

By-law No. 2



Published: August 2022

A by-law made under the Legal Aid Services Act, 2020 relating generally to conflicts of interest of members of the board, officers, employees, volunteers and per diem counsel of:

LEGAL AID ONTARIO (the “Corporation”)

The Corporation’s *“By-law No. 2 Conflict of interest policy for directors of Legal Aid Ontario”*, which was passed by the board on August 3, 2000 and amended by the board on October 15, 2004, is repealed and replaced by this by-law.

BE IT ENACTED as a by-law as follows:

SECTION A: GENERAL

1. Definitions

In this by-law,

- a. “Act” means the Legal Aid Services Act, 2020 (Ontario) and, where the context requires, the regulations made under that Act;
- b. “applicable law” means all applicable (i) laws, constitutions, treaties, statutes, codes, ordinances, orders, decrees, rules, regulations and by-laws, including, for certainty, the OBCA Conflict of Interest Rules and the PSOA Conflict of Interest Rules; and (ii) judgments, orders, writs, injunctions, decisions, awards and directives of any governmental authority, and (iii) to the extent that they have the force of law, policies, guidelines, notices and protocols of any governmental authority;
- c. “board” means the board of directors of the Corporation;

- d. “CEO” means the chief executive officer of the Corporation;
- e. “director” means a director appointed to the board by the Lieutenant Governor in Council under subsection 24(1) of the Act;
- f. “ethics executive” means the individual designated under: (i) section 62 or 63 of the PSOA; or (ii) Subsection 5(c), as an ethics executive for an LAO representative;
- g. “Integrity Commissioner” has the meaning given to it in the PSOA;
- h. “LAO representatives” has the meaning given to it in Section 3;
- i. “members of the board” means the directors and the CEO and “member of the board” means any one of them;
- j. “OBCA” means the Business Corporations Act (Ontario) and, where the context requires, the regulations made under that Act;
- k. “OBCA Conflict of Interest Rules” means the conflict of interest provisions of the OBCA which apply to the Corporation’s directors and officers by virtue of the Act;
- l. “officer” means an officer of the Corporation;
- m. “per diems” means per diem duty counsel of the Corporation;
- n. “PSOA” means the Public Service of Ontario Act, 2006 (Ontario) and, where the context requires, the regulations made under that Act;
- o. “PSOA Conflict of Interest Rules” means the conflict of interest rules applicable to public servants as determined pursuant to the PSOA; and
- p. “this by-law” means this By-law No. 2 of the Corporation.

2. Appendices

The following Appendices are attached to this by-law:

Appendix	Content
A	Provisions of PSOA dealing with applicable ethics rules & Provisions of PSOA Regulation 146/10 establishing the Corporation as a public body
B	PSOA Conflict of Interest Rules
C	Provisions of the Act pertaining to Conflicts of Interest
D	OBCA Conflict of Interest Rules

SECTION B: APPLICATION

3. Application

Unless expressly stated otherwise, the provisions of this by-law apply to:

- a. members of the board;
- b. officers;
- c. the Corporation's employees;
- d. the Corporation's volunteers; and
- e. per diems,

(collectively, the "**LAO representatives**"), provided that the board may, subject to applicable law, from time to time, pass a resolution exempting any or all of the Corporation's volunteer(s) and/or per diems from any provision of this by-law.

SECTION C: REQUIRED COMPLIANCE & FAILURE TO COMPLY

4. PSOA and PSOA Conflict of Interest Rules

The relevant provisions of: (a) the PSOA; and (b) the PSOA Conflict of Interest Rules are attached as Appendix A and B, respectively.

