies and processes with optimal openness and transparency.

The Board of Directors – A Fiduciary Relationship

Effective board members should be knowledgeable about the operations of the organization, become regularly involved in board activities and ultimately develop a trusting relationship with the organization.

As a member of a board of directors, one has the power and obligation to act for the organization and is therefore held in a position of trust. This type of association based on trust is called a FIDUCIARY relationship. A **fiduciary** is one that stands in a special relation of trust, confidence, or responsibility in certain obligations to others.

Care, Diligence and Skill

Regardless of the structure of an organization or its mandate, all directors face the fiduciary duty to perform with care, diligence and skill. Boards of Directors are expected to operate in good faith and with the best interests of an organization in mind.

According to both Federal and Provincial legislation, the actions of a board member (i.e. the standard of care expected) will be judged according to what a reasonably prudent person would do in comparable circumstances.

This does not mean that all directors will be judged the same. Rather, this depends on the individual director. For example, if the treasurer of a voluntary, community-based organization (VCBO) is an accountant, he or she has a duty to practice the same standard of care required when working as a paid professional. If a member has significant business experience this higher standard of care is also applied to that member.

Higher Standard of Conduct

Directors of charitable organizations may be held to a higher standard of conduct than those who manage non-profit organizations that are not charitable. This is because the courts treat directors and officers of charitable organizations as TRUSTEES, setting a higher standard of care. A **trustee** is one who holds legal title to property, but other people have the right to benefit from that property.

The most effective way for a board member to ensure that the proper standard of care is provided is to attend board meetings regularly, make reasonable inquiries into the day-to-day management of the organization, participate in making decisions, and ensure the selection of qualified and responsible management and staff.

In order to do this, directors must be prepared for meetings rather than relying on the opinions of others. To assist in preparation, directors should ask for copies of documents and reports prior to meetings. If anything is not clear, clarification and explanation should be sought.

Be Prepared and Stay Informed

While making decisions, it is the responsibility of a director to try to foresee any consequences of a course of action in order to avoid taking unreasonable risks. This means directors must fully understand any issues and seek outside expert advice if necessary. For example, if deciding on the purchase of new equipment, a director needs to know the financial situation of the organization, as well as future plans, in order to make an informed vote.

If, for some reason, a director misses a meeting, he or she should review the minutes and ensure any objections to decisions are recorded at the next board meeting.

Essentially, a board of directors is responsible to not only the organization itself, but to other board members, employees, volunteers, clients and members of the organization.

Definition

A conflict of interest arises when the interests of a Board member have the *potential* to be at odds with the *best* interests of the organization. The Board member's interests may be personal (the member may also represent the interests of a third party that may benefit from their vote) or professional (affiliation with a potential supplier to the association).

"Conflict of interest" means generally any situation in which an employee, trustee, or agent of the Foundation has or promotes an interest which results in or may be reasonably perceived to result in:

- an interference with the objectivity with which the employee, trustee, or agent is expected to exercise responsibilities and duties to and on behalf of the Foundation; and/or
- an advantage or material gain to the employee, trustee, or agent, and/or to other persons with whom the employee, trustee, or agent does not deal at arm's length, by virtue of the relationship of the employee, trustee, or agent to the Foundation.

There are two important aspects to the above description:

- A conflict of interest does not exist only when interests are at odds. A conflict of interest exists when there is the *potential* for interests to be at odds. It is better to include these aspects within the definition of conflict of interest rather than having perceived or potential conflicts of interest that are somehow outside or external to the conflict of interest definition.
- A conflict of interest exists in the context of the *best* interests of the organization. This means that it is not sufficient for the organization to benefit, but how the decision is made is also of importance. It is important that the decision is made by the right individual or group, in an objective and informed manner, and according to all policies of the organization.

Non-profit board members are likely to be affiliated with many organizations in their communities, both on a professional and a personal basis, so it is not unusual for actual or potential conflict of interest to arise.

It is important that directors of charities understand that whenever the personal or professional concerns of a board member or a staff member affect his or her ability to put the welfare of the organization before personal benefit, conflict of interest exists.

Why be concerned about conflict of interest?

Board service in the non-profit sector carries with it important ethical obligations. Non-profits serve the broad public good, and when board members fail to exercise reasonable care in their oversight of the organization they are not living up to their public trust. In addition, board members have a legal responsibility to assure the prudent management of an organization's resources. In fact, they may be held liable for the organization's actions. A 1974 court decision known as the "Sibley Hospital case" set a precedent by confirming that board members can be held legally liable for conflict of interest because it constitutes a breach of their fiduciary responsibility.

Does conflict of interest involve only financial accountability?

No. Conflict of interest relates broadly to ethical behaviour, which includes not just legal issues but considerations in every aspect of governance.

Independent Sector describes three levels of ethical behaviour:

1. obeying the law;
2. decisions where the right action is clear, but one is tempted to take a different course;
3. decisions that require a choice among competing options.

The third level of behaviour can pose especially difficult ethical dilemmas for the board members of Canadian charities.

What should be included in a conflict-of-interest policy?

A policy on conflict of interest has three essential elements:

1. Full disclosure.

Board members and staff members in decision-making roles should make known their connections with groups doing business with the organization. This information should be provided annually.

2. Board member abstention from discussion and voting.

Board members who have an actual or potential conflict of interest should not participate in discussions or vote on matters affecting transactions between the organization and the other group.

3. Staff member abstention from decision-making.

Staff members who have an actual or potential conflict should not be substantively involved in decision-making affecting such transactions.