

EXAMPLE POLICY ON CONFLICT OF INTEREST: ANNOTATED VERSION

ETHICS RESOURCES

For more resources on ethical practice see www.ccic.ca.

TITLE

[essential policy element]

EFFECTIVE DATE

[desireable]

OBJECTIVE

[essential; wording may vary]

INTRODUCTORY NOTE

THIS ANNOTATED VERSION OF AN EXAMPLE POLICY STATEMENT IS DESIGNED TO SET OUT THE KEY ELEMENTS OF A VIABLE CONFLICT OF INTEREST POLICY. OLDER POLICIES MAY REFER TO "PROHIBITING" CONFLICTS OF INTEREST, BUT NEWER POLICIES FOCUS MORE ACCURATELY ON MANAGING CONFLICT OF INTEREST SITUATIONS IN ORDER TO ENSURE THAT DECISION-MAKING IS NOT INFLUENCED BY CONFLICTING INTERESTS. THE PHRASE "CONFLICT OF INTEREST SITUATION" REFERS TO CIRCUMSTANCES WHERE THERE IS A POSSIBILITY OF A CONFLICT WHICH MUST BE FURTHER IDENTIFIED AND MANAGED.

THE EXAMPLE POLICY APPLIES TO A FICTIONAL CSO CALLED CANDEVORG, WHICH IS A MEMBER OF CCIC. HOWEVER, MEMBER ORGANIZATIONS ARE OBVIOUSLY ENCOURAGED TO DEVELOP THEIR OWN POLICIES, APPROPRIATE TO THEIR OWN CIRCUMSTANCES. THE EXAMPLE IS INTENDED TO SERVE AS INSPIRATION, NOT TO BE COPIED CLOSELY.

THE SIDEBAR INCLUDES OCCASIONAL ANNOTATIONS INCLUDING WHETHER EACH POLICY ELEMENT IS ESSENTIAL, DESIRABLE OR OPTIONAL.

TITLE:

CanDevOrg, Conflict of Interest Policy

EFFECTIVE DATE:

Adopted March 2008, for Board review in 2013

OBJECTIVE:

CanDevOrg must meet high ethical standards in order to merit the trust of its partners and clients, as well as donors, governments and the public. The integrity of CanDevOrg depends on ethical behaviour throughout the organization, and in particular, on fair, well-informed decision-making. The ability to make a decision is sometimes affected by other interests (personal or professional) of individuals in the organization. Such conflict of interest situations are a regular part of organizational and personal life and cannot simply be eliminated. The objective of this policy is to permit CanDevOrg to manage conflict of interest situations successfully and resolve them fairly.

SCOPE

[essential]

Some specific provisions in the policy apply to one group but not another. In fact, organizations may wish to have separate policies for members of the Board, staff and volunteers, to be embedded in the documentation for that group.

DEFINITION OF CONFLICT OF INTEREST

[essential]

SCOPE:

This policy applies to all members of the Board of Directors and all staff of CanDevOrg. It also applies to volunteers, but formal procedures should take into account their particular circumstances. Collectively, these three groups are called "affected persons" below. Partner organizations are encouraged to establish similar policies for themselves.

DEFINITION OF CONFLICT OF INTEREST:

A **conflict of interest** is a situation in which a person has a private or personal interest sufficient to appear to influence the objective exercise of his or her official duties at CanDevOrg.

"**Private or personal interest**" refers to an individual's self-interest (e.g. to achieve financial profit or avoid loss, or to gain another special advantage or avoid a disadvantage); the interests of the individual's immediate family or business partners; or the interests of another organization in which the individual holds a position (voluntary or paid).

"**Objective exercise of duties**" refers to an individual's ability to carry out her or his responsibilities in the best interest of CanDevOrg.

TYPES OF CONFLICT

A Board member, employee or volunteer of CanDevOrg may be in a conflict of interest situation that is:

1. **Actual or real**, where his official duties are or will be influenced by his private interests.
2. **Perceived or apparent**, where her official duties appear to be influenced by her private interests.
3. **Foreseeable or potential**, where his official duties may be influenced in the future by his private interests.

EXAMPLES OF CONFLICTS OF INTEREST

[Desirable policy element to give the abstract definitions some concrete content that is appropriate to the mandate and operations of the organization. However, examples may be included in guidance or training materials rather than in the policy itself.]

RESPONSIBILITIES

[essential]

The "Overall responsibility" can be included at the end of the Objective section.

EXAMPLES OF CONFLICTS OF INTEREST:

[See Appendix 1 for some categories of conflict situations, as well as Appendix 2 for some longer scenarios.]