5. Compliance with PSOA Conflict of Interest Rules and Ethics Executives

- a. Subject to Subsection 5(b), LAO representatives shall comply with the PSOA Conflict of Interest Rules. The foregoing requirement shall apply regardless of whether an LAO representative is captured within the scope of persons to which the PSOA Conflict of Interest Rules expressly, by their terms, apply.
- b. In applying the PSOA Conflict of Interest Rules to those LAO representatives who are not subject to those Rules by virtue of the PSOA, the PSOA Conflict of Interest Rules shall be subject to the necessary modifications (for example, modifications necessary to reflect the relationship of the Corporation's volunteers and per diems with the Corporation as not one of employment).
- c. Subject to the PSOA, the ethics executives for the purposes of the PSOA and the PSOA Conflict of Interest Rules are:

Ethics Executive	For
CEO	officers (but for the CEO and chair), employees, volunteers and per diems
chair	directors
Integrity Commissioner	CEO
Integrity Commissioner	chair

- d. The same duties that apply to the CEO as the ethics executive of officers (other than the CEO and chair) and the Corporation’s employees by virtue of the PSOA and the PSOA Conflict of Interest Rules shall be deemed to apply to the CEO as the ethics executive of the Corporation’s volunteers and per diems by virtue of this by-law.
- e. Any LAO representative who is a “public servant” (as such term is defined in the PSOA) shall comply with the requirements of the PSOA that are applicable to “former public servants” (as such term is defined in the PSOA) upon ceasing to be a director, officer or employee of the Corporation (as the case may be).

6. The Act & OBCA Conflict of Interest Rules

The relevant provisions of: (a) the Act; and (b) the OBCA Conflict of Interest Rules, are attached as Appendix C and Appendix D, respectively.

7. Compliance with the OBCA Conflict of Interest Rules

- a. The OBCA Conflict of Interest Rules shall apply to members of the board and the officers.
- b. The following provisions of the OBCA Conflict of Interest Rules apply, with the necessary modifications, to those LAO representatives who are employees, volunteers and per diems of the Corporation:
 - i. subsection 132(1), provided that the disclosure contemplated by that subsection shall only be required where the Corporation’s employee, volunteer or per diem, as the case may be, has knowledge that the Corporation is a party to the material contract or transaction or proposed material contract or transaction giving rise to the interest under that subsection;
 - ii. subsections 132(3) and (4); and
 - iii. subsection 132(5), as it relates to attendance at a meeting of the board.

For certainty, the foregoing requirement shall apply to the Corporation's employees, volunteers and per diems despite such individuals not falling within the scope of individuals to which the OBCA Conflict of Interest Rules expressly, by their terms, apply.

8. Non-Compliance

- a. Subject to Subsections 8(b) and (c), LAO representatives who fail to comply with this by-law or any provision of applicable law dealing with conflicts of interest, may be subject to:
 - i. disciplinary actions including termination of their appointment, employment or other service agreement; and
 - ii. any other remedies available to the Corporation.
- b. The provisions of Subsection 8(a) shall, at all times, be subject to:
 - i. applicable law; and
 - ii. any contracts to which the Corporation is a party.

SECTION D: RESPONSIBILITIES

In addition to the roles and responsibilities set out in this by-law or any applicable law as it relates to conflict of interest, the following individuals shall have the following responsibilities:

9. The Board

The board shall support new members of the board in becoming familiar with the requirements of this by-law, the OBCA Conflict of Interest Rules and PSOA Conflict of Interest Rules.

10. General Counsel Office

The Corporation's General Counsel Office is responsible for providing the following assistance as the same may be requested from time-to-time:

- a. assisting LAO representatives who are not members of the board in becoming familiar with the requirements of this by-law (including by providing a new copy of this By-law to such individuals in the event that an Appendix is amended from time to time), the PSOA Conflict of Interest Rules and the OBCA Conflict of Interest Rules, as applicable;
- b. assisting ethics executives who are also LAO representatives in fulfilling their duties under the PSOA Conflict of Interest Rules; and
- c. assisting in the interpretation and application of this by-law, the PSOA Conflict of Interest Rules and the OBCA Conflict of Interest Rules.

