

**BY-LAW NO. 9****CONFLICT OF INTEREST OF  
COUNCILLORS AND COMMITTEE MEMBERS****DEFINITIONS**

1. In this by-law,

“committee” means a committee or a panel of a committee of the College including any statutory, standing or ad hoc committee;

“committee member” means a member of a committee other than an employee of the College serving on an ad hoc or standing committee;

“panel” means a panel of a statutory committee of the College;

“related corporation” means a corporation wholly or substantially owned or controlled by the councillor or committee member or related person of that councillor or committee member;

“related person” is any person who has one of the following relationships to the councillor or committee member or to the spouse of the councillor or committee member, whether based on blood, marriage, common-law or adoption, namely:

1. child or spouse of a child;
2. grandchild or spouse of a grandchild;
3. parent or spouse of a parent;
4. grandparent or spouse of a grandparent;
5. sibling or spouse of a sibling;
6. aunt or uncle or spouse of an aunt or uncle;
7. niece or nephew or spouse of a niece or nephew;

and in respect of the definition of related person,

“child” means a child born within or outside marriage and includes an adopted child and a person whom a parent has demonstrated a settled intention to treat as a child of his or her family;

“parent” means a person who has demonstrated a settled intention to treat a child as a member of his or her family whether or not that person is a natural parent of the child;

“spouse” means a person to whom the person is married or with whom the person is living in a conjugal relationship outside marriage;

## **CONFLICT OF INTEREST**

2. In any context other than one involving a hearing or meeting involving a decision which directly affects a named person, a person shall have acted in conflict of interest where
  - (a) a reasonable person knowing the relevant facts would conclude or perceive that the exercise of the councillor's or committee member's judgment was likely to have been influenced by the personal financial interest of the councillor or committee member or by the financial interest of a related person or a related corporation of that councillor or committee member;
  - (b) the councillor is a person who holds a position with another organization such that a reasonable person knowing the relevant facts would conclude or perceive that the exercise of the councillor's judgment was likely to have been influenced by that councillor's responsibilities or duties to that other organization; or
  - (c) the committee member is a person who holds a position with another organization such that a reasonable person knowing the relevant facts would conclude or perceive that the exercise of the committee member's judgment was likely to have been influenced by that committee member's responsibilities or duties to that other organization.

- 
3. In the context of a hearing or meeting involving a decision that directly affects a named person, a person shall have acted in conflict of interest
- (a) if the committee member who is a member of the decision-making panel has an association, relationship, non-financial interest or activity that is incompatible with his or her responsibilities as an impartial decision-maker; or
  - (b) if a reasonable person knowing the relevant facts would conclude or perceive that the committee member's decision was not impartial nor based solely on the evidence or information properly received by the committee, but rather influenced by the existence of personal extraneous factors which may include but are not limited to
    - (i) the committee member's connection with the issue(s) or the decision(s) to be made; or
    - (ii) the committee member's connection with a person or persons involved in the proceeding, including the person who is the subject matter of the hearing or meeting or any person whose evidence or information is presented at the hearing or meeting.
4. (1) Subject to subsection (2), if a councillor believes that he or she has or may have a conflict of interest in respect of any matter which is the subject of either debate or action or intended action by council, the councillor shall
- (a) if time and circumstances permit, consult privately with the Registrar, the Registrar's designate or the independent chair of the council meeting (if one is present) to obtain advice as to whether a conflict of interest exists and if so, advice as to how the councillor should proceed;
  - (b) unless the councillor is satisfied that no conflict of interest exists,
    - (i) prior to any consideration of the matter at a meeting of council, disclose to the council the fact that he or she has or may have a conflict of interest;

- 
- (ii) not take part in the discussion of or vote on any question in respect of the matter;
    - (iii) absent himself or herself from that portion of the meeting relating to the matter; and
    - (iv) not attempt in any way to influence the voting or do anything which might be reasonably perceived as an attempt to influence the other councillors or the decision relating to that matter.
  - (2) A councillor shall not be considered to have acted in conflict of interest in respect of a meeting of council by failing to comply with subsection (1) if the councillor discloses the nature of the conflicting interest and council determines by a resolution of at least two-thirds of those present at the meeting (excluding the councillor whose interest is the subject of concern) that the councillor should be entitled to participate in the debate and the vote in respect of the matter.
  - (3) Where a councillor declares a conflict of interest in accordance with subsection (1), that fact shall be reflected in the minutes of that meeting of council.
5. (1) If a committee member believes that he or she may have a conflict of interest respecting any action or intended action of that committee, the committee member shall
- (a) if time and circumstances permit, consult with the Registrar or the Registrar's designate to obtain advice as to whether a conflict of interest does exist and if so, advice as to how the committee member should proceed;
  - (b) if time and circumstances prevent the committee member from consulting with the Registrar or the Registrar's designate and the committee member is a member of a panel appointed to conduct a hearing, consult with the panel's independent legal counsel at the earliest opportunity to obtain advice as to whether a conflict of interest does exist and, if so, advice as to how the committee member should proceed; and

