North Bay Regional Health Centre Foundation
Fondation du Centre régional de santé de North Bay

Subject: Conflict of Interest – Trustees and Community Committee Volunteers	Number of Pages: 7
Developed By: Executive Committee	
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1.0 Application

This policy applies to all Trustees and Officers, including ex-officio Directors, and all non-Board members of committees. "Officers" means Officers appointed by the Board including the Chair, a Vice-chair, Secretary, Treasurer and others who perform functions for the organization similar to those normally performed by such Officers.
This policy also applies to all Foundation employees and volunteers who may influence decisions, actions or transactions within the Foundation.

2.0 Purpose

This policy is intended to protect the tax-exempt status of this Corporation's interest when it is contemplating entering into a transaction or arrangement that might benefit the private interest of a Trustee of the Corporation or might result in a possible excess benefit transaction. (An excess benefit is any kind of transaction in which an insider receives an economic benefit from an exempt organization that exceeds the fair market value of what the organization receives in return. In addition, the law covers transactions in which the economic benefit is provided to the insider indirectly (i.e., through an entity controlled by the organization or through an intermediary).)

In addition it serves to preserve and promote the reputation of both North Bay Regional Health Centre Foundation and the individual Trustees.

All Trustees 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. It is inherent in a Trustee's fiduciary duty that conflicts of interest be avoided. It is important that all Trustees and Officers understand their obligations when a conflict of interest or potential conflict of interest arises.

Trustees, officers and non-Board committee members shall avoid situations in which they may be in a position of conflict of interest or perceived conflict of interest. The bylaws contain provisions with respect to conflict of interest that must be strictly adhered to. In addition to the bylaws, the process set out in this policy shall be followed when a conflict or potential conflict arises.

It is inevitable that conflicts of interest will arise from time to time. The purpose of this policy is to give Trustees and Foundation a process to follow to help identify and track these inevitable situations.

This policy is intended to supplement but not replace any applicable state and federal laws governing conflict of interests applicable to nonprofit and charitable organizations. Conflicts are not the problem, they are unavoidable, it is undeclared or undisclosed conflicts that are a problem and should be avoided; disclosure is the key.

3.0 Policy

A conflict of interest does not exist only when interests are at odds. A conflict of interest exists when there is the *potential* for interests to be at odds.

A conflict of interest exists in the context of the *best* interests of the organization. This means that it is not sufficient for the organization to benefit, but how the decision is made is also of importance. It is important that the decision is made by the right individual or group, in an objective and informed manner, and according to all policies of the organization. Trustees are expected to follow the spirit and the intent of benefiting the organization, not just avoiding costs or losses to the organization.

Any Trustee who has an interest directly or indirectly in activities involving business, commercial or financial interests, whether potential or apparent, which may conflict with the interest of the Foundation or the duties of the individual, must be promptly declared and disclosed to the Board of Trustees or the appropriate officer of North Bay Regional Health Centre Foundation.

The Trustee's interests may be:

- Direct: a narrow legal conflict of interest exists when the individual or immediate family member stands to gain or lose money personally because of a decision before North Bay Regional Health Centre Foundation – e.g. self or immediate family member being considered for employment or contract for services;

- Indirect: when the financial gain is one step removed from the individual, e.g. Trustee is an officer or executive of a potential supplier or landlord to North Bay Regional Health Centre Foundation, or of a charity where the Foundation is a funder;

- Perceived: when someone looking in from the outside perceives that an individual used their influence to get the Foundation to make a decision that favoured someone or a group with whom the Trustee has affinity – e.g. a contract being awarded to a neighbour, someone they went to school with, or their local community.

1. Trustees and their families shall not enter into any proposed contract or transaction with the Foundation except:

   (a) On a competitive bid basis or other basis in writing, and

   (b) Where the Trustee has declared any interest therein, and where he has absented himself from the meeting and where he has refrained from voting thereon.

Conflicts of "Duty and Duty" – While overlapping directorships are not prohibited, a Trustee who serves on more than one Board should be mindful of the potential conflicts that might arise and avoid situations that may involve a conflict of "duty and duty". This can arise, for example, where a Trustee serves on a Board of another organization that may contract with the Foundation or may seek to take advantage of an opportunity that is also available to Foundation. Trustees may find themselves in a conflict of "duty and duty" if they learn of information by virtue of their appointment on one Board that may be important and material to the affairs under consideration of another Board. In such a situation, the Trustees may find themselves in a position where their duties of disclosure (honesty and candour) are in conflict with their duty to hold information in confidence. In this situation, the Trustee should declare a conflict to both Boards and recuse themselves from deliberations and decisions.