11. LAO Representatives

LAO representatives shall ensure that they remain familiar, and comply at all times, with the requirements of this by-law and all applicable requirements of the OBCA Conflict of Interest Rules and the PSOA Conflict of Interest Rules.

SECTION E: EFFECTIVE DATE

12. Effective Date

This by-law is effective as of October 18, 2021.

APPENDIX A

Public Service of Ontario Act, 2006

S.O. 2006, CHAPTER 35 SCHEDULE A

[...]

Interpretation

2 (1) In this Act,

[...]

“public body” means a body that is prescribed as a public body under clause 8 (1.1) (a);
“public service of Ontario” means,

- a. ministries, including ministers’ offices, and
- b. public bodies;

[...]

Public servant

(2) For the purposes of this Act, the following are public servants:

[...]

4. Every employee of a public body.
5. Every person appointed by the Lieutenant Governor in Council, the Lieutenant Governor or a minister to a public body. 2006, c. 35, Sched. A, s. 2 (2).

[...]

Regulations, Part I

8 (1) [...]

Same, Minister

(1.1) The minister responsible for the administration of this Act may make regulations,

- a. prescribing the bodies that are public bodies for the purposes of the definition of

“public body” in subsection 2 (1);

- b. prescribing as Commission public bodies, for the purposes of the definition of “Commission public body” in subsection 2 (1), public bodies,
 - i. for which the Public Service Commission may, under this or any other Act, appoint public servants under Part III, or
 - ii. in respect of which there is no statutory authority to employ employees. 2009, c. 33, Sched. 17, s. 10 (4).

Rules for public bodies

58 (1) Every public servant and every former public servant who works or, immediately before ceasing to be a public servant, worked in a public body shall comply with the conflict of interest rules that apply to him or her, determined as follows:

1. The conflict of interest rules that apply to the public servant or former public servant are the rules, if any, approved and published by the Integrity Commissioner under section 59 or 60 for the public body.
2. During the year beginning on the day on which this section comes into force, if no conflict of interest rules are approved and published by the Conflict of Interest Commissioner under section 59 or 60 for a Commission public body, the conflict of interest rules prescribed under clause 71 (1) (a) apply to the public servant or former public servant, with necessary modifications.
3. During the year beginning on the day on which this section comes into force, if no conflict of interest rules are approved and published by the Conflict of Interest Commissioner under section 59 or 60 for a public body that is not a Commission public body, the conflict of interest rules that apply to the public servant or former public servant are the rules that applied to him or her immediately before this section comes into force.
4. On and after August 21, 2008 and before the day section 2 of Schedule 35 to the *Restoring Trust, Transparency and Accountability Act, 2018* comes into force, if no conflict of interest rules are approved and published by the Conflict of Interest Commissioner for a public body, the conflict of interest rules prescribed under clause 71 (1) (a) of this Act apply to the public servant or former public servant, with necessary modifications.
5. On and after the day section 2 of Schedule 35 to the *Restoring Trust, Transparency and Accountability Act, 2018* comes into force, if no conflict of interest rules are approved and published by the Integrity Commissioner for a public body, the conflict of interest rules prescribed under clause 71 (1) (a) of this Act apply to the public servant or former public servant, with necessary modifications.

Public Service of Ontario Act, 2006

ONTARIO REGULATION 146/10

PUBLIC BODIES AND COMMISSION PUBLIC BODIES — DEFINITIONS

Public bodies

1. Each body that is listed in Column 1 of Table 1 is prescribed as a public body for the purposes of the Act.

[...]

Commission public bodies

2. A public body that is listed in Column 1 of Table 1 is prescribed as a Commission public body for the purposes of the Act if so indicated in the corresponding row in Column 2. O. Reg. 286/16, s. 1.

[...]

