

# SIMON FRASER UNIVERSITY ADMINISTRATIVE AND PROFESSIONAL STAFF ASSOCIATION

## Conflict of Interest Policy

The Directors and members of committees of Simon Fraser University Administrative and Professional Staff Association (“**SFU APSA**”) must not only behave lawfully and ethically in all matters related to their position but must also be perceived as behaving in accordance with the highest ethical standards for non-profit organizations. The following policy is designed to guide Directors and committee members to recognize and appropriately manage conflict of interest and divided loyalty situations.

### 1 Objectives

1.1 The objectives of this policy are:

- (a) to enhance public confidence in the integrity of SFU APSA, its governing body and its management;
- (b) to ensure that Directors comply with the requirements of the *Societies Act* and SFU APSA’s Bylaws;
- (c) to establish clear standards for Directors and committee members when a potential or actual conflict of interest arises; and
- (d) to provide guidelines for the conduct of Directors and committee members following the identification of a conflict of interest, to ensure that the conflict continues to be properly handled.

### 2 Interpretation

- 2.1 In the case of any ambiguity in the interpretation of this policy or a matter arising out of it, the Board will determine the matter and the Board’s determination is final.
- 2.2 In this policy, capitalized terms reflect the definitions set out in the Bylaws.
- 2.3 In this policy, and except as otherwise required by context, the terms “they”, “them” and “their” are used as gender neutral pronouns to refer to an individual regardless of gender.

### 3 Duties of Loyalty and Care

- 3.1 Directors owe a duty of loyalty and a duty of care to SFU APSA. Directors have these duties as fiduciaries of SFU APSA, both at common law and under the *Societies Act*. Members of committees of SFU APSA assume these duties when they agree to take on such position.
- 3.2 The duty of care requires Directors and committee members to carry out their duties and responsibilities in a professional manner, acting with all reasonable care, skill and diligence. The duty of loyalty requires Directors and committee members to act in the best interests of SFU APSA and avoid or appropriately manage conflicts of interest in accordance with this policy.
- 3.3 Directors and committee members must never use their position or influence within SFU APSA to obtain or secure a personal advantage or private gain, or for the undue benefit of friends, relatives or business associates.

## 4 Conflicts of Interest: Definition

4.1 A conflict of interest arises in any situation where a Director or committee member knows or reasonably ought to know that they have a direct or indirect material interest in:

- (a) a contract where SFU APSA is a party;
- (b) a transaction involving SFU APSA; or
- (c) a matter for consideration by the Board.

4.2 A **direct interest** is one where the Director or committee member's own financial or personal interests are involved.

4.3 An **indirect interest** is one where the financial or personal interests of a spouse, family member, close friend or business associate of the Director or committee member are involved, including a corporation or partnership in which the Director or committee members holds a significant interest, or a person to whom the Director or committee member owes an obligation (collectively, "**associates**"). At law, these parties may be considered "non-arms'-length" with the Director or committee member.

4.4 An interest is "**material**" if it is meaningful to the Director or committee member or associate, such that it could influence the Director or committee member's decisions or impair their ability to:

- (a) act in the best interests of SFU APSA; or
- (b) make decisions (or participate in decision-making) on behalf of SFU APSA fairly, impartially and without bias.

An interest is not material if it is insignificant in the circumstances and could not reasonably be considered capable of affecting a Director or committee member's decision-making.

4.5 Conflicts of interest can arise from financial interests or personal interests. A **financial interest** is any situation where the Director or committee member, or their associate, will or may receive a benefit or advantage that can be measured in terms of money.

4.6 In contrast, a **personal interest** includes any situation where the Director or committee member, or their associate, may receive a benefit or advantage that, while not measurable in terms of money, is nevertheless real and not insignificant.

4.7 Examples

- (a) A direct financial interest would exist where the Board is considering entering into a contract or transaction with a business of which a Director is owner and operator (or one of several owners).
- (b) An indirect financial interest would exist where the Board is considering entering into a contract or transaction with the spouse or family member of a Director or committee member.
- (c) A personal interest that could create a conflict will exist where the Board is considering applicants for a staff position at SFU APSA and one of those applicants is a family member of a Director or committee member.

- 4.8 Conflicts of interest may be actual or perceived. An **actual conflict of interest** is a situation in which a Director or committee member, or their associate, in fact receives, will receive or may receive a benefit, whether direct, indirect, financial or personal, from a contract or transaction with SFU APSA.

In contrast, a **perceived conflict of interest** is a situation where a reasonably well informed person could perceive that a Director or committee member, or their associate, is receiving, will receive or may receive a direct or indirect benefit.