4.0 Procedure

1. In the case of a proposed contract or transaction, the Trustee shall declare his or her interest at the meeting of the Board, at which the question of entering into the contract or transaction is first taken into consideration or if he is not present at such a meeting, then at the first Board meeting held thereafter.

2. In the case where the Trustee becomes interested in a contract or transaction after it is made, the Trustee shall declare his interest at the first Board meeting held after he becomes so interested.

3. The Trustee shall refrain from participating in the matter further, including not voting on the consideration or approval of any contract, grant, award, contribution, construction project or situation involving a conflict, whether potential or apparent, which includes their participation, directly or indirectly.

4. If the Trustee is not, at the date of that meeting, interested in the proposed contract or transaction, he shall make the declaration at the first Board meeting which is held after he became interested in the proposed contract or transaction.

5. Trustees shall not vote on any matter in which they have a direct or indirect financial interest and shall declare the details of such interest prior to the discussion and vote on such matter.

6. Any Trustee who has declared an interest in any proposed contract or transaction or other financial interests with the Foundation which is being discussed shall absent himself during the discussion of and vote upon the matter, and the event shall be recorded in the minutes.

7. A Conflict of Interest may occur with respect to a proposed or current contract, transaction, matter or decision of the Corporation, or any other matter that competes for the interest of the Trustee.

8. Every Trustee who, either directly or through one of his or her associates, has, or thinks he or she may potentially have, a Conflict of Interest shall disclose the nature and extent of the interest at a meeting of the Board.

9. Trustees must avoid actual or potential conflict of interest, including but not limited to those identified in the definition of "Conflict of Interest" in the Bylaws and this Policy.

10. The declaration of actual or potential Conflict of Interest shall be disclosed at the meeting of the Board of Trustees at which the contract, transaction, matter or decision is first raised.

11. If the Trustee (or his/her associates) becomes interested in a contract, transaction, matter or decision after the Board meeting at which it is first raised, the Trustee shall make a declaration at the next Board meeting.

12. In the case of an existing contract, transaction, matter or decision the declaration shall be made at the first meeting of the Board after an individual becomes a Trustee or the interest comes into being.

13. After making such a declaration no interested Trustee shall vote or be present at the vote or during the discussions or otherwise attempt to influence the voting on a contract, transaction, matter or decision, (including discussing the matter with other Trustees) nor shall the Trustee be counted in any required quorum with respect to the vote.

14. If a Trustee has made a declaration of interest and otherwise complied with this policy, the Trustee is not accountable to the Foundation for any profit he or she may realize from the contract, transaction, matter or decision.

15. If the Trustee fails to make a declaration of his or her interest in a contract, transaction, matter or decision as required by this policy, this shall be considered grounds for termination of his or her position as a Trustee of the Foundation.

16. The failure of any Trustee to comply with the Conflict of Interest provisions of this policy does not, in or of itself, invalidate any contract, transaction, matter or decision undertaken by the Board.

17. If a Trustee believes that any other Trustee is in a Conflict of Interest position with respect to any contract, transaction, matter or decision, the Trustee shall have the concern recorded in the minutes.

18. Thereafter, at the request of a Trustee, the Board shall, after the Trustee alleged to have a conflict has absented himself or herself from the room, vote on whether the Trustee alleged to have a Conflict of Interest is, in the opinion of the Board, in a Conflict of Interest. If the Board so finds the person in a Conflict of Interest, the Trustee shall absent himself/herself during any subsequent discussion or voting process relating to or pertaining to the conflict.

19. The question of whether or not a Trustee has a Conflict of Interest shall be determined by a simple majority of the Board and shall be final.

20. If the Board finds that the Trustee is not in conflict, the Board will then vote on the contract, transaction, matter or decision and the votes of each Trustee shall be recorded.

21. If it is decided that the conflict or breach is significant and not manageable, the Trustee would be expected to resign or be dismissed with just cause from the Board.

22. Any contract or transaction entered into by the organization with a Trustee must be reasonable and fair to the corporation. The Board may require additional due

diligence to be performed to ensure this is the case before a contract or transaction is approved or confirmed.

23. If the amount or risk are considered significant, the Board (or its Chair, between meetings), may choose to approve all payments to the Trustee, family member or firm, as a result of the contract or transaction.