RESPONSIBILITIES:

Overall Responsibility

Members of the CanDevOrg Board, staff and volunteers are responsible for managing conflict of interest situations in order to ensure that workplace behaviour and decision-making throughout CanDevOrg are not influenced by conflicting interests.

Responsibility for Prevention

CanDevOrg supports an organizational culture in which people freely take responsibility for both "self-declaring" possible conflicts of interest, and respectfully raising possible conflicts faced by others in the organization. This culture makes it possible to avoid many such situations from arising in the first place. Managers, staff, volunteers and Board members have the responsibility to implement practical preventive measures, such as:

- Providing education about what to do when gifts and hospitality are offered;
- Providing meeting agendas in advance to enable participants to foresee possible conflicts;
- Ensuring that people are clearly told when information must be protected from improper use;
- Declining involvement in an action (such as supporting a questionable outside activity).

RESPONSIBILITIES

This approach to responsibilities may be called the Modern Managed Approach.

A second way to deal with responsibilities, called the Traditional Code-of-Conduct Approach, is set out in Appendix 3.

CCIC members should choose one approach for their policy, not both. A very limited number of additional clauses from the Traditional approach may be advisable for some organizations, e.g. adding a small number of mission-critical formal responsibilities under the heading "Specific Responsibilities". But an organization's policy should not be overly lengthy.

Responsibility for Managing

Where prevention is not the solution, conflict of interest situations must be managed. Here are the steps to be taken by those involved in such situations, working together and supporting one another's ethical responsibilities.

1. **Declare it.** Ensure transparency by self-declaration, and by making sure that a record of the declaration is made.
2. **Discuss it.** In a doubtful situation, take a moment for a quick word with the chair of your meeting, or undertake a full dialogue with the group, if the situation warrants it.
3. **Deal with it.** Measures to mitigate or eliminate a conflict of interest will depend on what is appropriate to the severity of the situation. Options include:
 - a. **Restrict the involvement of the individual.** For example, withdraw from decision-making. This would not be appropriate if the conflict of interest arises frequently, or if the individual cannot be separated from parts of the activity.
 - b. **Recruit a third party to assist.** For example, ask a disinterested party to sit on a hiring board. There will be situations where no appropriate third party is available.
 - c. **Remove the individual from affected duties.** When restrict and recruit are not suitable options, the individual with the conflict may be removed from duties related to the conflict. The individual could transfer to other duties.
 - d. **Relinquish the private interest.** In cases of serious conflict, the individual may choose to drop the private interest, such as membership on the Board of another organization, which is causing the conflict.
 - e. **Resign from the official duties.** In serious cases where other solutions are not possible, the individual may have to resign from the position creating the conflict.

4. Document what has been done. Board minutes, correspondence to interested parties, or other documentation will provide a record of steps taken.

POLICY APPLICATION:

1. This policy must be explained to all new Board members, staff and volunteers. All such affected persons must agree in writing, at the outset of taking a position or volunteering with CanDevOrg, that they will abide by this policy..
2. At that time, Board members and staff must disclose possible conflict situations to the Executive Director (or Board Chair if appropriate) in confidence. Subsequent material changes must be disclosed when they first emerge. Volunteers must inform their coordinator of possible conflict situations.
3. The Executive Director (or Board Chair if appropriate) will indicate to each individual whether any further action is necessary to manage the possible conflicts of interest disclosed. Actions might include the following, depending on the severity of the conflict:
 - a. Declaring the conflict to all concerned before discussion or decision-making;
 - b. Withdrawing from final decision-making only;
 - c. Withdrawing from all aspects of discussion and decision-making.
4. The Executive Director (or Board Chair if appropriate) is also the final authority on resolving disputes, for example when an individual does not agree with the perception that he or she is facing a conflict of interest.

POLICY APPLICATION

[essential; some content may be set out under the optional section on Accountability]

Organizations may require employees to renew annually an agreement to abide by the policy.

See Appendix 4 for a short questionnaire that can be used to prepare for disclosure.

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5. The Executive Director (or Board Chair if appropriate) is the authority on dealing with real conflicts of interest which are discovered "after the fact". A variety of serious measures, such as cancelling a contract or hiring decision, may have to be considered, case by case, in such situations. CanDevOrg legal services will normally be involved in the final disposition.

For the purposes of this policy, the Board Chair is the appropriate authority in all matters relating to the affairs of the Board, and to any issues involving the Executive Director's own affairs. Any issues involving the Board Chair's own affairs will be dealt with by the Board Vice-Chair and the Board. The Executive Director is the authority in all other matters.

