



Board Governance Policy Manual

POLICY CATEGORY: GOVERNANCE/ BOARD PROCESS POLICY NUMBER: B07

POLICY TITLE: GOVERNOR CONFLICT OF INTEREST EFFECTIVE: FEB. 09/11

REFERENCE (MOTION): 387.O.7.4 (EST. OCT.2005)

PURPOSE

This purpose of this Governor Conflict of Interest Policy (Policy) is to protect the integrity and ethical standards of the Board of Governors (Board) and, importantly, to protect the integrity of an individual Governor who may face a conflict of interest. This Policy is intended to assist each individual Governor (i) in fulfilling the Governor's fiduciary duty to act in the best interests of Mohawk College, and (ii) in demonstrating high personal standards of moral responsibility, character, and ethics, both of which also protect the integrity of the Board as a whole.

APPLICATION AND SCOPE

This Policy applies to each member of the Board of Governors.

DEFINITIONS

"Actual conflict of interest" exists when a Governor has a private or personal interest that, in the view of the Board and having regard to all relevant circumstances, interferes with the exercise of the Governor's independent judgment or influences the performance of the Governor's duties and responsibilities.

"Internal Governor" is an academic staff member, an administrative staff member, a member of support staff, or a member of the student body who is duly elected to the Board from their respective constituent group in accordance with procedures and conditions that are established by the Board. The President is an Internal Governor by virtue of the President's position.

"Perceived conflict of interest" exists when a Governor has a private or personal interest that could, in the view of the Board and having regard to all relevant circumstances, be reasonably perceived to interfere with the exercise of the Governor's independent judgment or to influence the performance of the Governor's duties and responsibilities.

"Potential conflict of interest" exists when a Governor has a private or personal interest that has the potential, in the view of the Board and having regard to all relevant circumstances, to interfere with the exercise of the Governor's independent judgment or to influence the

performance of a Governor's duties or responsibilities, even though the Governor has not yet exercised that independent judgment or duty or responsibility.

"Private or personal interest" refers to any affiliation, involvement or interest of a Governor, whether or not of a financial nature, that does not serve to benefit of Mohawk College but, rather, the Governor or a Related Person.

"Related Person" refers to a spouse, life partner, child, parent, sibling, aunt, uncle, niece, nephew, grandparent, cousin, person residing in the Governor's home, close friend of a Governor, or any entity in which the Governor, or a Related Person, has a financial or business interest.

PRINCIPLES

Governors are expected to act honestly and uphold the highest ethical standards.

Governors are obliged to perform their official duties and conduct themselves in a manner that will bear the closest public scrutiny, given that Mohawk College is part of the broader public sector and subject to greater public scrutiny than private organizations.

Governors shall not have private or personal interests, other than those permitted pursuant to this Policy, that would affect or be affected by, or be seen to affect or be affected by, Mohawk College decisions; the independence and impartiality of the Governor; or actions in which the Governor participates or could influence.

When appointed, each Governor must arrange the Governor's private and personal interests to avoid or prevent a conflict of interest. If a conflict of interest arises between the private or personal interests of a Governor and the exercise of independent judgment and fulfilment of duties and responsibilities of the Governor, the conflict shall be resolved in favour of the College's interest.

Each Governor, regardless of the manner of appointment or election, has a responsibility, first and foremost, to the welfare and stewardship of Mohawk College, and must function exclusively as a member of the Board, and not as a member of any particular constituency.

CONFLICT OF INTEREST

A conflict of interest arises when a Governor's private or personal interest supersedes, competes with, or undermines the Governor's exercise of independent judgment and fulfilment of duty and responsibility. The foregoing could arise from an actual, potential or perceived conflict of interest of a financial or non-financial nature.

CIRCUMSTANCES WHERE A CONFLICT OF INTEREST MAY NOT EXIST

Normally, a conflict of interest may or will be considered in the judgment of the Board not to exist where:

- i) The interest of the Governor is so remote or insignificant in nature that it cannot be reasonably regarded as likely to influence a Governor;
- ii) The pecuniary or other interest of the Governor is in common with a broad group of which the Governor is a member (e.g., academic staff, administrative staff, students or support staff); or
- iii) The interest is general or shared with another stakeholder, including members of the public.