TABLE 1		
Item	Column 1 Public bodies	Column 2 Commission public body?
60.	Legal Aid Ontario	No

APPENDIX B

Public Service of Ontario Act, 2006

ONTARIO REGULATION 381/07

PART I RULES FOR PUBLIC SERVANTS WHO WORK IN A MINISTRY

INTERPRETATION

Definitions

In this Part,

“confidential information” means information that is not available to the public and that, if disclosed, could result in harm to the Crown or could give the person to whom it is disclosed an advantage;

“gift” includes a benefit of any kind;

“spouse” means,

- a. a spouse as defined in section 1 of the Family Law Act, or
- b. either of two persons who live together in a conjugal relationship outside marriage.
O. Reg. 381/07, s. 1.

Application

This Part applies to every public servant who works in a ministry. O. Reg. 381/07, s. 2.

PROHIBITED CONDUCT

Benefiting self, spouse or children

(1) A public servant shall not use or attempt to use his or her employment by the Crown to directly or indirectly benefit himself or herself or his or her spouse or children. O. Reg. 381/07, s. 3 (1).

(2) A public servant shall not allow the prospect of his or her future employment by a person or entity to detrimentally affect the performance of his or her duties to the Crown. O. Reg. 381/07, s. 3 (2).

Accepting gifts

(1) A public servant shall not accept a gift from any of the following persons or entities if a reasonable person might conclude that the gift could influence the public servant when performing his or her duties to the Crown:

1. A person, group or entity that has dealings with the Crown.
2. A person, group or entity to whom the public servant provides services in the course of his or her duties to the Crown.
3. A person, group or entity that seeks to do business with the Crown. O. Reg. 381/07, s. 4 (1).

(2) Subsection (1) shall not operate to prevent a public servant from accepting a gift of nominal value given as an expression of courtesy or hospitality if doing so is reasonable in the circumstances. O. Reg. 381/07, s. 4 (2).

(3) A public servant who receives a gift in the circumstances described in subsection (1) shall notify his or her ethics executive. O. Reg. 381/07, s. 4 (3).

Disclosing confidential information

(1) A public servant shall not disclose confidential information obtained during the course of his or her employment by the Crown to a person or entity unless the public servant is authorized to do so by law or by the Crown. O. Reg. 381/07, s. 5 (1).

(2) A public servant shall not use confidential information in a business or undertaking outside his or her work for the Crown. O. Reg. 381/07, s. 5 (2).

(3) A public servant shall not accept a gift directly or indirectly in exchange for disclosing confidential information. O. Reg. 381/07, s. 5 (3).

Giving preferential treatment

(1) When performing his or her duties to the Crown, a public servant shall not give preferential treatment to any person or entity, including a person or entity in which the public servant or a member of his or her family or a friend has an interest. O. Reg. 381/07, s. 6 (1).

(2) When performing his or her duties to the Crown, a public servant shall endeavour to avoid creating the appearance that preferential treatment is being given to a person or entity that could benefit from it. O. Reg. 381/07, s. 6 (2).

(3) A public servant shall not offer assistance to a person or entity in dealing with the Crown other than assistance given in the ordinary course of the public servant's employment. O. Reg. 381/07, s. 6 (3).

Hiring family members

(1) A public servant shall not, on behalf of the Crown, hire his or her spouse, child, parent or sibling. O. Reg. 381/07, s. 7 (1).

(2) A public servant shall not, on behalf of the Crown, enter into a contract with his or her spouse, child, parent or sibling or with a person or entity in which any of them has a substantial interest. O. Reg. 381/07, s. 7 (2).

(3) A public servant who hires a person on behalf of the Crown shall ensure that the person does not report to, or supervise the work of, the person's spouse, child, parent or sibling. O. Reg. 381/07, s. 7 (3).

(4) A public servant who reports to, or supervises the work of, his or her spouse, child, parent or sibling shall notify his or her ethics executive. O. Reg. 381/07, s. 7 (4).

Engaging in business, etc.

