

## Board Special Resolution IV.3

# Conflict of Interest or Duty

**Category:** Board of Governors

**Approval:** Board of Governors

**Responsibility:** University Secretary

**Date:** November 25, 1994, April 7, 2017

By-law No. 1, Section 38 – Conflicts of Interest, is the governing provision for determining conflicts of interest for Governors and shall continue to govern those matters referred to therein. This policy provides additional context to that provision and a procedure for declaring and determining conflicts of interest.

## 1.0 Purpose

- 1.1 For the purposes of this policy, “Conflict” relates to either of “Conflict of Interest” or “Conflict of Duty”.
- 1.2 Conflicts of interest are expected to arise as part of the day-to-day work of the Board and its committees. Identification of a conflict is not a reflection on the integrity of an individual.
- 1.3 The purpose of the Conflict of Interest or Duty Policy is to:
  - 1.3.1 Ensure that Board and Board Committee Members (including external consultants to committees), as fiduciaries to a publicly-funded university are, and are seen to be, fulfilling their special duties of care and loyalty to Trent University with respect to maintaining the University’s interests as paramount to all others;
  - 1.3.2 Promote a standard of conduct that will preserve and enhance public confidence in the integrity, objectivity and impartiality of the decision-making processes of the Board of Governors and its Committees; and
  - 1.3.3 Assist Board and Committee Members and others to recognize and to respond to Conflict of Interest situations.

## 2.0 Definitions

- 2.1 “Act” means the Trent University Act.
- 2.2 “Board” means the Board of Governors of Trent University.

- 2.3 “Board Chair” means the individual appointed by the Board of Governors as the Chair of the Board of Governors of Trent University.
- 2.4 “Board Committee” is a standing, special, ad hoc or other committee established by the Board under its jurisdiction under the Act.
- 2.5 “Board Member” means a Member of the Board of Governors of Trent University.
- 2.6 “Board Vice-Chair” means an individual who has been appointed by the Board of Governors to the role of Vice-Chair.
- 2.7 “Conflict” means Conflict of Interest or Duty.
- 2.8 “Conflict of Interest” is a situation or circumstance involving a private interest of a Board and/or Committee Member, which is sufficient to influence, or appear to influence, a Member’s exercise of an official power or performance of an official duty or function on behalf of the Board of Governors, its Committees and the University generally.
- 2.8.1 “Actual Conflict of Interest” is a situation where a Board and/or Committee member has a private or personal interest that is sufficiently connected to his or her duties and responsibilities as a governor that it influences the exercise of these duties and responsibilities;
- 2.8.2 “Perceived Conflict of Interest” is a situation where reasonably well-informed persons could properly have a reasonable belief that a governor has an actual conflict of interest, even where that is not the case in fact;
- 2.8.3 “Potential Conflict of Interest” is a situation where a governor has a private or personal interest that could influence the performance of a governor’s duties or responsibilities, provided that he or she has not yet exercised that duty or responsibility.
- 2.9 “Conflict of Duty” means a set of circumstances in which a Board and/or Committee Member has or appears to have a conflict between their duties to act in the best interests of the University and the duties they have or appear to have because of another role and/or private interest. May also be referred to as “wearing two hats”.

### **3.0 Interpretation**

- 3.1 Responsibilities of the Board and Board Committee Members with regard to conflict:
- 3.1.1 Board Members and Board Committee Members are appointed with the responsibility to act in the best interests of the University. A Board or Committee Member will not exercise an official power or perform an official duty or function if that Member has a Conflict of

Interest or Duty or a perceived Conflict unless that Conflict has been disclosed, mitigated and/or managed appropriately. Members of the Board of Governors and Committee Members will adhere to the established and approved Board of Governors Conflict of Interest or Duty Policy. Board or Committee Members must declare any real or perceived conflicts.