OBLIGATION OF FULL DISCLOSURE AND MANAGEMENT OF A CONFLICT OF INTEREST

The foregoing is not determinative, and shall not be within the purview of the individual Governor, but rather the purview of Board. The subjective view of an affected Governor of (i) whether a conflict of interest by the Governor exists, (ii) whether the conflict is actual, perceived, or potential, and (iii) how a conflict of interest shall be treated, is subsidiary to the objective view of non-conflicted Governors on the Board.

The Chair of a meeting of the Board or a Board Committee has a responsibility for taking all reasonable steps to ensure that the opportunity exists at each meeting for each Governor to declare any conflict(s) of interest.

Each Governor has an affirmative obligation:

- (i) To declare promptly, in a full, true and plain manner, to the Board Chair and Committee Chair, as the case may be, orally and in writing as or if requested, the Governor's actual, potential or perceived conflict(s) of interests (conflict of interest), when the conflict of interest occurs or is likely to arise; prior to being considered for board service; and annually in the form of a declaration of interests (see Annual Declaration, below) on the part of a Governor or a Related Person that could give rise to any actual, perceived or possible conflict of interest upon being appointed or elected to the Board;
- (ii) To respond in a full, true and plain matter to inquiries concerning the conflict of interest; to maintain relevant books and records; and to cooperate and report fully with requests for information or documentation, or the retention of independent advice on whether a conflict of interest may exist;
- (iii) Not to unduly influence the decision by the Board or Board Committee of whether a conflict exists and how the conflict shall be managed or mitigated;
- (iv) To absent themselves from the discussion pertaining to the conflict of interest;
- (v) To draw the Board Chair's, Governance Committee's, or Board's attention to actual, potential or perceived conflicts of interest on the part of another Governor(s) in a confidential manner.

PROCEDURES TO AVOID AND MANAGE CONFLICTS OF INTEREST

Each Governor must immediately take steps to resolve an actual, perceived or potential conflict of interest.

At the beginning of each Board and Board Committee meeting, the Chair shall ask for disclosures of any actual, potential or perceived conflicts of interest relating to any agenda item.

- When the agenda item arises in the open portion of a meeting, the Governor with an actual conflict of interest shall not remain in the room nor unduly influence the discussion or vote on this agenda item. The minutes should reflect this.
- If the matter arises during the closed or *in camera* portion of a meeting, the Governor should not remain in the room nor unduly influence the discussion or vote on this agenda item. The minutes should reflect this.
- When the conflict of interest is perceived or potential, the Board, in its business judgment, will determine whether the affected Governor should remain in the room (i) for a discussion of the perceived or potential conflict of interest by the Governor, and (ii) for the discussion and vote on the agenda item. The minutes should reflect what takes place.

In cases where a conflict cannot be avoided, a Governor is to declare a conflict of interest at the earliest opportunity, and the nature of the conflict and all relevant circumstances. Where a conflict of interest is declared before a Board or Committee meeting, the declaration should be made to the Board or Committee Chair, and the Board is to be informed.

Where a Governor is unsure whether the Governor is in a conflict of interest, the Governor shall raise the matter in advance with the Board, and the Board will determine, by majority vote, whether or not a conflict exists and, if so, the appropriate course of action. The Governor raising the issue must refrain from voting on whether or not a conflict exists, nor unduly influence the management of the conflict.

CONFLICTS OF INTEREST SUBSEQUENTLY DISCLOSED OR DISCOVERED

Actual, perceived or possible conflicts of interests should not normally be subsequently disclosed by a Governor or discovered by the Board, and Governors should be diligent in disclosing such matters in advance. However, if a conflict of interest with respect to a matter is discovered after consideration of the matter by the Board, the conflict of interest must be declared to the Board by the Governor and appropriately remedied and recorded at the first opportunity. If the Board determines that involvement of the Governor with the conflict influenced an earlier decision on the matter, the Board must re-examine the matter, and may rescind, vary or confirm its original decision.

SAFE DISCLOSURE OF GOVERNOR CONFLICTS OF INTEREST

Any Governor who perceives another Governor to be in a conflict of interest in respect of a matter under consideration by the Board or a Board Committee shall raise this concern in confidence with the Board Chair or the Governance Committee. The Board Chair or the Governance Committee, in turn, must discuss the matter with the latter Governor who is perceived to be in a conflict of interest, while preserving the anonymity of the former Governor who perceives the latter Governor to be in a conflict of interest; and, as appropriate, bring the matter to the Board or hold further discussions with the former Governor who raised the concern. 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 and what the course of action shall be. The latter Governor who is perceived to be in conflict must refrain from unduly influencing or voting on the issue of whether a conflict of interest exists. The anonymity of the former Governor who perceived the latter Governor to be in a conflict of interest shall be preserved to the fullest extent practicable.