## 5 Legal Requirements

- 5.1 The *Societies Act* sets out minimum standards for the management of conflicts of interest of Directors. These requirements are closely reflected in Bylaw 10.5 of SFU APSA's Bylaws, which provides as follows:

*"A Director who has a direct or indirect material interest in a contract or transaction (whether existing or proposed) with the Association, or a matter for consideration by the Directors:*

- (a) will be counted in the quorum at a meeting of the Board at which the contract, transaction or matter is considered;*
- (b) will disclose fully and promptly the nature and extent of his or her interest in the contract, transaction or matter;*
- (c) is not entitled to vote on the contract, transaction or matter;*
- (d) will absent him or herself from the meeting or portion thereof:
 
  - (1) at which the contract, transaction or matter is discussed, unless requested by the Board to remain to provide relevant information; and*
  - (2) in any case, during the vote on the contract, transaction or matter; and**
- (e) refrain from any action intended to influence the discussion or vote."*

- 5.2 Failure to comply with these statutory requirements may result in personal liability of the Director or Directors in question.

## 6 Duties on Appointment

- 6.1 On appointment as a Director or committee member of SFU APSA, individuals are expected to arrange their affairs and interests outside SFU APSA in a manner that will, to the greatest extent possible, prevent actual or perceived conflict of interest with one's duties and responsibilities to SFU APSA. This may include resigning from the boards or other organizations where it is likely that the divided loyalty or potential for frequent and ongoing conflict of interest will result in problems for either organization.

## 7 On-going Duties with Respect to Conflicts of Interest

- 7.1 Directors and committee members must, on a continuing and ongoing basis, consider whether any direct or indirect material interests, whether financial or personal, have arisen whereby they have, may have, or are likely to be perceived as having, a conflict of interest with their duties to SFU APSA.
- 7.2 If a Director or committee member is unsure or in doubt as to whether there is a conflict of interest, they should discuss the matter with the President to determine if there is a conflict of interest and what further steps need to be taken, if any. Where possible, the President with the assistance of the Executive Director, can assist the individual to clarify the situation and direct them to take appropriate steps, if any. Directors and committee members should be open and responsive to the

advice of the President/Executive Director. Where necessary, the President may refer the matter to the Board for detailed discussion and direction.

- 7.3 If a Director or committee member has either a financial or personal interest that may affect (or be perceived as affecting) their ability to act in the best interests of SFU APSA or if they, or some person or entity close to them may receive a direct or indirect benefit from a current or proposed contract or transaction with SFU APSA, that Director or committee member must:
- (a) fully and promptly disclose the conflict as set out below;
  - (b) provide such information as may be requested to allow SFU APSA to determine the most appropriate course of action, including the reasons why he or she considers there is or may be a conflict of interest; and
  - (c) unless expressly instructed by the President to the contrary, refrain from doing any of the following:
    - (i) attending at any part of a meeting during which the conflict matter is under consideration;
    - (ii) participating in any discussion of the conflict matter;
    - (iii) attempting in any way, whether before, during the matter is raised, to influence the discussion of the conflict matter or a decision related to the matter; or
    - (iv) if applicable, voting on a question in respect of the conflict matter.

- 7.4 Where a Director has reasonable and good faith concerns that another Director (or a committee member in relation to another member of the same committee) may have an actual, potential, or reasonably perceived conflict of interest in relation to a matter before the Board (or committee, as the case may be), the Director should raise the matter with the President, who will take any further steps they consider necessary. Directors and committee members should not raise another Director's (or committee member's) conflicts at a meeting unless a) there was no opportunity to raise this issue with the President prior to the meeting, and b) there is a conflict of interest that would be clear to a reasonable person in the situation, and where failure to comply with legal requirements could result in harm to SFU APSA or its board.

## **8 Disclosing a Conflict of Interest**

- 8.1 A Director or committee member must disclose the existence of a conflict of interest, whether actual, potential or apparent, as soon as it is known or reasonably ought to have been known. Wherever possible, this disclosure should happen before the relevant issue is raised for discussion or decision.
- 8.2 If a Director or committee member does not become aware of the conflict matter until after a contract, transaction or matter for discussion is raised, or even concluded, nevertheless they must still disclose the conflict immediately.
- 8.3 Where a Director or committee member becomes aware of an actual conflict of interest they must:
- (a) immediately disclose in writing provided to every other Director (as is required by the *Societies Act*) the nature and extent of the conflict of interest and all relevant circumstances; and
  - (b) provide such further information as may be requested by the President.