TRANSPARENCY:

The application of this policy involves two types of transparency:

1. **Confidential Disclosure:** Affected persons must provide information on possible conflicts of interest and related matters to the Executive Director (or Board Chair if appropriate). This information will be kept strictly confidential.
2. **Declaration to Concerned Parties:** If the Executive Director (or Board Chair if appropriate) deems that a particular element of information on a possible conflict of interest must be provided to a wider audience of concerned parties (such as the members of a committee or the Board, or the public at large), then a declaration of the conflict of interest situation will be made and recorded. The person involved should be consulted prior to the wider declaration.

GOOD JUDGMENT

The application of this policy relies heavily on the good judgment and common sense of those affected, following the ethical principles outlined in the CCIC Code of Ethics.

TRANSPARENCY

[optional]

GOOD JUDGMENT

[optional]

ACCOUNTABILITY

[optional element for greater clarity, particularly in larger organizations with more formal staff structures]

ACCOUNTABILITY

Every member of staff is responsible for his or her own conflict of interest situation:

1. Awareness of the policy,
2. Self-declaring potential problems to superior,
3. Respectfully identifying potential problems of other staff members,
4. Undertaking follow-up action determined by the Executive Director, and
5. Making disclosures when circumstances change significantly.

Volunteers are responsible for respecting this policy. They should take any questions in this regard to their coordinator. **Coordinators of volunteers** will apply the policy to them under the general direction of the Executive Director.

The **Executive Director** is responsible for the ongoing application of the policy and procedures to staff. The Executive Director will:

1. Provide a point of contact for advice about conflict of interest matters,
2. Determine the actions required as a result of confidential disclosures by staff,
3. Receive complaints about possible breaches of the policy,
4. Determine the actions required by breaches of the policy, and
5. Make annual reports on the overall situation of conflict of interest of staff and volunteers to the Board.

The Executive Director's own conflict of interest situation is the responsibility of the Board Chair.

The **Board Chair** is the key person to establish the ethical climate for CanDevOrg and its Board, and for ongoing attention to conflict of interest issues on the Board. The Chair is also responsible for the resolution of conflict of interest situations, and related disputes, among members of the Board.

The **Board Vice-Chair** will, together with the Board, deal with the Board Chair's own conflict of interest situation.

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The Board bears great responsibility for the good name of the organization and as such has a special responsibility for ethical matters. The Board is also ultimately responsible for policy, and should review of the conflict of interest policy every 5 years, or when the nature of the organization changes significantly.

The Canadian Council for International Co-operation (CCIC) is responsible for the Council's Code of Ethics as well as guidance documents, communications and training on conflict of interest. Its Ethics Review Committee can provide assistance on managing particularly troublesome conflict of interest issues.

APPENDIX 1: SOME CATEGORIES OF CONFLICT OF INTEREST SITUATIONS

- **Self-interested funding, contracting or hiring:** when an affected person uses a position in CanDevOrg to influence a decision to provide funding or contracts to another organization in which he or she has an interest, or to go outside normal hiring processes to give a job to a friend or family member.
- **Improper influence:** when an affected person solicits or accepts some form of benefit in return for influencing CanDevOrg activities or promoting someone else's interests in CanDevOrg.
- **Misuse of information or property:** when an affected person uses information or property to which the person has access at work, and to which others would not have access, for some personal benefit.
- **Inappropriate outside activity:** when an affected person's activities outside CanDevOrg are in conflict with the interests of CanDevOrg.
- **Accepting undue benefits,** such as significant gifts which place an affected person under obligation to the donor.

APPENDIX 2: SOME POSSIBLE SCENARIOS

The scenarios below illustrate the application of the policy, showing the kinds of judgments, values and measures involved. Further information is available from CCIC's Code of Ethics Guidance Document.

- **Gifts** – People in partner organizations and communities frequently offer gifts that it would be impolite to refuse. It is important to distinguish gifts and favours that represent goodwill and friendship from those that are designed to create an indebtedness on the part of the recipient. A conflict of interest may also arise when gifts are larger than a normal token in a given situation. Key ethical principles in resolving the situation are **integrity** (i.e. action in line with our policy and values), **transparency** (including honesty in discussing the issue), and **respect** (for the gift giver). A possible action would be to explain that policy will only allow the gift to be accepted on behalf of the organization. If there is an appearance of indebtedness, it may be necessary to respectfully decline the gift.
- **Coalition members involved in funding and decisions** – The terms of reference for a coalition should state clearly that the first duty of the coalition's Board members is to the coalition. When the coalition members provide funding and are active in decisions about programs, there is a possibility of conflicts arising between the interests of the coalition and the members' own organizations. Such conflict situations must be **declared** and discussed by the Board. Then, depending on the extent of the possible conflict, the Board will decide to what sort of **restrictions** should be placed on the concerned individual in discussions and decisions. The resolution of the issue should be **documented** in the minutes.
- **Awards committees** – Members of awards committees are in a similar situation to the coalition members described above, but the situation is even more serious because they are making decisions about the disbursement of funds. In addition to **declaring** conflicts, and **removing** themselves from the awards process as it relates to their home organization, members of such committees must remove themselves from the application process **in their home organization**. They may also have to **recruit** someone else to undertake some of the duties they cannot fulfil as a result.

