



# CONFLICT OF INTEREST POLICY

## APPLICATION

This policy applies to all directors, including ex officio directors and all non-board members of committees as well as Foundation and College employees.

## BACKGROUND

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

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

When appointed, Directors must arrange their private interests to prevent conflict of interest. If a conflict does arise between the private interests of a Director and the official duties of the individual, the conflict shall be resolved in favour of the public interest. Each Director, regardless of how he or she becomes a member, has a responsibility first and foremost to the welfare of the Foundation and College and must function primarily as a member of the Board, not as a member of any particular constituency.

To sustain trust and confidence in the Foundation and College, it is important to identify, disclose and resolve all forms of conflict of interest. This policy outlines conflict of interest guidelines intended to:

- assist a member in determining that his/her membership on the Board is not used for personal or private benefit, financial or otherwise
- protect the integrity of the Board and individual Board members who follow conflict of interest provisions
- protect the integrity of the Board and enable each Director to carry out his/her fiduciary duty as it relates to any actual potential or perceived conflict of interest

## DEFINITIONS

An “Actual Real Conflict of Interest” exists when a Director has a private or personal interest or incurs an obligation that is sufficiently connected to his/her duties and responsibilities as a Director that it influences the execution of those duties and responsibilities.

A “Potential Conflict of Interest” exists when a Director has a private or personal interest that could influence the performance of a Director’s duties or responsibilities, provided that he/she has not yet exercised that duty or responsibility.

A “Perceived Apparent Conflict of Interest” exists when reasonably well informed individuals could properly have a reasonable belief that a Director has an actual real conflict of interest, even where there is no actual real conflict in fact.

Because George Brown College Foundation is a registered charity and the College is part of the broader public sector and subject to a high level of public scrutiny, the issue of apparent conflict will often be more problematic than the issue of real or potential conflict. To sustain trust and confidence in the College, it is important to identify, disclose and resolve all forms of conflict of interest. This policy outlines conflict of interest guidelines intended to:

- assist a member in determining that his/her membership on the Board is not used for personal or private benefit, financial or otherwise
- protect the integrity of the Board and individual Board members who follow conflict of interest provisions
- protect the integrity of the Board and enable each Director to carry out his/her fiduciary duty as it relates to any conflict or potential or apparent conflict of interest.

The issue of conflict of interest is also addressed in By-Law No. 5 (Section 3.27 3.28) and the MTCU Minister’s Binding Policy Directive on Conflict of Interest issued under the OCAAT Act, April 1, 2003 October 1, 2010 (the “Minister’s Binding Directive”)

<http://www.tcu.gov.on.ca/pepg/documents/ConflictofInterestDirective.pdf>

## POLICY STATEMENTS

### 1 PRIVATE/PERSONAL INTERESTS

Private/Personal interests include those relating to or involving money (pecuniary) and other interests unrelated to money (non-pecuniary). For the purpose of these guidelines, “related person” refers to a spouse, life partner, child, parent, sibling or close friend of the member as well as any business entity in which the individual has a material interest.

Generally, pecuniary (monetary) interests lead to a conflict of interest when a Director or related person is in a position to directly or indirectly:

- i) benefit financially or avoid financial loss as a result of a contract or other matter of a monetary nature in which the College is involved
- ii) use information obtained as the result of being a Director for personal benefit.

**Conflict of interest will be considered not to exist where:**

- i) a pecuniary interest is so remote or insignificant in nature that it cannot be reasonably regarded as likely to influence a Director
- ii) the pecuniary interest of the Director is in common with a broad group of which the Director is a member
- iii) where the issue is one of general or public information.

Other private/personal interests lead to conflict of interest when a Director has non-economic interests such as religious, political, corporate and/or institutional interests which supersede or compete with his/her duties and responsibilities as Director.

A Director's ability to place College interests first may come into question in situations where the Director holds a position of influence in another organization which has taken positions on issues related to ones under discussion by the Board. In such situations, a Director's loyalties may be divided between serving the best interests of two different organizations. Conflict of interest should be declared in such situations.

Careful consideration should be given to whether other private/personal interests place a Director in conflict of interest, especially when there are matters before the Board which affect:

- i) a non-share capital corporation in which a Director is a Director or officer
- ii) any other organization in which a Director holds a position of influence or an ownership interest.

Note: These guidelines recommend that in the situation where a student Director also holds a position in the Student Association, holding such position of influence should not be considered to create a conflict of interest when there are matters before the Board that affect students.

## **2 INTERNAL BOARD MEMBERS (BOARD MEMBERS WHO ARE STUDENTS OR EMPLOYEES OF THE FOUNDATION OR COLLEGE)**

Although internal Board members who are students or employees of the College are subject to the same guidelines as other external members, they should be aware of the following circumstances that apply to them specifically. The following situations specific to internal Directors should be noted:

In general, voting on matters which have an effect on a broad group (i.e., students, support staff, academic staff or, administrators) by a member of that group is not considered a conflict of interest. A conflict could reasonably be considered to exist, however, when considering the following:

- i) decisions/motions directly affecting a specific instructional program in which Board members or related persons are enrolled, or in which Board members or related persons are employed

or

- ii) decisions/motions related to labour negotiations, for Board members who are employees of the Foundation or College, including administrative staff but excluding the President; and for Board members with related persons who hold positions at other institutions who could be seen to gain benefit from information divulged on these matters.

