

BYLAW #8 CONFLICT OF INTEREST

Approved: July 1979

Amendment: December 2008

I. CODE OF CONDUCT

The effective governance of Vancouver Island University is contingent on Board members fulfilling their roles and responsibilities with the highest standards of conduct. The following outlines the duties demanded of members of Boards:

- a. Duty of Integrity – to act honestly and in good faith.
- b. Duty of Loyalty – to give his or her loyalty to the University when acting on behalf of the Board.
- c. Duty of Care – to act in a prudent and diligent manner, keeping himself or herself informed as to the policies, business and affairs of the University.
- d. Duty of Confidentiality – notwithstanding the need of members to make informed decision on an issue before the Board by obtaining input from internal and external communities, members are to ensure that information which is normally considered confidential (i.e. financial and personnel issues) remains so.
- e. Duty of Skill – to use one’s level of knowledge and one’s expertise effectively in dealing with the affairs of the University.

Conduct of members contrary to the above duties may be subject to review by the Board, and subsequent punitive action similar to Section 4 of the following Conflict of Interest guidelines may be imposed. Likewise, the appeal process outlined in Section 3 of the Conflict of Interest guidelines will be made available to either party in a dispute.

II. CONFLICT OF INTEREST

A member of the Board holds a position of trust. As such there is a general obligation on him or her to avoid situations of conflict of interest. Each member, regardless of how he or she becomes a member, has a responsibility first and foremost to the welfare of the University and must function primarily as a member of the Board, not as a member of any particular constituency.

Given the nature of Board activities, internal members of the Board will occasionally find themselves in potential conflict of interest situations dissimilar to most appointed Board members. The conflict of interest and other associated sections outlined in this document are intended to clarify both general areas of conflict for all Board members as well as address situations in which internal members could expect to find themselves in conflict. The constituent

specific guidelines are intended to be parallel to the historical nature of interest conflicts. That is, those of primarily a pecuniary interest.

DEFINITIONS

In this bylaw:

“Board”

means the Board of Governors and associated committees of the University;

“Member”

means a person either appointed to the governing board by the Lieutenant Governor in Council, a person elected by a constituency or a person who is on the board because of a position held (i.e. the President and the Chancellor);

“Internal Member”

means the President and faculty, support staff and students elected by their respective constituency;

“External Member”

means a community member appointed by the Lieutenant Governor in Council;

“Related person”

means a spouse, child, parent, or sibling of the member;

“Adjudicator”

means a person identified by the Ministry to assist in determining a declaration of conflict of interest.

Section 1: Conflict of Interest Defined

(1.1) A conflict of interest arises when a Board member’s private interests supersedes or competes with his or her dedication to the interests of the University. This could arise from Real, Potential or Apparent Conflict of Interest for a Board member or related persons and may be financial or otherwise. For this purpose:

- a. A “Real Conflict of Interest” occurs when a Board member exercises an official power or performs an official duty or function and at the same time, knows that in the performance of this duty or function or in the exercise of power there is the opportunity to further a private interest.
- b. A “Potential Conflict of Interest” occurs when there exists some private interest that could influence the performance of a member’s duty or function or in the exercise of power provided that he or she has not yet exercised that duty or function.
- c. An “Apparent Conflict of Interest” exists when there is a reasonable apprehension which reasonably well-informed persons could properly have that a Real Conflict of Interest exists on the part of the member.

Section 2: Declaration of Conflict

(2.1) Board members must arrange their private affairs and conduct themselves in a manner to avoid a conflict of interest. In cases where conflict cannot be avoided, a Board member has an obligation to declare a conflict of interest prior to discussion or decision of an issue. Upon declaration of a conflict the person recording the events of the meeting should duly note the declaration and the Board member must:

- a. in an in-camera session or committee meeting, absent himself or herself from the proceedings during discussion or voting on that particular matter, contract or arrangement;
- b. in a public session, refrain from discussion or voting on that particular matter, contract or arrangement.

(2.2) Where a Board member is unsure of whether he or she is in conflict that member should raise the perceived potential conflict with the Board, and the Board should determine by majority vote whether or not a conflict of interest exists. The member perceived to be in conflict should refrain from voting on the issue.

(2.3) Where a conflict of interest is discovered after consideration of a matter, the conflict must be declared to the Board and appropriately recorded at first opportunity. If the Board determines that involvement of said member influenced the decision of the matter, the Board shall re-examine the matter and may rescind, vary, or confirm its decision.

