

LOYALIST COLLEGE

Board of Governors Policy

20. CONFLICT OF INTEREST

Date Last Approved: May 29, 2025

Next Review Date: 2029

Background

In this policy, capitalized terms used but not defined herein shall have the respective meanings ascribed to them in the Definitions Schedule.

It is an inherent part of a fiduciary duty that conflicts of interest be avoided. It is important that all Governors understand their obligations when a conflict of interest or Potential Conflict of Interest arises. This policy is based upon the following principles:

1. Governors are expected to act honestly, lawfully and uphold the highest ethical standards.
2. Governors must perform their official duties and conduct themselves in a manner that will bear the closest public scrutiny because colleges are part of the broader public sector and are subject to greater public scrutiny than private organizations.
3. Governors shall not have private interests (other than those permitted pursuant to the By-Law, subject to the Policy Directives and other applicable laws) that would be affected particularly or significantly by the College's decisions or actions in which they participate as Governors.
4. When appointed, Governors must arrange their private interests to prevent conflicts of interest. If a conflict does arise between the private interests of a Governor and the official duties of that individual, the conflict shall be resolved in favour of the public interest.
5. Each Governor has a responsibility first and foremost to the welfare of the College and must function primarily as a member of the Board, not as a member of any particular constituency or other stakeholder group.

Policy / Procedure

All Governors have a duty to ensure that the integrity of the decision-making processes of the Board are maintained by ensuring that they and other members of the Board are free from conflict or potential conflict in their decision making. All Governors must comply with the Minister's "Conflict of Interest" Policy Directive.

Common Conflict Situations

The situations in which conflict of interest may arise cannot be exhaustively set out. Conflicts generally arise in the following situations:

1. **Transacting with the College:** When a Governor transacts with the College directly or indirectly and a Governor has a material direct or indirect interest in a transaction or contract with the College.
2. **Interest of a Relative:** When the College conducts business with suppliers of goods or services or any other party of which a relative or member of the household of a Governor is a principal, officer or representative.
3. **Gifts:** When a Governor or a member of the Governor's household, or any other person or entity designated by the Governor, accepts gifts, payments, services or anything else of more than a token or nominal value from a party with whom the College may transact business (including a supplier of goods or services) for the purposes of (or that may be perceived to be for the purposes of) influencing an act or a decision of the Board.
4. **Acting for an Improper Purpose:** When Governors exercise their powers motivated by self-interest or other improper purposes. Governors must act solely in the best interest of the College. Governors who are elected by a particular group must act in the best interest of the College even if this conflicts with the interests of such group.
5. **Appropriation of Corporate Opportunity:** When a Governor diverts to their own use, an opportunity or advantage that belongs to the College.
6. **Duty to Disclose Information of Value to the College:** When Governors fail to disclose information that is relevant to a vital aspect of the College's affairs.
7. **Serving on Other Corporations:** A Governor may be in a position where there is a conflict of "duty and duty". This may arise where the Governor serves as a governor of two (2) corporations that are competing or transacting with one another. It may also arise where a Governor has an association or relationship with another entity. For example, if two (2) corporations are both seeking to take advantage of the same opportunity. A Governor may be in possession of confidential information received in one boardroom or related to the matter that is of importance to a decision being made in the other boardroom. The Governor cannot discharge the duty to maintain such information in confidence while at the same time discharging the duty to make disclosure. The Governor cannot act to advance any interests other than those of the College.

More specifically, the following agenda items are likely to result in a conflict of interest:

1. **Regarding the President:**
 - Any agenda items relating either directly or indirectly to the President's compensation, perquisites, and/or benefits.

Note: The Board may require certain information from the President to assist their deliberations, but these queries must be of the general nature or relate to providing performance related information concerning the President's success in meeting agreed to objectives and must not in any way, either directly or indirectly, influence decisions on their compensation, perquisites, and/or benefits.

2. **Regarding Internal Staff Governors:**

- Agenda items relating to a decision to eliminate the program in which an academic staff member taught.
- Agenda items relating either directly or indirectly to collective bargaining for the particular bargaining unit of which the staff person is a member.

Note: This would not apply to agenda items that are of a general nature occurring in the open to the public portion of the Board meeting.

- Agenda items relating to the President's evaluation or performance review.

Note: This does not prevent the Chair or evaluation committee asking for their input as part of a general information-gathering process in preparing the President's evaluation.

3. **Regarding the Student Governor**

- Agenda items relating to an increase in the tuition fees for the particular program in which the student is enrolled.
- Agenda items relating to the President's evaluation or performance review.

Note: This does not prevent the Chair or evaluation committee asking for their input as part of a general information-gathering process in preparing the President's evaluation.

- Agenda items relating either directly or indirectly to collective bargaining and/or compensation and terms and conditions of employment for college staff.