- 
- (c) unless the committee member is satisfied that no conflict of interest exists,
- (i) in the case of a member of a committee which committee is either holding a hearing or involved in a matter which directly affects the rights of a specifically named member or person
1. decline to participate in any way in respect of the hearing or matter and remove himself or herself from the panel or committee; and
  2. not attempt in any way to influence or do anything which might be reasonably perceived as an attempt to influence any of the other members of the panel or of the committee or the outcome of the hearing or matter;
- (ii) <sup>1</sup>in the case of a member of a committee which committee is neither holding a hearing nor involved in a matter that directly affects the rights of a specifically named individual, comply with either of the following two alternatives:

---

<sup>1</sup> From time to time, committee members who technically have a conflict of interest are very interested in a particular subject matter which is being dealt with by a committee. Where that committee is neither holding a Hearing nor doing anything which directly affects the rights of an individual person, the committee member who has the conflict has the option of providing information to the committee in respect of the subject matter [but not vote on it], provided the individual discloses the nature of the conflict prior to any consideration of the matter. Alternatively, the committee member with the conflict can choose to simply not take part in the discussion of or vote on any question in respect of the matter and absent himself/herself from that portion of the meeting.

1. prior to any consideration of the matter,
    - (I) disclose to the chair the fact that he or she has a conflict of interest which prevents him or her from participating without disclosing the details of it;
    - (II) not take part in the discussion of or vote on any question in respect of the matter;
    - (III) absent himself or herself from that portion of the meeting relating to the matter; and
    - (IV) not attempt in any way to influence the voting or do anything which might be reasonably perceived as an attempt to influence other members of the committee of the decision relating to that matter; or
  2. prior to any consideration of the matter,
    - (I) disclose to the committee the fact that he or she has a conflict of interest and the nature of it; and
    - (II) not take part in the vote on any question in respect of the matter.
- (2) Where a committee member declares a conflict of interest in accordance with subsection (1), that fact shall be reflected in the minutes of that committee's meeting or in the record of the hearing.
6. Where the registrar believes, on reasonable and probable grounds, that a councillor or committee member may have acted in conflict of interest or breached this by-law, the registrar shall
- (a) provide in writing to the person whose conduct has been called into question the basis for the registrar's belief,

- 
- (b) provide that person with twenty days to provide a written response,
  - (c) once the written response has been received or the twenty days referred to in clause (b) has expired, provide the executive committee with the information referred to in clauses (a) and (b) above, and
  - (d) unless the executive committee directs that a special meeting of council be called, place the matter on the agenda of the next regular council meeting.
7. Where the registrar receives a written statement from a councillor alleging that another councillor or committee member has acted in conflict of interest or breached this by-law including the basis for that belief, the registrar shall
- (a) provide a copy of the written statement to the person whose conduct has been called into question,
  - (b) provide that person with twenty days to provide a written response,
  - (c) once the written response has been received or the twenty days referred to in clause (b) has expired, provide the executive committee with the information referred to in clauses (a) and (b) above, and
  - (d) unless the executive committee directs that a special meeting of council be called, place the matter on the agenda of the next regular council meeting.
8. (1) Where council is asked to consider an allegation that a councillor or committee member has acted in conflict of interest or breached this by-law, and unless council determines to hold a hearing in accordance with subsection (2), council shall adopt a process to deal with the allegation which is consistent with normal parliamentary rules and which provides the person whose conduct has been called into question with an opportunity to explain to council his or her actions. Where the council determines, without holding a hearing, that the person whose conduct has been called into question did act in conflict of interest or breach this by-law, the council may do any one or more of the

following:

- 
- (a) demand an apology;
    - (b) require assurances from the person that similar behaviour will not occur in the future;
    - (c) as a final action, suspend the person as a member of council or one or more of the committees of the College, in the case of a councillor, or from one or more committees of the College, in the case of a committee member, until an apology or resolution acceptable to the council is reached.
  
  - (2) Where council determines that the allegation, if proven, may be sufficiently serious to warrant the disqualification of the councillor or committee member, it shall appoint a retired Justice of the Ontario Superior Court of Justice (“Commissioner”) to hold a hearing to determine
    - (a) if the person whose conduct has been called into question acted in conflict of interest or breached this by-law;
    - (b) the surrounding circumstances; and
    - (c) the effect or anticipated effect of the conduct on the College.
  
  - (3) The Commissioner shall determine who, in addition to the person whose conduct has been called into question, shall be parties to the hearing and, where appropriate, may appoint legal counsel to present evidence in respect of the allegation.
  
