

CONFLICT OF INTEREST GUIDELINES
BC Law Reform Commission
Recommended Conduct Policy Statement For Society Participants

Contents

- Paragraph 1 Definition
- Paragraph 2 General Duties
- Paragraph 3 More About Avoiding a Conflict of Interest
- Paragraph 4 Using Society Property & Society Information
- Paragraph 5 Rules About Gifts
- Paragraph 6 Guidelines For Authorizing a Transaction From Which a Member May Derive a Benefit

Advice to the Society

- All people involved in a society - its members, directors, officers and employees - have duties they owe the society.
- This is a general statement of the legal principles that apply. It should be made readily available to society participants.
- While everyone in a society is subject to these duties, some people, like directors and officers, are subject to higher duties, such as those set out in the [Standards of Conduct Act.]

Definition

1.1 A "conflict of interest" is any situation where

- (a) your personal interests, or
- (b) those of a close friend, family member, business associate, corporation or partnership in which you hold a significant interest, or a person to whom you owe an obligation could influence your decisions and impair your ability to
 - (i) act in the society's best interests, or
 - (ii) represent the society fairly, impartially and without bias.

It is important to note that a "conflict of interest" exists if the decision could be influenced - it is not necessary that influence takes place.

General duties

2.1 Unless authorized to do so by the board, or by a person the board designates, you may not

- (a) act on behalf of the society, or deal with the society, in any matter where you are in a conflict of interest or appear to be in a conflict of interest, nor
 - (b) use your position, office or affiliation with the society to pursue or advance your personal interests or those of a person described in paragraph 1.1(b).
- 2.2 The "appearance of a conflict of interest" occurs when a reasonably well informed person properly could have a reasonable perception that you are making decisions on behalf of the society that promote your personal interests or those of a person described in paragraph 1.1(b).
- 2.3 If you are a director, you must immediately disclose a conflict of interest in writing individually to each person on the board of directors. It is important to make the disclosure when the conflict first becomes known. If you do not become aware of the conflict until after a transaction is concluded, nevertheless you must still make the disclosure immediately.
- 2.4 If you are in doubt about whether you are or may be in a conflict of interest, you must request the advice of the board of directors or a person the board designates.
- 2.5 Unless otherwise directed, you must immediately take steps to resolve the conflict or remove the suspicion that it exists.

More About Avoiding a Conflict of Interest

- 3.1 If you are a director,
- (a) you must not use your relationship with the society to confer a benefit on a person described in paragraph 1.1(b). This duty does not prevent you or anyone else from transacting business with other people connected with the society.
 - (b) you must not personally benefit from any transaction involving the society except in unique situations, authorized by the board.
 - (c) you must not indirectly benefit from any transaction involving the society except in unique situations, authorized by the board.
- 3.2 An "indirect benefit" is
- (a) a benefit derived by a close friend, family member, business associate, or a corporation or partnership in which you hold a significant interest, or
 - (b) a benefit which advances or protects your interests although it may not be measurable in money.

Using Society Property and Society Information

- 4.1 You must have authorization from the board, or from a person the board designates,
- (a) to use, for personal purposes, property owned by the society, or
 - (b) to purchase society property unless it is through channels of disposition equally available to the public. Even then you may not purchase the property without authorization if you are involved in some aspect of the sale.
- 4.2 You may not take personal advantage of an opportunity available to the society unless
- (a) it is clear that the society has irrevocably decided against pursuing the opportunity, and
 - (b) the opportunity is equally available to members of the public.
- 4.3 You may not use your position with the society to solicit a society's clients for a personal business or one operated by a close friend, family member, business associate or a corporation or partnership in which you hold a significant interest. This duty does not prevent you or anyone else from transacting business with other people connected with the society.
- 4.4 "Society information" is information that is acquired solely by reason of involvement with the society and which the society is under an obligation to keep confidential.
- 4.5 You may use society information only for society purposes.
- 4.6 You must not use society information for your personal benefit.
- 4.7 You must protect society information from improper disclosure.
- 4.8 You must report to the board, or to a person the board designates, any incident of abuse of society information.
- 4.9 You may divulge society information if
- (a) you are authorized by the board or by a person designated by the board to release it, and
 - (b) it is to a person who has a lawful right to the information.
- 4.10 If you are in doubt about whether society information may be released, you must request advice from the board or from a person the board designates.

Rules About Gifts

- 5.1 You may accept a gift made to you because of your involvement in the society in the following circumstances:
- (a) the gift has no more than token value,
 - (b) it is the normal exchange of hospitality or a customary gesture of courtesy between persons doing business together,
 - (c) the exchange is lawful and in accordance with local ethical practice and standards, and
 - (d) the gift could not be construed by an impartial observer as a bribe, pay off or improper or illegal payment.
- 5.2 You personally may not use society property to make a gift, charitable donation or political contribution to anyone on behalf of the society. Any gift must have the authorization of the board of directors or a person the board designates.

Guidelines for Authorizing a Transaction From Which a Member May Derive a Benefit

- 6.1 Even if you are not a director, if you are in a position to influence decisions made on behalf of the society, the board must treat you as if you are a director.

Note: The origin of this policy statement is a document prepared by the BC Law Reform Commission. It was designed to provide, in relatively plain language, guidance on conflicts of interests and related issues. Permission to reprint has been granted.