Note: This would not apply to agenda items that are of a general nature occurring in the open to the public portion of the Board meeting.

Meeting Procedure

At the beginning of every Board meeting, the Chair shall ask and have recorded in the minutes whether any Governor has a conflict of interest to declare in respect of any agenda item. A Governor who has a conflict of interest shall declare the conflict of interest and the general nature of the conflict of interest.

When the agenda item arises in the open portion of the Board meeting, the Governor(s) with an Actual Conflict of Interest may remain in the room for the duration of the discussion but shall not participate in the discussion

or vote on this item. The minutes are to record whether the Governor(s) with an Actual Conflict of Interest remained in the room, whether they participated in the discussion and whether they voted on the item.

Should the matter occur in an in-camera session, the Governor(s) shall withdraw from the room while the matter is being discussed or voted on. Such Governor(s) shall not be informed of the results of the in-camera session until and unless the Board has determined that such results are to be made public.

When the conflict of interest is a conflict of interest other than an Actual Conflict of Interest, the Board shall determine whether the Governor(s) may remain for the discussion and vote on agenda items. The minutes shall reflect the ruling of the Board and whether such Governor(s) remained in the room, participated in the discussion or voted on the item.

Duty to Declare

Internal Governors and the President must declare that their actions in their capacities as Governors will be independent and unbiased.

All Governors must complete a “Conflict of Interest Disclosure Statement” before being appointed. Thereafter, each Governor shall complete a “Conflict of Interest Declaration Form”, in which the Governor shall agree to comply with the Minister’s “Conflict of Interest” Policy Directive, on an annual basis. The Chair is to submit an attestation to the ministry to confirm the Board’s compliance with the Minister’s “Conflict of Interest” Policy Directive on an annual basis.

A Governor shall declare a conflict of interest at the earliest opportunity and, at the same time, declare the general nature of the conflict. Where a conflict of interest is declared prior to a Board meeting, the declaration shall be made to the Chair and the Board shall be so informed by the Chair.

Where a Governor is unsure whether they have a conflict of interest, they shall raise the issue with the Board, and the Board shall determine by a majority vote whether or not the conflict of interest exists. The said Governor may participate in the discussion but shall not vote on whether or not a conflict of interest exists.

Duty to Report

Any Governor who believes another Governor (the “**Potentially Conflicted Governor**”) may have a conflict of interest in a matter under consideration shall, without delay, inform the Chair. The Chair shall discuss the matter with the Potentially Conflicted Governor and, as appropriate, hold further discussions with the reporting Governor. If the discussions do not lead to a resolution, the matter shall be brought to the Board and the Board shall determine by a majority vote whether or not a conflict of interest exists. The Potentially Conflicted Governor may participate in the discussion but shall not vote on the issue of whether they have a conflict of interest.

Whether a Governor has a conflict of interest shall be determined on an individual case by case basis.

Where a conflict of interest is discovered after consideration of a matter, it is to be declared to the Board and appropriately recorded at the first opportunity. If the Board had reached a decision on the matter, the Board is to

re-examine the matter and may rescind, vary, or confirm its decision, without participation by the Governor with the conflict of interest in any related discussions or in any related vote.

Notwithstanding anything in this policy, where the Governor with a conflict of interest is the Chair, a Vice-Chair shall act as Chair for the purposes of this policy. The Vice-Chair shall also act as Chair of the meeting for that portion of the meeting dealing with the Chair's conflict of interest. If the Chair has declared or is found by the Board to have a conflict of interest with respect to an agenda item, the Vice-Chair shall also act as Chair at the portion of the meeting dealing with that agenda item.

Sanctions

Where there has been a failure on the part of a Governor to comply with this policy and/or the Minister's "Conflict of Interest" Policy Directive, unless the failure is the result of a bona fide error in judgment, the Board shall:

- issue a verbal reprimand;
- issue a written reprimand;
- request that a Governor resign; and/or
- remove the Governor through processes established in the By-Law.

Insignificant Conflicts

Where the interest of a Governor is so remote or insignificant that it cannot reasonably be regarded as likely to influence the Governor or where a pecuniary or other interest is in common with a broad group of which the Governor is a member (e.g., students, support staff members, academic staff members, administrative staff members), such interest shall be deemed to not, in and of itself, put such Governor in a conflict of interest with the College for the purposes of this policy. Similarly, where the issue is one of general or public information, a Governor shall be deemed to not be in a conflict of interest for the purposes of this policy with respect to such issue.

Monitoring

This policy may be amended by the Board.

Related Materials

Ministry of Colleges and Universities, "Conflict of Interest" Policy Directive - 2023
<https://www.ontario.ca/page/conflict-interest-policy-directive-colleges-applied-arts-and-technology>