SANCTIONS

Where there has been a failure on the part of a Governor to comply with this Policy, unless the failure is the result of a good faith error in judgement, the Board shall:

- Issue a verbal reprimand; or
- Issue a written reprimand; or
- Request the resignation of the Governor; and/or
- Remove the Governor through the process outlined in Section 8.01 and Appendix 2 of ByLaw #1.

ADDITIONAL MATTERS

Annual Declaration

Each Governor must complete a Conflict of Interest Disclosure Statement before being appointed. Thereafter, each Governor shall complete a Governor's Declaration, in which the Governor shall agree to comply with this Policy, on an annual basis.

If before or between annual Declarations, an actual, perceived or potential conflict of interest arises in respect of a matter not on the agenda for a Board meeting, the affected Governor must bring the matter to the attention of the Chair and Governance Committee, who will present the matter to the Board for review and determination at the next meeting of the Board, applying the procedures set out above, with such modifications as the Board considers appropriate in the circumstances. The results will be recorded in the minutes.

Examples of Conflict of Interest

A material conflict of interest may arise for a Governor of Mohawk College in a variety of circumstances. The following are examples of situations where conflicts of interest might exist. This list is not exhaustive and is provided for illustrative purposes.

Generally, financial interests lead to a conflict of interest when a Governor or a Related Person is in a position, directly or indirectly, to:

- i) Personally benefit financially or avoid financial loss as a result of an arrangement, contract, decision, investment, procurement, program, situation, transaction or other matter of a financial nature in which Mohawk College is involved; or
- ii) Use information obtained as the result of being a Governor for personal financial benefit.

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

- i) A corporation, including a non-share capital corporation, in which a Governor or a Related Person is a director or officer; or
- ii) Any other organization in which a Governor or a Related Person hold a position of influence or an ownership interest.

Other private or personal interests can lead to conflict of interest where a Governor has non-economic interests, such as religious, political, corporate or institutional interests, which supersede, compete with, or undermine the exercise of independent judgment and fulfillment of the duties and responsibilities of the Governor to Mohawk College.

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

Other examples of circumstances where a conflict of interest may arise include:

- i) A Governor, or a Related Party, receives or offers a gift, perquisite or advantage of any nature, of any monetary value, from any person or entity outside of Mohawk College that may be, or that may appear to be, connected with the Governor's exercise of independent judgment and fulfillment of duties and responsibilities to Mohawk College;
- ii) A Governor, or a Related Party, receives or offers any form of present or future advantage, including but not limited to employment, honors, enrichment or opportunity, from any person or entity outside of Mohawk College that may be, or that may appear to be, connected with the Governor's exercise of independent judgment and fulfillment of duties and responsibilities to Mohawk College;
- iii) A Governor, or a Related Person, is, or has been, a partner of, or employed by, a current or former Internal Auditor or External Auditor of Mohawk College;

- iv) A Governor, or a Related Party, has a close personal relationship with a member of senior Management or another Governor of Mohawk College;
- v) A Governor serves on a board with another Governor, other than on the Board of Mohawk College; or
- vi) A Governor adversely affects the reputation or integrity of Mohawk College.

Internal Governors

Although Internal Governors are subject to the same obligations as other Governors, they should be aware of particular circumstances that apply to them specifically.

In general, voting on matters that affect a broad group (i.e., academic staff, administrative staff, students or support staff) by a member of that group is normally not considered a conflict of interest, for reasons set out earlier in this Policy. For example, it is recommended that student Governors be permitted to vote on issues related to student fees. In situations where a student Governor 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 affects students.

However, a conflict of interest could reasonably be considered to exist when the Board is considering:

- i) Matters directly affecting a specific instructional program in which a Governor, or a Related Person(s), is enrolled, or in which a Governor, or a Related Person(s), is employed; or
- ii) Matters related to employment, including labour negotiations (for Internal Governors except the President, and for a Governor with a Related Person(s) who holds a position at another institution who could be seen to benefit from information divulged on these matters by the Governor and in breach of confidentiality (Rule 6 of the Governor's Code of Conduct)).

POLICY REVIEW DATE:

Originated: Feb. 10, 2010

Revised: Nov. 2014; Feb. 2016; Feb. 2018

Next Review – 2021/2022