- 3.1.2 Board and Committee Members, no matter how they come to be appointed, have a responsibility only to the best interests of the University. Any Member must function as a Member of the Board or Committee as a whole and not as a spokesperson for a constituency. Each Member has a duty with other Members to further the best interests of the University.
- 3.1.3 Members must maintain an arm's length separation between their Private Interests or any other duties they might have with other roles and their official functions and duties as Board and/or Committee Members. Members of the Board shall be permitted spousal independence in circumstances where the Member's domestic partner is a University employee or student. Such relationships should be reported when completing the Conflict of Interest/Duty Declaration.
- 3.1.4 Internal Board members who are members of bargaining units are required to absent themselves from discussions of labour issues pertaining directly to their bargaining unit, and from votes on matters pertaining to their contract or compensation.
- 3.1.5 Temporary Leaves of Absence from the Board and/or Board Committees

Temporary leaves of absence may be instituted in the following circumstances:

- 3.1.5.1 Where a board member is also a member of a collective bargaining unit which is participating in job action against the University (i.e., labour dispute); and/or
- 3.1.5.2 A Board member has undertaken formal action against the University. The Board reserves the right to invoke additional action(s) as per **Section 6 – Breaches** (below), dependent on the specific nature of the action undertaken.

#### **4.0 Disclosure and Process for Resolution**

- 4.1 Each Board and Board Committee member shall complete and submit, at least annually, to the University Secretary a Disclosure of Interest form listing personal interests which would give rise to a conflict (real, potential

or perceived), direct or indirect, with the Board or Board Committee member's duties to the University. Such disclosure shall describe the nature and extent of the conflict. If a Board or Board Committee member is uncertain whether a conflict exists, he or she shall err on the side of disclosure.

- 4.2 If any Board or Board Committee member believes that another Board or Board Committee member has a conflict, the former shall disclose the potential conflict to the University Secretary at the earliest opportunity. Such disclosure shall describe the nature and extent of the conflict. In such cases, the Chair of the Board or Board committee will discuss the matter with the member considered to have a conflict for determination of whether a conflict exists.
- 4.3 The completion and submission of a Disclosure form does not negate the responsibility of the Board or Board Committee member to declare conflicts of interest at the beginning of each meeting at which a matter which may give rise to a conflict is the subject of consideration. If a Board or Board Committee member fails to declare a conflict at a meeting at which a matter which may give rise to a conflict is subject of consideration, the Chair shall disclose the conflict, if known. The disclosure of the conflict of interest shall be included in the minutes of the meeting in question.
- 4.4 Services offered by the University to the general public, to which a Board or Board Committee member subscribes, shall not, in and of itself, constitute a conflict of interest (e.g., use of athletics and recreational facilities).
- 4.5 An interest of a Board or Board Committee member which is so remote or insignificant in its nature that it cannot reasonably be regarded as likely to influence the member shall not constitute a conflict of interest.

## **5.0 Quorum**

Where the number of Board or Board Committee members who, by reason of the provisions of these rules, are disqualified from voting in a meeting is such that at the meeting there are not sufficient members to constitute a quorum, then the remaining members shall be deemed to constitute a quorum, provided the number is not less than one third of the voting membership.

## **6.0 Breaches**

A breach of this policy, or the occurrence of an egregious or prolonged conflict may result in consequential measures (up to and including removal from the Board or Board Committee).

Such consequential measures shall be determined by the Board (provided that consideration of the removal of a Board member shall be on thirty (30) days' notice to the Board member. After thirty (30) days' notice to the Board member, the Board, by a resolution passed at a meeting at which at least two-thirds of the members of the Board are present, may declare vacant the seat of such member.) In the case of a breach by a Board Committee member, such consequential measures shall be determined by the Board.

## **Appendix A**

### **Board of Governors: Acknowledgement and Undertaking regarding Conflict of Interest or Duty**

Trent University Board of Governors and Board Committees

#### **General Undertaking**

I acknowledge that, as:

- a) A Board member on the Board of Governors of Trent University (the “Board), and/or
- b) As a Committee member of a Committee of the Board of Governors (a “Board Committee”);

I have read the relevant Board policy documents pertaining to Board member and Board Committee member conflict of interest or duty.