A public servant shall not become employed by or engage in a business or undertaking outside his or her employment by the Crown in any of the following circumstances:

1. If the public servant's private interests in connection with the employment or undertaking could conflict with his or her duties to the Crown.
2. If the employment or undertaking would interfere with the public servant's ability to perform his or her duties to the Crown.
3. If the employment is in a professional capacity and is likely to influence or detrimentally affect the public servant's ability to perform his or her duties to the Crown.
4. If the employment would constitute full-time employment for another person. However, this paragraph does not apply with respect to a public servant who is employed part-time by the Crown. This paragraph also does not apply with respect to a public servant who is on an authorized leave of absence from his or her position, but only if the employment is not contrary to or inconsistent with the terms of the leave of absence.
5. If, in connection with the employment or undertaking, any person would derive an advantage from the public servant's employment as a public servant.
6. If government premises, equipment or supplies are used in the employment or undertaking. O. Reg. 381/07, s. 8.

Participating in decision-making

(1) A public servant shall not participate in decision-making by the Crown with respect to a matter that the public servant is able to influence in the course of his or her duties if the public servant could benefit from the decision. O. Reg. 381/07, s. 9 (1).

(2) Subsection (1) does not apply if the public servant obtains the prior approval of his or her ethics executive to participate in decision-making by the Crown with respect to the matter. O. Reg. 381/07, s. 9 (2).

(3) A public servant who, in the course of his or her employment in a ministry, is a member of a body or group shall not participate in, or attempt to influence, decision-making by the body or group with respect to a matter if the public servant could benefit from the decision or if, as a result of the decision, the interests of the body or group could conflict with the interests of the Crown. O. Reg. 381/07, s. 9 (3).

(4) A public servant described in subsection (3) shall inform the body or group if the circumstances described in that subsection exist. O. Reg. 381/07, s. 9 (4).

MATTERS THAT MIGHT INVOLVE THE PRIVATE SECTOR

Interpretation

(1) Sections 11 and 12 apply to every public servant who works in a ministry, who routinely works on one or more matters that might involve the private sector and who has access to confidential information about the matter obtained during the course of his or her employment by the Crown. O. Reg. 381/07, s. 10 (1).

(2) In this section and in sections 11 and 12,

“matter that might involve the private sector” means a matter,

(a) that relates to services currently provided under a program of the Crown or by a public body, an agency of the Crown or a corporation controlled by the Crown with respect to which it is possible that a private sector entity will provide all or part of the financing for the services or will provide some or all of the services, and

(b) that has been referred to a ministry, a public body or an agency of the Crown by the Executive Council or a member of the Executive Council for review or implementation. O. Reg. 381/07, s. 10 (2).

Duty to declare certain financial interests

(1) When a public servant described in subsection 10 (1) begins work on a matter that might involve the private sector, he or she shall make a declaration to the Integrity Commissioner in which the public servant discloses the following matters respecting his or her financial interests:

1. A legal or beneficial interest of the public servant in securities or derivatives of corporations or governments, other than the Government of Ontario.
2. A legal or beneficial interest of the public servant in a business entity or a commercial

operation or in the assets of such an entity or operation.

3. A legal or beneficial interest of the public servant in real property.
4. A legal or beneficial interest of the public servant in a mutual fund that is operated as an investment club where,
 - i. its shares or units are held by not more than 50 persons and its indebtedness has never been offered to the public,
 - ii. it does not pay or give any remuneration for investment advice or in respect of trades in securities, except normal brokerage fees, and
 - iii. all of its members are required to make contributions in proportion to the shares or units each holds for the purpose of financing its operations. O. Reg. 381/07, s. 11 (1); O. Reg. 82/19, s. 1 (1).

(2) Despite subsection (1), the public servant is not required to disclose his or her legal or beneficial interest in any of the following:

1. A mutual fund within the meaning of subsection 1 (1) of the Securities Act other than a mutual fund described in paragraph 4 of subsection (1) of this section.
2. Fixed-value securities issued or guaranteed by a government or a government agency.
3. A guaranteed investment certificate or similar financial instrument issued by a financial institution entitled by law to issue such instruments.
4. A registered pension plan, an employee benefit plan, an annuity or life insurance policy or a deferred profit sharing plan.
5. Real property that the public servant, or a member of his or her family, uses primarily as a residence or for recreational purposes. O. Reg. 381/07, s. 11 (2); O. Reg. 82/19, s. 1 (2).