**Note:** It is recommended that student members be permitted to vote on issues related to student fees.

### 3 DIRECTORS BIDDING ON PROCUREMENT CONTRACTS WITH THE COLLEGE

The Minister’s Binding Directive specifically addresses the issue of whether a Director who owns a company may submit a tendering proposal to the College. The answer to that question is reprinted below:

“Yes, a Director may submit a tendering proposal to the College. However, at the point in time when a Director becomes aware that his or her company might submit a tender, the Director 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 Director might have information not available to competitors in the tendering process. The Board of Directors will need to consider how to proceed to ensure an open, fair, and transparent process.

Should the Director’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.”

To expand on and clarify the requirements in these circumstances, a Director must disclose to the Board Chair as soon as possible if the Director, or any related person of that Director, is proposing to bid on any contract to provide goods or services to the Foundation/College, regardless of the size or perceived materiality of the contract, before submitting a bid on the contract. (For clarity, the Director or related person may submit an intention to submit a bid to meet a deadline for stating any such intention under the procurement process.)

The Board (or the Executive Committee of the Board, where the Board cannot achieve quorum within the timeframes dictated by the competitive procurement process) will consider whether it is appropriate for the Director or the related person to bid on the contract. The Board (or Executive Committee, as the case may be) may determine that it is inappropriate for the bid to be accepted by the College for various reasons, including (without limitation) a perception of favoritism or a perception that the College may be operationally bound to the Director or the related person should the bid be successful. The Board may disqualify any such bid from proceeding or may attach conditions to the bid if it proceeds.

Any bid that is allowed to proceed must indicate prominently the association between the bidder and the Director.

### 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 where no 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.

## 4 DECLARATION OF CONFLICT

All Directors will be required to fill out a Conflict of Interest Disclosure Statement prior to their appointment being finalized. After being appointed, Board members are expected to arrange their private affairs and conduct themselves in a manner to avoid conflict of interest on an ongoing basis. The following guidelines should be followed in situations where conflict cannot be avoided.

At the beginning of every Board/committee meeting, the Chair should ask and have recorded in the minutes whether any member has a conflict to declare concerning any agenda item.

### i) Disclosure by a Board Member in a Conflict of Interest Situation

When conflict cannot be avoided, a Board member must declare conflict of interest at the earliest opportunity, and at the same time, declare the general nature of the conflict. When conflict of interest is declared before a meeting, the declaration should be made to the Board Chair.

If a Board member is unsure whether he/she is in conflict, the member should raise the perceived potential conflict with the Board who will determine by majority vote whether a conflict exists. The Board member raising the issue should refrain from voting on the conflict of interest issue.

When a conflict of interest is discovered after consideration of a matter, it must be declared to the Board and appropriately recorded at the first opportunity. If the Board determines that involvement of the member with the conflict influenced the decision of the matter, the Board must re-examine the matter, and may rescind, vary or confirm its original decision.

### ii) Disclosure by any other Board member who perceives another member to be in conflict of interest

Any Board member who perceives another member to be in conflict of interest in a matter under consideration must raise this concern with the Board Chair. The Chair, in turn, must discuss the matter with the Board member who is perceived to be in conflict and, as appropriate, hold further discussions with the first Director. If the discussions do not lead to a resolution, the matter must be brought to the Board. The Board must determine by majority vote whether a conflict of interest exists. The member perceived to be in conflict must refrain from voting.

## 5 BOARD PROCEDURES WHERE CONFLICT EXISTS

The Chair should record any declared conflict of interest on the part of a Board member in the minutes, and, if relevant, indicate that the Director withdrew from the discussion and did not vote. The Board member who has declared a conflict of interest will not be included in the count for a quorum, in accordance with the Minister's Binding Policy Directives.

<https://www.ontario.ca/laws/statute/90m19>

When a Board member has declared, or has been found to be in a conflict of interest, the member must:

- not attempt in any way before, during or after the meeting to influence the voting on the related matter
- in the open portion of the meeting, refrain from participating in any discussions of the related matter by the Board or a committee of the Board; and refrain from voting on any motion in relation to the matter

- in the in-camera portion of the meeting, withdraw from a Board meeting or a Board committee meeting while the matter is being discussed or voted upon.

## 6 SANCTIONS

When a Board member has failed to comply with these conflict of interest guidelines, unless the failure is the result of bona fide error in judgment, the Board may do any or all of the following:

- issue an oral reprimand
- issue a written reprimand
- request the resignation of the Board member; and/or
- remove the Board member through processes outlined in the Foundation By-Law.

## 7 MONITORING

All Board members have a responsibility to declare their own real, potential or perceived conflicts of interests and to draw the Board’s attention to real, potential or perceived conflict of interest on the part of other Board members.

The Board Chair has responsibility for ensuring that the opportunity exists at each meeting for members of the Board to declare a conflict of interest.

POLICY:	CONFLICT OF INTEREST POLICY
APPROVING AUTHORITY:	GBCF BOARD OF DIRECTORS
EFFECTIVE DATE:	OCTOBER 12, 2017
MANDATED REVIEW:	OCTOBER 12, 2020