I acknowledge that I must adhere to the highest level of conduct in carrying out my duties and responsibilities to the University, including acting honestly, in good faith and in the best interests of the University. I acknowledge that, in carrying out my duties and responsibilities to the University, my obligation is to act in accordance with this Acknowledgement and Undertaking and with relevant University by-laws and policies, as applicable, while offering my perspective as an individual derived from my personal and work experience. For greater certainty, I acknowledge that the obligations of confidentiality arising out of such fiduciary obligations override any perceived conflicting obligation(s) I may have to report confidential information to others.

#### **Preamble**

A real, potential or perceived conflict of interest or duty of a Board or Board Committee member arises where financial, professional or personal considerations may compromise, or have the appearance of compromising, the judgement of a Board or Board Committee member in carrying out his or her duties as a Board or Board Committee member, as the case may be.

As a Board or Board Committee member you may be considered to have a conflict of interest or duty:

- (i) when you hold a personal interest, whether direct or indirect, that you are aware of and in the opinion of a reasonably informed and well-advised person is sufficient to put into question your independence, impartiality, and objectiveness that you are obliged to exercise in the performance of your duties as a member of the Board of Governors or a Board Committee (as applicable); or

- (ii) when you appear to have, in the opinion of a reasonably informed and well-advised person, a personal interest, whether direct or indirect, that is sufficient to put into question your independence, impartiality, and objectiveness that you are obliged to exercise in the performance of your duties as a member of the Board of Governors or a Board Committee (as applicable).

Refer to Appendix B for examples of real, potential or perceived conflicts of interest.

To assist in identifying real, potential or perceived conflicts of interest and, in so doing, to ease the operation of the Board of Governors and its Committees in the conduct of their work, all members of the Board of Governors and its Committees are asked each year to review Special Resolution IV.3 – Board of Governors Conflict of Interest or Duty, and to disclose any obligation, commitment, relationship or interest that may conflict or may be perceived to conflict with their duties as a member of the Board of Governors or a Board Committee.

In requesting this information, the University acknowledges its responsibilities to protect the privacy of personal information. Personal information that you provide in completing the form below is collected under the authority of the Trent University Act (1962-63). It is collected for the purpose of administering the conflict of interest

Provisions in By-law No. 1 of Trent University. At all times information collected will be protected in accordance with the Freedom of Information and Protection of Privacy Act (“FIPPA”). If you have questions about the collection, use and disclosure of personal information, you are encouraged to speak directly with the Chair of the Board of Governors or to the University Secretary.





## Appendix B

### Examples of Types of Conflicts/Scenarios

The following examples are intended to guide board members in situations where they believe there is a potential conflict of interest, and to raise awareness of potential circumstances where others may perceive a board member to be in conflicts of interest or duty.

Under any circumstances, the board chair and vice chair are available for advice and consultation to any board member who has concerns or uncertainty about the carrying out of his or her responsibilities as a board member.

**Table 1 showing examples of types of conflicts/scenarios:**

Category	Financial Conflict of Interest	Non-Financial Conflict of Interest	Conflict of Duty
Actual	Governor is a partner in a business tendering for a contact with the University.	Governor's former partner owns a business tendering for a contract with the University.	Governor is an employee of the University. The Board is discussing upcoming collective bargaining negotiations/agreement ratification.
Potential	Governor owns shares in a start-up company which intends to provide services in the post-secondary education sector.	Governor's friend (or family member) is a senior employee of the University and is likely to be considered for a promotion (as approved by the Board) in the future.	Governor is also on the local municipal council. The University Board is considering a partnership with that municipality or an affiliated body.
Perceived	Governor is widely known in the community as a partner in a local firm which is a key contractor to the University, but has divested him/herself of her stake in the business.	Governor's cousin (with whom he/she has little contact) is active in a community group opposing a University initiative.	Governor is the local mayor and also sits on the board of a local community college. There are no current conflicts at this time but a perception of conflicted duties may arise in future.