24. If it is decided that the conflict is manageable, the Trustee may remain on the Board, but withdraw from participating in any discussions, deliberations or votes concerning the matter. This includes not being involved in the decision-making process at any point, and not using influence with other Board members, management or others to give an advantage over non-Board member parties seeking to contract with the Foundation. This also includes any other management or Board discussions, briefings, reports or agenda items on the subject, whether the Trustee was awarded the contract in question or not (i.e. the conflict situation begins before, and extends throughout the life of a transaction or contract, and the Trustee is excluded from all confidential information or matters whether he or she won the contract or lost it, completed the transaction or not.)

25. If the amount and risk is deemed to be less significant, the Board may delegate payment approval and contract administration to the President and CEO, but must still review all documentation and payments at its next regular meeting. The President and CEO may decline such delegation without explanation.

26. Further, all related-party transactions, including contracts with Trustees, are subject to a regular annual review by the Finance and Executive Committee and external auditor as part of their review of the annual financial statements.

27. If the Trustee in question is the Chair of the Board, and the conflict is not considered manageable, the Chair would be expected to resign or be dismissed with just cause from the Board.

28. If the Trustee in question is the Chair of the Board, and the conflict is considered manageable, the [a] Vice-Chair shall act as Chair for the purposes of agenda setting, Board information packages, meeting deliberations and votes, and minute-taking, regarding all aspects of the subject matter.

29. The Foundation shall take measures to ensure that a Trustee in a conflict of interest does not receive any non-public material related to the subject matter. This includes any verbal information or briefings with management, inside or outside Board meetings, and the Trustee may not raise or question management on the subject matter at any time.

5.0 Records of Proceedings.

The minutes of Board meetings will reflect the consideration, adjudication and implementation of conflicts or breaches. It may be necessary to maintain a redacted set of minutes if the minutes could disclose information that the Trustee should not have.

The minutes of the Board of Trustees and all committees with board delegated powers shall contain:

(1) The names of the persons who disclosed or otherwise were found to have a financial interest in connection with an actual or possible conflict of interest, the nature of the financial interest, any action taken to determine

whether a conflict of interest was present, and the Board of Trustees' or committee's decision as to whether a conflict of interest in fact existed.

(2) The names of the persons who were present for discussions and votes relating to the transaction or arrangement, the content of the discussion, including any alternatives to the proposed transaction or arrangement, and a record of any votes taken in connection with the proceedings.

6.0 Violations of the Conflict of Interest Policy:

(1) If the Board of Trustees or committee has reasonable cause to believe a Trustee has failed to disclose actual or possible conflicts of interest, it shall inform the Trustee or member of the basis for such belief and afford the Trustee an opportunity to explain the alleged failure to disclose.

(2) If, after hearing the Trustee's response and after making further investigation as warranted by the circumstances, the Board of Trustees or committee determines the Trustee has failed to disclose an actual or possible conflict of interest, it shall take appropriate disciplinary and corrective action.

System of Consequences for violations:

The following are examples of consequences the Foundation can implement on the occurrence of Conflict of Interest violations. The severity and frequency of occurrence(s) will assist in determining the consequence to be received.

1) Verbal warning and education of the Conflict of Interest policy

2) Written warning

3) Suspension of duties

4) Termination

7.0 Definitions

Conflict of Interest:
A conflict of interest occurs when an entity or individual becomes unreliable because of a clash between personal (or self-serving) interests and professional duties or responsibilities. Such a conflict occurs when a company or person has a vested interest—such as money, status, knowledge, relationships, or reputation—which puts into question whether their actions, judgment, and/or decision-making can be unbiased.

For example:
Accepting favours in circumstances which suggest the possibility of impropriety or undue advantage,
Failing to promptly disclose the acceptance of gifts or favours by relatives in circumstances which suggest the possibility of impropriety or undue advantage
Using his or her position with the foundation or disclosing inside information obtained as a result of their position of trustee to obtain an undue gain or advantage
Otherwise carrying on any activity which may adversely affect the operations or integrity of the club.

When such a situation arises, the party is usually asked to remove themselves, and it is often legally required of them.

8.0 Policy Oversight

The Executive Committee, in collaboration with the Finance & Admin Officer, will conduct an annual review of compliance with the policy, ensuring that declarations are properly recorded and followed.

9.0 Appendices/Educational Materials

Not applicable.

10.0 References

Process steps (1) through (13) are from the Bylaws, section 14.

- ADM-BO-003 – NBRHC – Conflict of Interest – Board and Committee Members
- Governance Centre of Excellence – Guide to Good Governance: Not-for-Profit and Charitable Organizations (Second Edition 2013)
- North Bay Regional Health Centre Foundation By-Laws (2015) (section 20)
- © 2014 The Ontario Organizational Development Program (OODP)
- CAA Conflict of Interest Policy and Sign