

# THE BRITISH COLUMBIA LIBRARY ASSOCIATION

## Conflict of Interest and Divided Loyalty Policy

The Directors, committees and employees of The British Columbia Library Association (“BCLA”) 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 employees 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 BCLA, its governing body and its management;
- (b) to ensure that Directors comply with the requirements of the *Societies Act* and BCLA’s Bylaws;
- (c) to establish clear standards for Directors and employees when a potential or actual conflict of interest arises; and
- (d) to provide guidelines for the conduct of Directors and employees 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.

### 3 Duties of Loyalty and Care

3.1 Both Directors and employees of BCLA owe a duty of loyalty and a duty of care to the organization. Directors have these duties as fiduciaries of BCLA, both at common law and under the *Societies Act*. The Executive Director is considered a “senior manager” under the *Societies Act* and has duties under that statute. Other employees have these duties as a result of employment law and, in many cases, under their contracts of employment.

3.2 The duty of care requires Directors and employees 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 employees to act in the best interests of BCLA and avoid or appropriately manage conflicts of interest in accordance with this policy.

3.3 Directors and employees must never use their position or influence within BCLA 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 employee has a direct or indirect material interest in:

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

4.2 A **direct interest** is one where the Director or employee'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 employee are involved, including a corporation or partnership in which the Director or employee holds a significant interest, or a person to whom the Director or employee owes an obligation (collectively, "**associates**"). At law, these parties may be considered "non-arms'-length" with the Director or employee.

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

- (a) act in the best interests of BCLA; or
- (b) make decisions (or participate in decision-making) on behalf of BCLA 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 employee'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 employee, 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 employee, 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 employee.
- (c) A personal interest that could create a conflict will exist where the Board is considering applicants for a staff position at BCLA and one of those applicants is a family member of a Director or employee.

4.8 Conflicts of interest may be actual or perceived. An **actual conflict of interest** is a situation in which a Director or employee, 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 BCLA.

In contrast, a **perceived conflict of interest** is a situation where a reasonably well informed person could perceive that a Director or employee, 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 mirrored in section 10.8 of the 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 Section, 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 himself 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) must 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 or Hire

6.1 On appointment as Director to BCLA, or upon hiring as an employee of BCLA, individuals are expected to arrange their affairs and interests outside BCLA in a manner that will, to the greatest extent possible, prevent actual or perceived conflict of interest with one’s duties and responsibilities to BCLA. 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.

6.2 Directors and employees will, on appointment or hiring, as the case may be, provide the Board with a written statement listing each other organization on which the individual serves as a Director, officer, committee chair or other position of decision-making authority.

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

7.1 Directors and employees must, on a continuing and on-going 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 BCLA.

7.2 If a Director or employee is unsure or in doubt as to whether there is a conflict of interest, they should discuss the matter with the President (in the case of a Director) or the Executive Director (in the case of an employee) to determine if there is a conflict of interest and what further steps need to be taken, if any. Where possible, the President (or Executive Director, as the case may be) can assist the individual to clarify the situation and direct them to take appropriate steps, if any. Directors and employees should be open and responsive to the advice of the President/Executive Director. Where necessary, the President or Executive Director may refer the matter to the Board for detailed discussion and direction.

- 7.3 If a Director or employee has either a financial or personal interest that may affect (or be perceived as affecting) their ability to act in the best interests of BCLA 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 BCLA, that Director or employee must:
- (a) fully and promptly disclose the conflict as set out below;
  - (b) provide such information as may be requested to allow BCLA 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 or the Executive Director (as the case may be) 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.

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

- 8.1 A Director or employee must disclose the existence of a conflict of interest, whether actual, potential or apparent, as soon as they become aware of it. Wherever possible, this disclosure should happen before the relevant issue is raised for discussion or decision.
- 8.2 If a Director or employee 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 In the case of an employee who becomes aware of an actual, potential or perceived conflict of interest they must:
- (a) immediately notify the Executive Director of the conflict, including details as to the nature and extent of the conflicting interest;
  - (b) provide such relevant circumstances as may be requested; and
  - (c) complete a formal written declaration as soon as possible.
- 8.4 In the case of a Director who becomes aware of an actual, potential or perceived 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.

If a Director becomes aware of a 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 and then complete and submit a formal written declaration as soon as possible thereafter.

- 8.5 A Director or employee should repeat their disclosure on any occasion or meeting where the conflict matter arises.
- 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 employee's outside interest and a description of how that interest does, will or may conflict or be perceived as conflicting with their duties to BCLA.