  - (4) Where council determines to hold a hearing as referred to in subsection (2), the Commissioner shall use a process that provides the person whose conduct is in question with full and continuing disclosure of the evidence which will be presented at the hearing as well as an opportunity to make written or oral submissions or both to the Commissioner. To the extent reasonably possible, the provisions of the Statutory Powers Procedure Act shall be used in respect of the hearing.

- 
- (5) Where council determines to hold a hearing as referred to in subsection (2), it may suspend the person whose conduct has been called into question from all of his or her duties with the council, any or all of the committees of the College, or both, until the matter is finally disposed of if council is satisfied that the suspension is necessary to ensure the integrity of the College and/or its processes.
  - (6) The hearing shall be completed within forty-five days of the appointment of the Commissioner or such other period of time as shall be permitted by the executive committee.
  - (7) After considering all of the evidence, the Commissioner shall determine and provide a written report to council which shall include the Commissioner's findings as to
    - (a) whether the person whose conduct has been called into question acted in conflict of interest or breached this by-law;
    - (b) whether the person's conduct was due to inadvertence or as a result of the wilful conduct or the gross neglect of the person; and
    - (c) whether the person's action has had or is likely to have serious and substantial negative implications for the College;as well as the Commissioner's reasons for those findings.
  - (8) The Commissioner shall deliver to the registrar the report referred to in subsection (7) as soon as possible following the completion of the hearing.
  - (9) The registrar shall provide a copy of the report to the executive committee and unless the executive committee directs that a special meeting of council be called, the report and the decision of what action to take as a result of the report shall be included in the agenda at the next meeting of council.

- (10) Where the Commissioner determines that the person whose conduct has been called into question did not act in conflict of interest or breach this by-law, council shall take no further action and any suspension imposed pursuant to subsection (5) shall automatically be lifted.
- (11) Where the Commissioner determines that the person whose conduct has been called into question did act in conflict of interest or breach this by-law, council may adopt either in whole or in part any or all of the findings of the Commissioner and where council determines that a serious breach of this by-law occurred it may
- (a) demand an apology and suspend the person from council or any or all committees of the College, or both, until an apology is received or other resolution acceptable to council is reached; or
  - (b) where council determines that the breach was wilful or caused by the gross neglect of the person or, that although inadvertent, the person's action has had or is likely to have serious and substantial negative implications for the College, request the immediate written resignation of the person from
    - (i) council and all committees of the College, in the case of a councillor;
    - (ii) all committees of the College, in the case of a member of a committee who is not a member of council;
- and if the resignation is not received forthwith, disqualify the person.
- (12) If council disqualifies the person in accordance with clause (b) of subsection (11), it shall

- (a) in the case of a councillor appointed by the Lieutenant-Governor in Council, immediately advise the Minister of its finding and suspend the councillor from sitting as a member of council or any committees of the College;
  - (b) in the case of a councillor who is a member of the profession, treat the situation in the same way as if a vacancy had been created as a result of the resignation of that person from council and all committees of the College; and
  - (c) in the case of a committee member who is a member of the profession, treat the situation in the same way as if a vacancy had been created as a result of the resignation of that person from all committees of the College.
9. Nothing in this by-law shall be interpreted as in any way affecting council's right under its by-laws to remove a person from a committee of the College for reasons that do not involve that person's disqualification.

#### **PROCEDURAL AND OTHER SAFEGUARDS**

10. (1) In determining whether a hearing should be held, whether an interim suspension should be imposed, whether a sanction should be imposed and, if so, the appropriate sanction to be imposed, council shall be mindful of the general principle that sanctions, except in the most extreme cases, shall not be used to punish councillors and committee members, but rather to protect the integrity of the College and its processes.
- (2) Council shall not consider whether to hold a hearing, suspend the person as a councillor or a committee member, or both, or take any action to disqualify a person in accordance with this by-law without first providing that person with an opportunity to address council either personally or by his or her solicitor.

- 
- 11.** A resolution of at least two-thirds of the members of council at a meeting duly called for that purpose shall be required in order to
- (a) determine that a councillor or committee member acted in conflict of interest or breached this by-law, as referred to in subsection 8(1);
  - (b) demand an apology, require assurances or suspend a person in accordance with clause (a), (b) or (c) of subsection 8(1);
  - (c) hold a hearing referred to in subsection 8(2);
  - (d) impose an interim suspension on the person in accordance with subsection 8(5); or
  - (e) disqualify a person in accordance with clause (b) of subsection 8(11).
- 12.** The councillor whose conduct is the subject of concern shall not take part in any council deliberation or vote which is taken pursuant to this by-law.
- 13.** Any deliberation or vote taken under this by-law shall be with the public excluded from the meeting unless the member whose conduct is the subject of concern requests that a public meeting be held.
- 14.** A member of council who is the subject of a vote taken under this by-law shall not be present during the vote on those issues and shall not be counted as a member of council in determining whether a quorum exists or whether the resolution is carried or defeated.