
Board support document

Conflicts of interest

Board members and members of Board committees have an ongoing obligation to identify and disclose actual, reasonably perceived, and potential conflicts of interest. These obligations are set out in case law and are also codified in statute, under the *Canada Not-for-profit Corporations Act* (“CNCA”).

While not expressly defined in the CNCA, a conflict of interest is understood to comprise any situation where:

- a) an individual’s personal interests, or
- b) those of a close friend, family member, business associate, corporation, or partnership in which the individual holds a significant interest, or a person to whom the individual owes an obligation, could influence their decisions and impair their ability to:
 - i. act in the best interests of the corporation, or
 - ii. represent the corporation fairly, impartially, and without bias.

Conflicts of interest exist if a Director’s decision could be, or could appear to be, influenced. *It is not necessary that influence actually takes place.* In cases where Directors are in an actual, perceived, or potential conflict of interest, they are required to disclose the conflicting interest to the Board¹ or, in the case where membership approval is sought, to the members,² as well as abstain from voting.

Handling conflicts of interest

Directors may use the following checklist when faced with a situation in which they think they might have an actual, perceived, or potential conflict of interest.

Step 1 - Identify the matter or issue being considered and the potential conflicting situation in which you are involved.

E.g. There is an item before the Board requiring discussion and a decision that involves potential litigation between Engineers Canada and the Engineering Regulator with whom you are licensed. Whether or not you are in a conflict of interest is not automatic—it will depend upon the personal circumstances of each Director.

Step 2 – Assess whether a conflict of interest exists or may exist.

In assessing whether you have an actual, reasonably perceived or potential conflict of interest, it may be helpful to ask yourself the following questions:

- ☐ Would I, or anyone associated with me benefit from, or be detrimentally affected by my proposed decision or action?
- ☐ Could there be benefits for me in the future that could cast doubt on my objectivity?
- ☐ Do I have a current or previous personal, professional, or financial relationship or association of any significance with an interested party?

¹ Section 141(1) and (2) of the CNCA

² Section 141(9)(a) of the CNCA

- ☐ Would my reputation or that of a relative, friend, or associate stand to be enhanced or damaged because of the proposed decision or action?
- ☐ Do I or a relative, friend, or associate stand to gain or lose financially in some way?
- ☐ Do I hold any personal or professional views or biases that may lead others to reasonably conclude that I am not an appropriate person to deal with the matter?
- ☐ Have I made any promises or commitments in relation to the matter?
- ☐ Have I received a benefit or hospitality from someone who stands to gain or lose from my proposed decision or action?
- ☐ Am I a member of an association, club, or professional organization, or do I have particular ties and affiliations with organizations or individuals who stand to gain or lose by my proposed decision or action?
- ☐ Could this situation have an influence on any future employment opportunities outside my current duties?
- ☐ Could there be any other benefits or factors that could cast doubts on my objectivity?
- ☐ Am I confident of my ability to act impartially in the best interests of Engineers Canada?

What perceptions could others have?

- ☐ What assessment would a fair-minded member of the public make of the circumstances?
- ☐ Could my involvement on this matter cast doubt on my integrity or on Engineers Canada's integrity?
- ☐ If I saw someone else doing this, would I suspect that they have a conflict of interest?
- ☐ If I did participate in this action or decision, would I be happy if my colleagues and the public became aware of my involvement?
- ☐ How would I feel if my actions were highlighted in the media?

Step 3 – Is the duty to disclose triggered?

If, in assessing the situation, you determine that you are in an actual, potential, or reasonably perceived conflict of interest, your duty to disclose is triggered. Directors disclosing a conflict must make the disclosure at the meeting at which the proposed contract or transaction is first considered and should request to have the disclosure entered into the minutes of the meeting.³

Disclosure must be made of the nature and extent of the interest that you have in the contract or transaction (or proposed contract or transaction).⁴ The limited case law dealing with the nature and scope of the disclosure required by a conflicted Director suggests that disclosure must make the other Directors fully informed of the real state of affairs (e.g. what your interest is and the extent of the interest).⁵ It will rarely suffice to simply declare that you have a conflict of interest.

Step 4 – What next?

Subject to limited exceptions, the general rule is that a conflicted Director cannot vote on the approval of a proposed contract or transaction, even where their interest is adequately disclosed.⁶ Further, as a best practice, they should leave the room and not participate in the salient part of the Board meeting.

3 Section 141(1) of the CNCA

4 Section 141(1) and 141(9)(b) of the CNCA

5 *Gray v. New Augarita Porcupine Mines Ltd.*, 1952 CarswellOnt 412 (Jud. Com. of Privy Coun.)

6 Section 141(5) of the CNCA