APPENDIX 3

Organizations may wish to choose this approach instead of the Modern Managed Approach. Note that the text is a new, improved version of the traditional approach – it does not merely state a number of prohibitions, but sets out the formal responsibilities in the context of the specific core values that the organization should follow. Organizations using this approach should be careful to include only those specific responsibilities that relate to their mandate and operations.

APPENDIX 3: THE TRADITIONAL CODE-OF-CONDUCT APPROACH TO SETTING OUT RESPONSIBILITIES

Overall Responsibility

1. Members of the CanDevOrg Board, staff and volunteers must arrange their private affairs and carry out their official duties in a manner that will prevent actual, foreseeable and perceived conflicts of interest from affecting decision-making in the organization.
2. If a conflict does arise between private interests and CanDevOrg duties, the conflict should be resolved in favour of the CanDevOrg duties.
3. Members of the Board and staff should respectfully raise, with those concerned, possible conflicts they see facing others in the organization.

Specific Responsibilities

1. Affected persons should treat outside entities and persons with **fairness** and **respect**, and without granting improper preferential treatment to anyone.
2. Affected persons should strive for **honesty** and **transparency**, without taking advantage of information that is obtained in the course of their CanDevOrg duties and that is not generally available to the public.
3. Affected persons should strive with **loyalty** for the good of CanDevOrg, avoiding work for organizations with competing interests (except with permission from the Executive Director or Board Chair, as appropriate).
4. Affected persons may engage in outside employment and activities unless they are likely to give rise to a conflict of interest.
5. The acceptance of gifts, hospitality and other benefits arising out of CanDevOrg duties is permissible if they do not place the affected person or CanDevOrg under an obligation to the donor, are infrequent and of minimal value, and are within normal standards of courtesy.

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6. Members of the Board and staff must periodically evaluate and report whether their assets and liabilities could create an actual, foreseeable or perceived conflict of interest.
7. After leaving CanDevOrg, affected persons should avoid taking improper advantage of their former positions.
8. Board members serve without compensation, other than reimbursement of reasonable expenses, and are not eligible for employment or service contracts with CanDevOrg.
9. Board members must not be closely connected to the Executive Director, and should not be closely connected to each other except as the Board may permit. The test for "closely connected" is a reasonable person's perception of a connection that would be likely to influence decision-making. (Close connections range from immediate family members, to dependents, long-term room-mates, and major business partners. Step-siblings, former spouses, minor business associates, etc. fall into a grey zone which must be decided case-by-case.)

NUMBER 8

Note that rule # 8, or some variation of it, may be more appropriately placed in policies on Board practices and independence, or on contracting.

APPENDIX 4

These three questions can be used to prepare for an oral confidential disclosure at the time of hiring, and after that whenever there is a material change in the person's circumstances. Larger, more complex organizations can use these questions in a formal written form to be submitted annually by Board members and staff.

SOURCES

This example policy makes use of material from: Michael McDonald, *Ethics and Conflict of Interest*, 1999; Ken Kernaghan & John Langford, *The Responsible Public Servant*, 1990; and *Managing Conflicts of Interest in the Public Sector – Toolkit*, Independent Commission Against Corruption, Australia, & Crime and Misconduct Commission, Queensland, 2004.

APPENDIX 4: QUESTIONNAIRE FOR CONFIDENTIAL DISCLOSURE ON CONFLICT OF INTEREST

1. Current assets and liabilities. Assets that do not need to be disclosed include those for private use (for example, residences, household goods, collectibles, automobiles), as well as cash, bonds, open-ended mutual funds, guaranteed investment certificates, annuities, and pension rights and the like.

Assets that must be disclosed if there is any possibility that they might create a conflict of interest include publicly traded securities, partnership interests, business interests, real property that is not for personal use, and speculative commodities or futures. Liabilities must be disclosed if there is a possibility that they might create undue indebtedness to a person or organization having dealings with CanDevOrg. (Use additional paper if necessary.)

2. Ongoing outside employment and activities (voluntary or paid) that could create a conflict of interest.

3. Gifts that could influence the person's objectivity, or create an obligation to the gift-giver, but that were not immediately declined.
