

POLICY

SECTION

BOARD - GENERAL

SUBJECT

**TBDSSAB BOARD MEMBERS
CONFLICT OF INTEREST POLICY****AUTHORITY**

TBDSSAB Resolution No. 12/66
 Governance & Procedural By-Law 03-2021 As Amended
Municipal Conflict of Interest Act, R.S.O. 1990 C.M50

INTENT OF POLICY

It is the duty of each Board Member to maintain the integrity of The District of Thunder Bay Social Services Administration Board (TBDSSAB or the Board), and the confidence of the community served by TBDSSAB, in particular the funding Ministries and the ratepayers. The Conflict of Interest Guidelines that follow are intended to assist each Board Member in ensuring that his or her integrity is beyond reproach. They are not intended to be a comprehensive code on the subject. They reflect rather than state in detail the applicable law. Reference to additional sources is recommended when required to address specific issues. These Guidelines do not replace the sound judgment expected from each Board Member.

DEFINITIONS

For the purpose of this policy, the following definitions will apply:

“Non-Pecuniary Interest” has the meaning given that expression in subsection 4, Non-Pecuniary Interests, below.

“Pecuniary Interest” has the meaning given that expression in subsection 3, Pecuniary Interests, below.

“Private or Personal Interests” includes both Non-Pecuniary Interest as well as Pecuniary Interest.

“Related Person” means a spouse, cohabiting partner, child, parent or sibling of a Board Member.

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POLICY

1. Conflict of Interest Defined

A conflict of issue arises when a Board Member’s Private or Personal Interests supersede or compete with his or her official duties and responsibilities as a Board Member. This could arise from Real, Potential or Apparent Conflict of Interest of a financial or other nature:

- i. A “Real Conflict of Interest” exists when a Board Member has a Private or Personal Interest that is sufficiently material and connected to his or her duties and responsibilities as a Board Member that it does, or in the judgment of reasonable people acting fairly is likely to, influence, or have influenced, the exercise of these duties and responsibilities.
- ii. A “Potential Conflict of Interest” exists, provided that a Board Member has not yet exercised a duty or responsibility in relation to it, when a Board Member has a Private or Personal Interest that could influence, or in the judgment of reasonable people acting fairly would be likely to influence, the performance of a Board Member’s duty or responsibility.
- iii. An “Apparent Conflict of Interest” exists when informed persons, acting prudently, might reasonably have a belief that a Board Member has a Real Conflict of Interest; however, upon full and complete disclosure of all the material information it becomes apparent that there is not real conflict in fact.

A Conflict of Interest as defined by the *Municipal Conflict of Interest Act*, R.S.O. 1990 C.M50 (the Act) is a conflict of interest for a Board Member of TBDSSAB, and may fit into any of the three categories defined.

In these Guidelines a reference to conflict of interest can mean a Real, Potential or Apparent Conflict of Interest, and includes but is not limited to a conflict of interest as defined under the Act. In addition, the methods for identifying, disclosing and resolving the conflict are not limited to those required under the Act.

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Conflicts of interest may also arise through the duties of Board Members established under common law or under the Not-for Profit Corporations Act, 2010, S.O 2020, c.15.

2. Why Conflicts are of Special Concern

It is important to note that the TBDSSAB is part of the broader public sector and therefore is subject to a greater level of public scrutiny than private organizations. This is not to say that private organizations do not aspire to and achieve high ethical standards. Rather, they tend to be less exposed to intense public scrutiny.

The public's perception of the TBDSSAB is important. Although the issue of Apparent Conflict will often be more problematic than the issue of Real or Potential Conflict, trust and confidence in the TBDSSAB can only be sustained if all forms of conflict of interest are identified, disclosed and resolved.

3. Pecuniary Interests

- a. A Board Member's Private or Personal Interest includes Pecuniary Interests. A Board Member's Pecuniary interests include but are not limited to situations in which a contract or other matter of a monetary nature before the Board Members affects:
 - i. a non-offering corporation in which a Board Member or Related Person(s) is a shareholder or paid Director or paid officer;
 - ii. an offering corporation in which a Board Member or Related Person(s) is a Director or officer or holds more than 10% of the issued shares of that offering corporation;
 - iii. a partnership or sole proprietorship in which a Board Member or Related Person(s) is a member;
 - iv. any body, in which the Board Member or a Related Person is a member, employee or associate; or
 - v. a Related Person.
- b. Generally, Pecuniary Interest leads to conflict of interest when a Board Member or Related Person is in a position to, either directly or indirectly, obtain personal financial benefit or avoid personal financial loss as result of:
 - i. a contract or other matter of monetary nature in which the TBDSSAB is involved or may become involved in; or