(3) The public servant shall disclose the information required by subsection (1), with necessary modifications, in respect of his or her spouse and dependent children, but only to the extent that the legal or beneficial interests of the spouse or a child could create a conflict of interest. O. Reg. 381/07, s. 11 (3).

(4) For the purpose of subsection (3), the public servant shall make reasonable efforts to obtain information about the financial interests described in subsection (1) of his or her spouse and dependent children. O. Reg. 381/07, s. 11 (4).

(5) The public servant shall give the Integrity Commissioner a revised declaration whenever there is a change in any of the information required to be disclosed. O. Reg. 381/07, s. 11 (5); O. Reg. 82/19, s. 1 (3).

Prohibition on certain purchases

(1) A public servant described in subsection 10 (1) shall not purchase, or cause another person to purchase on his or her behalf, a legal or beneficial interest in an entity that is carrying on, or proposes to carry on, an activity relating to a matter that might involve the private sector. O. Reg. 381/07, s. 12 (1).

(2) Despite subsection (1), a public servant may purchase an interest in a mutual fund (within the meaning of subsection 1 (1) of the Securities Act) that includes securities of a person or entity described in subsection (1) but not an interest in a mutual fund described in paragraph 4 of subsection 11 (1) of this Regulation that includes such securities. O. Reg. 381/07, s. 12 (2).

(3) The prohibition described in subsection (1) ceases to have effect with respect to the matter,

(a) six months after the date on which the action in respect of the matter is completed; or

(b) six months after the date the Crown ceases to work on the matter. O. Reg. 381/07, s. 12 (3).

List of positions

(1) The Public Service Commission shall maintain a current list of positions in which public servants work in a ministry and routinely work on one or more matters that might involve the private sector. O. Reg. 381/07, s. 13 (1).

(2) The Commission shall ensure that public servants employed by the Crown in the positions described in subsection (1) are advised of the duties and restrictions imposed upon them under sections 11 and 12. O. Reg. 381/07, s. 13 (2).

(3) Every ethics executive shall notify the Commission of changes to be made to the list with respect to those persons for whom he or she is the ethics executive. O. Reg. 381/07, s. 13 (3).

PART II RULES FOR FORMER PUBLIC SERVANTS WHO WORKED IN A MINISTRY

INTERPRETATION

Definition

In this Part,

“designated senior position” means any of the following positions:

1. The Secretary of the Cabinet.
2. Deputy minister, associate deputy minister or assistant deputy minister.
3. A position that is classified under subsection 33 (1) of the Act as SMG 2, XOFA 1, XOFA 2, ITX 2, ITX 3 or ITX 4. O. Reg. 381/07, s. 14.

Application

(1) This Part applies with respect to every former public servant who, immediately before he or she ceased to be a public servant, worked in a ministry. O. Reg. 381/07, s. 15 (1).

(2) Despite subsection (1), this Part does not apply to a person who ceases to be a public servant before the day on which section 57 of the Act comes into force. O. Reg. 381/07, s. 15 (2).

PROHIBITED CONDUCT

Seeking preferential treatment, etc.

A former public servant shall not seek preferential treatment by, or privileged access to, public servants who work in a minister's office, a ministry or a public body. O. Reg. 381/07, s. 16.

Disclosing confidential information

(1) A former public servant shall not disclose confidential information obtained during the course of his or her employment by the Crown to a person or entity unless the former public servant is authorized to do so by law or by the Crown. O. Reg. 381/07, s. 17 (1).

(2) A former public servant shall not use confidential information in a business or undertaking. O. Reg. 381/07, s. 17 (2).

Restriction on lobbying

(1) This section applies to a former public servant who, immediately before ceasing to be a public servant, was employed in a designated senior position. O. Reg. 381/07, s. 18 (1).