## **9 Actions following Disclosure**

- 9.1 Conflicts of interest can vary greatly in terms of impact on BCLA 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 employee, the Board, in the case of a Director, or the Executive Director in the case of an employee, will evaluate the situation and determine what steps (in addition to those in 9.5) must be taken to manage or avoid the conflict of interest.
- 9.3 A Director or employee who has disclosed a conflict of interest will comply with the decision of the Board or Executive Director, as the case may be, 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 employee in conflict will be sequestered from the conflict matter as entirely as possible in the circumstances.
- 9.5 For Directors 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;
  - (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 section 9.5(a), the Board 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 Director in conflict will provide information impartially and not attempt to persuade the Board. When the Board has received sufficient information, it may ask the Director to step away from the meeting and outside the room where it is taking place, after which the Board can continue to discuss the issue without the Director present for so long as

necessary. The Board may, in its discretion, adjourn the discussion to another meeting, if necessary.

- 9.7 Following the vote, or the conclusion of the discussion, the Director 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.
- 9.8 For employees, the Executive Director will determine what actions need to be taken to manage the conflict of interest, which may include removing an issue from the employee's control or input. The employee in conflict will comply with all directions of the Executive Director.

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

- 10.1 At any meeting of Directors 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 Director or employee is not present at any part of the meeting during which the matter is under consideration; and
    - (i) the person recording the minutes of the meeting will note in the minutes when the Directors 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 BCLA 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 BCLA he or she must resign from the Board prior to applying for any position.

## **12 Divided Loyalty: Definition and General Discussion**

- 12.1 A divided loyalty arises where an individual who owes of duty of loyalty to one organization (either as directors or as employees) has a competing or conflicting duty of loyalty to another organization.

Divided loyalty most often arises between two organizations that:

- (a) have overlapping or similar missions/mandates;
- (b) co-exist in the same sector; or
- (c) have dealings or a relationship with one another.

A divided loyalty can even arise where the two organizations are supportive or complementary of one another.

Where one or more of these factors exists, the individual may not be able to properly fulfill their duties to both organizations. There are several potential problems that can result from having Directors with divided loyalties.

First, it is extremely difficult for the Director to serve both organizations with equal devotion and diligence. To the extent that a Director favours one organization with greater time, attention or resources, he or she may be in breach of the fiduciary duty owed to the other organization.

Second, strong ties to one organization can affect (or, at the very least, be perceived as affecting) the director's ability to make decisions in the best interest of the other organization. This works both ways, so that the divided Director cannot be perceived as impartial or unbiased by either organization.

Third, it can be very confusing for third parties to know which role the individual is operating in at a given time. Is the individual speaking as board treasurer in organization A, or as committee chairperson in organization B? Members of the public may be familiar with the individual in one capacity and assume that they are in that role, even when the individual is acting on behalf of the other organization. This can lead to problems for both organizations if not carefully communicated.

Fourth, the divided Director will have great difficulty reconciling their duty to each organization with the requirement for confidentiality. The divided Director may have access to information that from one organization that is very relevant to the other organization. If they share that information without full approval, they have breached their duty of confidentiality to the first organization. However, if they withhold the information and harm comes, they may have breached their duty of loyalty to the second organization.

Lastly, in cases where the two organizations enter into a transaction or relationship, the divided loyalty can lead to an actual or perceived conflict of interest, because the duty owed to each organization is a kind of personal interest and the divided Director is on both sides of the transaction. This means that the divided Director must withdraw and abstain from participating in or influencing the decision on either side.

- 13.2 Neither the *Societies Act* nor the Bylaws deal directly with divided loyalties, except where they result in a direct conflict of interest. This policy is meant to provide guidance to address such situations.

### **13 On-going Duties With Respect to Divided Loyalties**

- 13.1 Each Director and employee must, on a continuing and on-going basis, consider whether they have any duties to or positions with other organizations that interfere, compete or conflict with the full and uncompromised performance of their duties to BCLA.
- 13.2 If a Director or employee is unsure or in doubt as to whether there is a divided loyalty, they should discuss the matter with the President (in the case of a Director) or the Executive Director (in the case of an employee).
- 13.3 If a Director or employee has divided loyalties, the issue should be presented to the Board (in the case of a Director) or the Executive Director (in the case of an employee) to determine what steps, if any, need to be taken to avoid problems associated with the divided loyalty. The Director or employee will have an opportunity to make submissions prior to a decision.

The Board or Executive Director (as the case may be) may determine what steps must be taken to resolve the divided loyalty issue, which steps may include (but are not limited to):

- (a) managing the issue like a conflict of interest;
- (b) sequestering the divided individual from discussing, influencing or participating in the decision-making regarding certain matters related to the divided loyalty; or

- (c) in the case of a Director only, and where circumstances are such that effectively managing the situation is not possible or where similar problems are likely to recur, requiring that the divided Director resign from one organization.

13.4 A Director or employee who has disclosed a divided loyalty will comply with the decision of the Board or Executive Director, as the case may be, in order to address, manage or avoid problems for BCLA.

#### **14 Accounting for Profits**

14.1 In accordance with the *Societies Act*, a Director may be required to account to BCLA for any profit made as a consequence of BCLA 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 BCLA at the time it was entered into; and
- (c) the transaction was approved by special resolution of BCLA's members in accordance with the *Societies Act*.

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