Governance Review Committee Review Date: 2012May24

IMPLEMENTATION / BOARD APPROVAL DATE:

June 21, 2012

REVISION DATE(S): 2012Nov23 (Hskpg – Policy#);
2013Feb21- Res 13/34; 2022Mar3-Hskpg-Act,By-law2023Nov7
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- ii. use of confidential/proprietary information, which information has been obtained as a result of being a Board Member.
- c. Pecuniary Interests may lack materiality. A Pecuniary Interest conflict should not be deemed to exist where:
 - i. a pecuniary interest is so remote or insignificant in nature that it cannot reasonably be regarded as likely to influence the Board Member; or
 - ii. the pecuniary interest is in common with electors generally, or electors of the appointing municipality, for purposes of the *Municipal Conflict of Interest Act*, or
 - iii. the pecuniary interest is in common with a broad group, of which the Board Member is a member, which broad group does not itself have a material conflict of interest.

4. Non-Pecuniary Interests

- a. A Board Member’s Private or Personal Interests include Non-Pecuniary Interests.

For example, a Board Member may have non-economic interests which supersede or compete with his or her duties and responsibilities as Board Member.

- b. Non-Pecuniary Interests may lack materiality.
- c. Each Board Member, except one, is, by statute, a municipal appointee. A municipal appointee Board Member should be deemed not to have a Non-Pecuniary conflict of interest when there are matters before the Board that are related to his or her municipality;
 - i. A predisposition is not in itself a conflicting Non-Pecuniary Interest.
- d. A prejudice may well be a Non-Pecuniary Interest that should be declared while a predisposition that, by its nature, does not arbitrarily preclude other points of view becoming the basis for a decision should be deemed not to be a conflict of interest.
- e. A Board Member who holds a position or belief on an issue that dismisses opposing views, as being without substance or merit merely because they

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are opposed, is not merely predisposed but is prejudiced.

- f. In general, voting by a Board Member on matters that have a Non-Pecuniary effect on a broad group where the Board Member or a Related Person is a member of the broad group is not considered a conflict of interest.
- g. A Non-Pecuniary Conflict would reasonably be deemed to exist, however, when considering the following:
- i. a decision directly affecting a specific program in which:
 - a Board Member or a Related Person may receive a direct benefit; or
 - a Board Member or a Related Person is employed.
 - ii. decisions related to labour negotiations:
 - where a Board Member or a Related Person is an employee of the TBDSSAB, including Administrative staff and including the Chief Executive Officer; or
 - where a Board Member or a Related Person holds a position at another organization and could be seen by reasonable people, acting fairly, to be likely to gain benefit from information divulged, or decisions made, on these matters.

STANDARDS OF APPLICATION

Declaration of Conflict

Board Members are expected to arrange their private affairs and conduct themselves in a manner, where practical, to avoid a conflict of interest. Where conflict cannot be avoided, however, the following guidelines on declaration of conflict should be followed.

- a. Administrative Steps to Elicit Declarations as to Conflicts of Interest
 - i. At the beginning of every meeting of the Board or a Committee of the Board, the Chair should ask and have recorded in the Minutes whether any Board Member has a conflict to declare and when the conflict was declared, whether it is a Real, Potential or Apparent Conflict of Interest or a Perceived Conflict of Interest in respect to any agenda item.
- b. Disclosure by a Board Member in a Conflict of Interest Situation
 - i. In cases where conflict cannot be avoided, a Board Member must not

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IMPLEMENTATION / BOARD APPROVAL DATE:

June 21, 2012

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wait for the request for disclosure at a meeting but instead must declare conflict of interest at the earliest opportunity and, at the same time, should declare the general nature of the conflict. Where conflict of interest is declared prior to a board or a committee meeting, the declaration should be made to the Chair of the Board, the Board, and the Chief Executive Officer, and in the situation of a Committee of the Board to the Chair of the Committee, the Members of the Committee, and the Chief Executive Officer.