(2) For 12 months after ceasing to be a public servant, the former public servant shall not lobby any of the following persons on behalf of a public body or another person or entity:

1. A public servant who works in a ministry or public body in which the former public servant worked at any time during the 12 months before he or she ceased to be a public servant.
2. The minister of any ministry in which the former public servant worked at any time during

the 12 months before he or she ceased to be a public servant.

3. A public servant who works in the office of a minister described in paragraph 2. O. Reg. 381/07, s. 18 (2).

Restriction on employment, etc.

(1) This section applies to a former public servant who, immediately before ceasing to be a public servant, was employed in a designated senior position and who, at any time during the 12 months before he or she ceased to be employed as a public servant, in the course of his or her employment as a public servant,

(a) had substantial involvement with a public body or another person or entity; and

(b) had access to confidential information that, if it were to be disclosed to the public body, person or entity, could result in harm to the Crown or could give the public body, person or entity an unfair advantage in relation to one or more third parties. O. Reg. 381/07, s. 19 (1).

(2) For 12 months after ceasing to be a public servant, the former public servant shall not accept employment with the public body, person or entity or serve as a member of the board of directors or other governing body of the public body, person or entity. O. Reg. 381/07, s. 19 (2).

Restriction re certain transactions

(1) This section applies to a former public servant who, when he or she was a public servant working in a ministry, advised the Crown about a particular proceeding, negotiation or other transaction. O. Reg. 381/07, s. 20 (1).

(2) The former public servant shall not advise or otherwise assist any public body or any other person or entity in connection with the particular proceeding, negotiation or other transaction until the Crown ceases to be involved in it. O. Reg. 381/07, s. 20 (2).

(3) Despite subsection (2), the former public servant may continue to advise or otherwise assist the Crown in connection with the particular proceeding, negotiation or other transaction. O. Reg. 381/07, s. 20 (3).

OMITTED (PROVIDES FOR COMING INTO FORCE OF PROVISIONS OF THIS REGULATION). O. Reg. 381/07, s. 21.

APPENDIX C

Legal Aid Services Act, 2020

S.O. 2020, CHAPTER 11

[...]

20

Conflict of interest and indemnification

(2) Sections 132 [...] of the *Business Corporations Act* apply with necessary modifications to the Corporation, the members of its board and its officers.

APPENDIX D

Business Corporations Act

R.S.O. 1990, CHAPTER B.16

[...]

Disclosure: conflict of interest

132 (1) A director or officer of a corporation who,

- a. is a party to a material contract or transaction or proposed material contract or transaction with the corporation; or
- b. is a director or an officer of, or has a material interest in, any person who is a party to a material contract or transaction or proposed material contract or transaction with the corporation,

shall disclose in writing to the corporation or request to have entered in the minutes of meetings of directors the nature and extent of his or her interest. R.S.O. 1990, c. B.16, s. 132 (1).

by director

(2) The disclosure required by subsection (1) shall be made, in the case of a director,

- a. at the meeting at which a proposed contract or transaction is first considered;
- b. if the director was not then interested in a proposed contract or transaction, at the first meeting after he or she becomes so interested;
- c. if the director becomes interested after a contract is made or a transaction is entered into, at the first meeting after he or she becomes so interested; or
- d. if a person who is interested in a contract or transaction later becomes a director, at the first meeting after he or she becomes a director. R.S.O. 1990, c. B.16, s. 132 (2).

by officer

(3) The disclosure required by subsection (1) shall be made, in the case of an officer who is not a director,

- a. forthwith after the officer becomes aware that the contract or transaction or proposed contract or transaction is to be considered or has been considered at a meeting of directors;
- b. if the officer becomes interested after a contract is made or a transaction is entered into, forthwith after he or she becomes so interested; or

- c. if a person who is interested in a contract or transaction later becomes an officer, forthwith after he or she becomes an officer. R.S.O. 1990, c. B.16, s. 132 (3).