(2.4) Any Board member who perceives another member to be in conflict of interest in a matter under consideration must identify the perceived conflict to the Board at the first opportunity. The Board should determine by majority vote whether or not a conflict of interest exists and the member perceived to be in conflict should refrain from voting.

(2.5) Where a Board member has been declared by vote to be in conflict of interest, and that member is in disagreement with the decision of the Board, he or she may appeal the decision through the steps outlined in Section 3. Until the appeal process is completed, the Board member perceived to be in conflict either stands aside on the given issue or continues at risk of acting in conflict and being subject to the associated penalty(s).

(2.6) At the discretion of the Board, the Board may invite the member in conflict to state his or her position on the issue in question prior to absenting himself or herself.

Section 3: Appeal of Declaration of Conflict

(3.1) If a Board has exhausted all possible means of resolving a conflict of interest declaration and the Board and the member(s) in question are still at an impasse, the determination of conflict shall be referred to a Provincial adjudicator(s). The Minister maintains a roster of potential individuals who can be called upon to review conflict of interest disputes and make determination on the dispute. Any costs associated with this appeal process will be the responsibility of the initiating Board.

(3.2) The process for appealing a declaration of conflict will require the following:

- a. the Board shall request in writing that the Minister identify an adjudicator(s) from the Provincial roster to review and make a determination on a perceived conflict of interest;
- b. the Board shall submit a report to the adjudicator and a copy to the member in question within seven days of the request of adjudication documenting the nature of the perceived conflict, and the background leading to the impasse;
- c. the Board member(s) perceived to be in conflict shall submit a report to the adjudicator and a copy to the Board within seven days of the request for adjudication documenting the nature of the perceived conflict, their rationale for not being in conflict, and the background leading to the impasse;
- d. the adjudicator(s) shall review the documentation, gather any other additional information required to make an informed decision, and provide the Board with a determination on the declaration of conflict of interest within two weeks of receiving the request for adjudication or may, if further review is necessary, request an extension from the parties involved.

Section 4: Punitive Action Associated with Conflict of Interest

(4.1) A second role for the adjudicator(s) is(are) to recommend to the Board any punitive action to be directed to the Board member deemed to be in conflict. The Board shall have the power and ability to impose punitive action including one or more of the following:

- a. letter of reprimand;
- b. suspension of a Board member(s) from the Board for a determined period of time;
- c. recommendation that a Board member(s) resign from the Board;
- d. for external members, recommendation that the appointment be rescinded.

Section 5: General Guidelines for Declaring Conflict of Interest (under section 1.1a)

The following examples of conflict of interest are intended to provide general guidelines for declaring conflict of interest. These examples should not necessarily be considered exhaustive. Instead, the definitions of conflict as described in Section 1 should be used as the ultimate measure of conflict:

(5.1) A **pecuniary interest** exists when a contract or other matter of a monetary nature is before the Board which:

- a. affects a private company in which a member or related persons are a proprietor or shareholder;
- b. affects a public company in which the member, or related persons, hold more than 10% of the shares issued of the public company;
- c. affects a partnership or firm in which the member, or related persons are a member;

- d. affects a corporation in which the member is a director;
- e. affects an organization in which the member is a senior officer;
- f. affects a private society, crown corporation or other organization in which the member by virtue of office holds a position of influence.

(5.2) A **conflict of interest due to representation of or relation to a specific constituency** may occasionally arise. In general, voting on matters which have an effect on a broad group (i.e. students, staff, faculty) by a member of that group is not considered a conflict of interest. Conflict could reasonably be considered to exist however for the following identified groups when considering these matters:

- a. decisions directly affecting a specific instructional program in which –
 - i. student Board members are enrolled in the program;
 - ii. faculty or support staff Board members are employed in the program;
 - iii. members with related persons are enrolled in or employed in the program;
- b. decisions related to labour negotiations and labour relations –
 - i. for faculty and support staff Board members;
 - ii. for Board members with related persons who hold faculty and/or support staff positions at the University;
 - iii. 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.

For the purpose of clarification, these guidelines recommend that student members be permitted to vote on issues related to tuition and fees.

IV. OATH OF OFFICE

The following Oath of Office is to be sworn, signed, and dated before the Board at the commencement of a member's first meeting with the Board. Either a Board or a Commissioner of Oaths is an appropriate administrator of the Oath.

I, _____, sincerely promise and swear (or affirm) that I will truly, faithfully and impartially, to the best of my ability execute the duties and responsibilities on my position as a member of the Board of Vancouver Island University. I have read and agree to abide by the Code of Conduct and the Conflict of Interest bylaws of this University.