- ii. Where a Board Member is unsure whether he or she is in conflict, that Board Member should raise the perceived conflict with the Chair and if the Chair concurs that there is a conflict the Member is invited to declare the conflict at the next meeting. If the Member disagrees with the recommendation of the Chair the matter will be referred to the Board. The Board must determine by majority vote whether or not a conflict of interest exists. The Board Member who is the subject of the conflict of interest discussion must refrain from voting on the issue of whether or not there is a conflict of interest. The vote should be by secret ballot and only the result announced and recorded in the Minutes.
- iii. This determination is however, only for internal purposes, and each Board Member must be aware that his or her conduct may be reviewed by a court under the procedures set out in the *Municipal Conflict of Interest Act*. Alternatively, in appropriate circumstances, conduct can be reviewed by a court applying the common law. The Board's determination may not affect the outcome of such a proceeding.
- c. Where a conflict of interest is discovered after consideration of a matter, it must be declared to the Board and appropriately recorded at the first opportunity. If the Board determines that involvement of said Board Member influenced the decision of the matter, the Board must re-examine the matter and may rescind, vary or confirm its decision.
- d. Assertion by a Board Member that another Board Member is in Conflict of Interest
 - i. Any Board Member who perceives another Board Member to be in conflict of interest in a matter under consideration must raise this concern with the Chair of the Board. The Chair, in turn, must discuss

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the matter with the Board Member who is thought to be in conflict and, as appropriate, hold further discussions with the Board Member who is questioning whether a conflict exists.

Where the Chair is unable to obtain a resolution, it is the Chair’s responsibility to obtain all of the facts and present them to the Board, as per d.(ii).

- ii. If the discussions do not lead to a resolution, the matter must be brought to the Board and the Board must determine by majority vote whether or not a conflict of interest exists.
- iii. In such a vote both the Board Member who is thought to be in conflict and the Board Member raising the question must refrain from voting on the issue of whether or not there is a conflict of interest.
- iv. Where the Chair is the Member perceived to be in conflict the above noted process will be handled by the Vice-Chair.

Board Operating Procedures Where Conflict Exists

- a. The Chair should ensure that the Minutes of the meeting record any declared conflict of interest and the reason on the part of a Board Member and if relevant, that the Board Member withdrew from the discussion and did not vote.
- b. Where a Board Member has declared or has been found to be in conflict of interest, the Board Member has several obligations.
 - i. In all cases, Open and Closed meetings, the affected Board Member must:
 - not attempt in any way whether before, during or after the meeting to influence the voting on the matter related to the conflict;
 - withdraw from a board meeting or a committee meeting while the matter is being discussed or voted upon; and
 - not vote on the matter related to the conflict.

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Protocol for Dealing with Ongoing Conflict of Interest

In the event that a Declaring Board Member discloses a conflict of interest that can be expected to be ongoing, over an indefinite period of time or an indefinite number of meetings (Ongoing Conflict), it is important that the Board as a whole, and Administration in particular, take on a more proactive role than they would if the declared conflict were in relation to a single piece of Board business. It is essential to understand in this regard that while a municipal council might, in its own proceedings, rely on the duties and outcomes set out in the *Municipal Conflict of Interest Act* alone, The District of Thunder Bay Social Services Administration Board is a statutory corporation with its own objects. The Board must ensure those objects are implemented in as impartial, consistent, and transparent a manner as possible.

In the situation where a Declaring Board Member has declared a conflict of interest it will be the responsibility of the Board:

- to determine whether the conflict of interest is, or is not, an Ongoing Conflict and when such ongoing conflict is no longer an issue; and
- to offer, when appropriate, guidance to the Declaring Board Member as to when he or she ought to consider withdrawing from discussion, voting and possibly attendance at a meeting of the Board, or of a Committee of the Board.

In the event that the conflict of interest has been determined by the Board to be an Ongoing Conflict Administration must take all reasonable precautions that the Declaring Board Member:

- not receive any confidential information related to the area of conflicted interest.

It is in the interests of the Declaring Board Member, and of the Board as a whole, not only that the Declaring Board Member actually have no influence over Board decisions related to the business in which the conflict has been declared, but also that, so much as is practicable, there be no room for anyone, acting reasonably, to perceive that the Declaring Board Member has influenced the Board’s decisions in the business in which the conflict has been declared.

The following protocol is designed to assist in this regard.