- 8.4 If a Director becomes aware of an actual conflict matter during a meeting, they should declare it verbally before all Directors present, which will be recorded with the minutes of the meeting, leave the meeting. A further written disclosure may be required at the board's recommendation. A Director or committee member should repeat their disclosure on any occasion or meeting where the conflict matter arises.
- 8.5 If a Director or committee member becomes aware of a potential or perceived conflict of interest, they should discuss it with the President in accordance with section 7.2 as soon as possible. If a Director or committee member becomes aware of a potential or perceived conflict of interest during a meeting, they should immediately excuse themselves from the meeting due to the potential conflict of interest for the remainder of that business and discuss it in detail with the President following the meeting to determine an appropriate course of action.
- 8.6 The written disclosure of a conflict of interest may be delivered by current mail or e-mail, and will include full disclosure of the nature and extent of the Director or committee member's outside interest and a description of how that interest does, will or may conflict or be perceived as conflicting with their duties to SFU APSA.

## **9 Actions following Disclosure**

- 9.1 Conflicts of interest can vary greatly in terms of impact on SFU APSA and potential to affect reputation, depending on a number of factors, including the nature and extent of the interest, the position and perceived influence of the person and the proximity of the person to the decision. Some conflicts of interest can be managed in a way which minimizes risk and exposure to liability; others cannot be effectively managed and should be avoided completely.
- 9.2 Following disclosure of a conflict of interest by a Director or committee member, and the departure of that individual, the Board will evaluate the situation and determine what steps (in addition to those in section 9.5) must be taken to manage or avoid the conflict of interest.
- 9.3 A Director or committee member who has disclosed a conflict of interest will comply with the decision of the Board in order to address, manage or avoid the conflict of interest.
- 9.4 In every case where the conflict of interest is determined to be manageable, the Director or committee member in conflict will be sequestered from the conflict matter as entirely as possible in the circumstances.
- 9.5 The following procedures will apply:
- (a) absenting themselves from all meetings or portions of meetings where the conflict matter will be discussed, considered or voted on;
  - (b) not being provided with materials relevant to the conflict matter, including materials they would normally receive as a Director (or committee members, as the case may be);
  - (c) not voting on any decision relevant to the conflict matter and absenting themselves from the meeting prior to the call for a vote; and
  - (d) not attempting to influence the discussion or vote on the conflict matter in any way whatsoever.
- 9.6 Notwithstanding paragraph 9.5(a), the Board (for a Director) or the committee (for a committee member) may, by unanimous consent or majority vote, request the Director in conflict to remain present in the meeting to provide relevant information to the matter under discussion. In such

circumstances, the individual in conflict will provide information impartially and not attempt to persuade the group. When the group has received sufficient information, it may ask the individual to step away from the meeting and outside the room where it is taking place, after which the group can continue to discuss the issue without the individual present for so long as necessary. The group may, in its discretion, adjourn the discussion to another meeting, if necessary.

- 9.7 Following the vote, or the conclusion of the discussion, the individual in conflict will be invited back into the meeting and will be briefly informed what, if any decision has been made or whether the discussion has been adjourned to a later time.

## **10 Duties in Response to Conflict**

- 10.1 At any meeting where a disclosure of a conflict of interest is made:

- (a) the person recording the minutes of the meeting must record the disclosure and a summary of the reasons given for it;
- (b) the chairperson of that meeting must ensure that the individual in conflict is not present at any part of the meeting during which the matter is under consideration; and
- (c) the person recording the minutes of the meeting will note in the minutes when the individual leaves the room and when they return.

## **11 Director Requirement to Resign**

- 11.1 If a Director has or acquires personal beliefs, interests or obligations to third parties which are considered by the Board to be fundamentally discordant with or detrimental to the work of SFU APSA or which have or are likely to result in repeated and on-going conflicts of interest, the board may, by Board Resolution, request a Director to resign from the Board and a Director who receives such request will submit a written resignation to the Board promptly.
- 11.2 If a Director desires employment by SFU APSA he or she must resign from the Board prior to applying for any position. Furthermore, pursuant to Bylaw 7.2 of SFU APSA's Bylaws, a Director may not become an committee member or contractor of SFU APSA for at least one year following the date the individual ceases to be a Director.

## **12 Accounting for Profits**

- 12.1 In accordance with the *Societies Act*, a Director may be required to account to SFU APSA for any profit made as a consequence of SFU APSA entering into a contract or transaction in which the Director derived a benefit unless:
- (a) the Director disclosed the conflict prior to the transaction in accordance with this policy; and
  - (b) the Director did not engage in any of the activities listed in paragraph 7.3(c) or Part 11 of this policy;
- or unless
- (a) the Director disclosed the conflict subsequent to the transaction;
  - (b) the transaction was reasonable and fair to SFU APSA at the time it was entered into; and

- (c) the transaction was approved by special resolution of SFU APSA's members in accordance with the *Societies Act*.

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