Where contract or transaction does not require approval

(4) Despite subsections (2) and (3), where subsection (1) applies to a director or officer in respect of a material contract or transaction or proposed material contract or transaction that, in the ordinary course of the corporation's business, would not require approval by the directors or shareholders, the director or officer shall disclose in writing to the corporation or request to have entered in the minutes of meetings of directors the nature and extent of his or her interest forthwith after the director or officer becomes aware of the contract or transaction or proposed contract or transaction. R.S.O. 1990, c. B.16, s. 132 (4).

Director not to vote

(5) A director referred to in subsection (1) shall not attend any part of a meeting of directors during which the contract or transaction is discussed and shall not vote on any resolution to approve the contract or transaction unless the contract or transaction is,

- a. one relating primarily to his or her remuneration as a director of the corporation or an affiliate;
- b. one for indemnity or insurance under section 136; or
- c. one with an affiliate. 2006, c. 34, Sched. B, s. 23 (1).

Remaining directors deemed quorum

(5.1) If no quorum exists for the purpose of voting on a resolution to approve a contract or transaction only because a director is not permitted to be present at the meeting by reason of subsection (5), the remaining directors shall be deemed to constitute a quorum for the purposes of voting on the resolution. 2006, c. 34, Sched. B, s. 23 (2).

Shareholder approval

(5.2) Where all of the directors are required to make disclosure under subsection (1), the contract or transaction may be approved only by the shareholders. 2006, c. 34, Sched. B, s. 23 (2).

Continuing disclosure

(6) For the purposes of this section, a general notice to the directors by a director or officer disclosing that he or she is a director or officer of or has a material interest in a person, or that there has been a material change in the director's or officer's interest in the person, and is to be regarded as interested in any contract made or any transaction entered into

with that person, is sufficient disclosure of interest in relation to any such contract or transaction. 2006, c. 34, Sched. B, s. 23 (3).

Effect of disclosure

(7) Where a material contract is made or a material transaction is entered into between a corporation and a director or officer of the corporation, or between a corporation and another person of which a director or officer of the corporation is a director or officer or in which he or she has a material interest,

- a. the director or officer is not accountable to the corporation or its shareholders for any profit or gain realized from the contract or transaction; and
- b. the contract or transaction is neither void nor voidable,

by reason only of that relationship or by reason only that the director is present at or is counted to determine the presence of a quorum at the meeting of directors that authorized the contract or transaction, if the director or officer disclosed his or her interest in accordance with subsection (2), (3), (4) or (6), as the case may be, and the contract or transaction was reasonable and fair to the corporation at the time it was so approved. R.S.O. 1990, c. B.16, s. 132 (7).

Confirmation by shareholders

(8) Despite anything in this section, a director or officer, acting honestly and in good faith, is not accountable to the corporation or to its shareholders for any profit or gain realized from any such contract or transaction by reason only of his or her holding the office of director or officer, and the contract or transaction, if it was reasonable and fair to the corporation at the time it was approved, is not by reason only of the director's or officer's interest therein void or voidable, where,

- a. the contract or transaction is confirmed or approved by special resolution at a meeting of the shareholders duly called for that purpose; and
- b. the nature and extent of the director's or officer's interest in the contract or transaction are disclosed in reasonable detail in the notice calling the meeting or in the information circular required by section 112. R.S.O. 1990, c. B.16, s. 132 (8).

Court setting aside contract

(9) Subject to subsections (7) and (8), where a director or officer of a corporation fails to disclose his or her interest in a material contract or transaction in accordance with this section or otherwise fails to comply with this section, the corporation or a shareholder of the corporation, or, in the case of an offering corporation, the Commission may apply to the court for an order setting aside the contract or transaction and directing that the director or officer account to the corporation for any profit or gain realized and upon such application

the court may so order or make such other order as it thinks fit. R.S.O. 1990, c. B.16, s. 132 (9).