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OPEN MEETINGS

1. The Declaring Board Member will disclose his or her conflict at all open public meetings where the matter in which the Declaring Board Member is conflicted is to be discussed.
2. All declarations will be duly recorded in the Minutes.
3. The Declaring Board Member shall not serve as Chair during the portion of a meeting of the Board or a Committee of the Board that deals with business related to the matter in which the Declaring Board Member is conflicted.
4. If relevant, this shall be reflected in the Minutes.
5. The Declaring Board Member will not take part in discussion of, or vote on, any question in respect of the matter in which the Declaring Board Member is conflicted and must absent himself or herself from the meeting for the period of the indicated discussion and voting.
6. The Declaring Board Member will not attempt to influence the voting in any way, whether before, during or after the meeting.

CLOSED MEETINGS

1. The Declaring Board Member will not receive any closed meeting agenda information or documents, in either hard copy or electronic form, related in any way to the matter in which the Declaring Board Member is conflicted (Excluded Materials). The list of Excluded Materials will include, but not be limited to, the following:
 - staff reports,
 - consultant reports,
 - confidential communications among Board Members,
 - communications from other levels of government,
 - financial statements, reports or projections,
 - draft requests for expression of interest,
 - draft requests for proposals,
 - recommendations, analyses or reviews of any Expressions of Interest or Proposals received,
 - draft contracts,

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- correspondence, memoranda and notes.
2. This will require that Excluded Materials are removed from, or not included in, the Declaring Board Member’s materials packages, whether provided in physical or electronic form. There should be clear direction to the administrative persons who prepare and circulate the packages that they should feel free to consult with the Chief Executive Officer if in doubt.
 3. Care should be taken not to provide to the Declaring Board Member any handouts or updates circulated at the closed meeting if they relate to the matter in which the Declaring Board Member is conflicted.
 4. The Declaring Board Member will disclose his or her conflict at all closed meetings where the matter in which the Declaring Board Member is conflicted is to be discussed.
 5. All declarations will be duly recorded in the Minutes.
 6. The Declaring Board Member will leave the meeting during that portion dealing with the matter in which the Declaring Board Member is conflicted.
 7. This shall be reflected in the Minutes.
 8. The Declaring Board Member shall not serve as Chair during any portion of a meeting that is to consider any question related to the matter in which the Declaring Board Member is conflicted.
 9. If relevant, this shall be reflected in the Minutes.
 10. Not only leaving the meeting pursuant to item #6 above, the Declaring Board Member will also not take part in any other discussion with other Board Members or Administration on any question related to the matter in which the Declaring Board Member is conflicted.
 11. The Declaring Board Member will not attempt to influence the voting in any way, whether before, during or after a meeting of the Board or a Committee of the Board.
 12. The Declaring Board Member will not sign as signing authority, or witness, any contracts and/or agreements related to the matter in which the Declaring Board Member is conflicted.

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The Declaring Board Member may receive, outside of the context of meetings, copies of materials circulated to Members of the Board relating to the matter in which the Declaring Board Member is conflicted provided that those materials do not contain any confidential information and are available to the general public.

Any documents containing confidential information should not be shown, provided or circulated to the Declaring Board Member, unless that information has been redacted (by removal or black out).

If documents contain a mix of confidential information related to the matter in which the Declaring Board Member is conflicted and material related to issues upon which the Declaring Board Member has not declared a conflict, a redacted copy should be provided to the Declaring Board Member. If this is not practical, the Declaring Board Member should not be supplied with a copy of the document and will make his or her own decisions how best to become informed regarding the issues on which the Declaring Board Member does not have a conflict.

SPOKESPERSON OR REPRESENTATIVE OF TBDSSAB BOARD

The Declaring Board Member will exercise prudent restraint.

- The Declaring Board Member will not be the representative of the Board on any issues related to the matter in which the Declaring Board Member is conflicted unless and until the Board has either determined otherwise, or determined that the Ongoing Conflict is at an end.
- Inquiries related to the matter in which the Declaring Board Member is conflicted should not be directed to the Declaring Board Member but should be directed to an officer of the Board who does not have a conflict of interest in the matter.
- The Declaring Board Member will not attend any presentations, receptions, meetings or functions related to the matter in which the Declaring Board Member is conflicted unless authorized in advance by the Chair.

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RELATED POLICIES

Registry of Declarations of Pecuniary Interest

RELATED PROCEDURES

N/A

FORMS

Declaration of Pecuniary Interest

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