



## **Conflict of Interest Guidelines**

### **Background & Purpose**

Directors and Officers of Action Sandy Hill (“ASH”) have a fiduciary duty toward the organization. This means that they must put the best interests of the organization ahead of their own. There are several aspects to the fiduciary duty, including the obligation to act honestly and in good faith, to protect the organization’s confidential information, and to avoid conflicts of interest.

These Guidelines are designed to help ASH’s Directors, Officers, and members understand, avoid, and identify conflicts of interest. These Guidelines should be read together with the ASH By-Laws, the Conflict of Interest Policy, and applicable questionnaires.

### **I. What is a Conflict of Interest?**

A conflict of interest arises when a Director or Officer’s outside interests result in him or her having divided loyalties, meaning that a reasonable person might have doubts about whether the Director or Officer is indeed acting in the best interests of ASH.

It is important to note that a Director or Officer’s intentions are irrelevant to determining whether they have a conflict of interest. The test is whether their interest conflicts, not whether they set out to profit at the organization’s expense. Likewise, a Director or Officer’s conflict of interest does not have to harm the organization for it to be inadmissible.

### **II. Why is it Important to Avoid Conflicts of Interest?**

The reason why conflicts of interest are problematic is that they undermine members’ faith in the good governance of the organization. In electing Directors, ASH’s members delegate responsibility for the management of the organization to individuals who they believe can be trusted.

If a Director or Officer uses his or her position to further personal interests, rather than those of the organization, then this trust is undermined. But even the perception that a Director or Officer is motivated by outside interests can negatively affect the organization’s reputation.

This is why the test for a conflict of interest is very strict; even outside interests that are indirect in nature – i.e. those of a spouse or relative – have been found to be problematic.

### III. How Does One Deal with Conflicts of Interest?

Having a conflict of interest does not mean that a Director or Officer has done something wrong or unethical. It is not at all unusual for a conflict of interest to arise from time to time. A Director should not be judged because he or she has a conflict of interest. However, once aware of the conflict, he or she must address it immediately.

#### A. Obligation to Disclose and Abstain

The law (The *Not-for-Profit Corporations Act*, 2010, SO 2010, c 15) is very strict with respect to conflicts of interest. As soon as a Director or Officer has a personal interest in a matter before the board or one of its committees, he or she is deemed to have a conflict of interest. Since it is impossible to get inside a person's mind and know what their motivations are, the mere existence of a conflict of interest is sufficient to trigger this obligation to disclose and abstain.

This means that the Director or Officer must disclose the nature and extent of his or her outside interest, and must not take part in the discussion or decision. This disclosure should happen before the matter is actually discussed. The Director or Officer in question should leave the room for the duration of the discussion, and not participate in the decision, i.e. not vote. The Director or Officer should also ensure that his or her disclosure and abstention are recorded in the minutes.

#### B. Identifying a Conflict of Interest

In order to determine whether you have a conflict of interest, **ask yourself whether a reasonable person, after learning about your outside interest, could have doubts about your loyalties** with respect to certain issues that come before the organization. In other words, could a reasonable person think that your participation in a discussion or decision on behalf of ASH is influenced by your outside interest?

Remember that your intentions, whether you profited, or whether the organization was harmed are all irrelevant. Once a Director or Officer has a conflict of interest, the duty to disclose and abstain is triggered regardless of the extent of the conflict. There is no such thing as a trivial or benign conflict of interest. Finally, your belief that you can set aside your outside interest for the purposes of the decision is also irrelevant.

## **CASE STUDIES**

The case studies provided below are designed to help ASH's Directors, Officers, and members interpret and apply the Conflict of Interest Policy. They are not meant as a definitive policy statement, but rather as an illustration of the types of situations that may or may not be problematic. These examples do not in any way prevent the Board from reaching a different conclusion on the facts of any particular case.

### **Example #1 – The University Employee**

#### Facts:

Bill works as a senior administrator at the University of Ottawa and is a long-time resident of Sandy Hill. Last May, he was elected to the ASH Board of Directors. At the AGM, Bill told the membership that he “works at the University”, but did not disclose the nature of his job. In July, the President of the University appointed Bill to the Special Committee on Student Housing, which was tasked with increasing residence spaces both on and off campus. Bill knows that many ASH members are opposed to the University building residences outside its traditional campus. At the next ASH Board meeting, an item called “New Student Residences” appears on the agenda. Is this a conflict of interest? What are Bill's obligations?

#### Analysis:

The fact that Bill works for the University of Ottawa is not in itself a conflict of interest. Although ASH and the University may have different interests, the mere fact that he is a University employee is not sufficient to create a conflict of interest. Therefore, at the time he stood for election to the ASH Board, there was no reason for him to disclose any more than he did; there was no issue before the organization that may give rise to a conflict.

However circumstances changed in July when Bill was appointed to the Special Committee. From this point on there was a potential that Bill's duty to his employer may conflict with his duty to ASH. This is because he knows that many ASH members are opposed to building student residences outside the traditional campus. As a result, if the membership found out about his new role at the University, legitimate questions could be raised about whose interests Bill is serving on the Board.

Bill should not wait until the matter comes up at the meeting to disclose the nature of his interest; he should do so proactively to prevent any damage to the organization's reputation by sending a letter to the Chairperson. When the item comes up for discussion at the meeting, Bill should make a statement disclosing the fact that he has been nominated to the Special Committee, which has been tasked with developing residence space both on and off campus. He should then leave the room and abstain from any vote on the matter.

This situation does not disqualify Bill from serving on the ASH Board. He may be able to participate in discussions and decisions that do not pose a potential conflict with his work on the Special Committee.

## **Example #2 – The Part-Time Landlord**

### Facts:

Jacques owns a large house on Besserer Street and is Vice-President of ASH. Jacques decides to renovate his basement to create an apartment that he plans to rent to students. He expects to earn \$1,000 per month from this venture. During the summers, Jacques rents his place to tourists on Airbnb and, as he has the only rental on the block, his place is booked year-round.

a) After Jacques completes the renovations, he continues to participate in Board discussions about planning. Is this a conflict of interest?

b) Raymond, Jacques' next-door neighbour, decides that he wants to convert his family home into a four-unit rental building, which he plans on renting to students and tourists. The City has asked ASH to comment on whether it supports this conversion. What are Jacques' obligations?

### Analysis:

Jacques has a relatively small financial stake in his basement rental unit. As a result, it is unreasonable to think that this interest would interfere with his obligations to ASH, particularly in general discussions surrounding conversions and zoning. Therefore, Jacques has no obligation to disclose and recuse himself from most matters involving planning.

However, the situation with respect to Raymond's conversion is more complicated. ASH members expect that such proposals will be evaluated on the basis of whether they are in the best interests of the community. Raymond's conversion would amount to new competition for Jacques and thus there is a risk that he would oppose it to further his own financial interests. Raymond's four new units on the same block would make Jacques more susceptible to vacancies in the summertime. Although Jacques' financial stake is still quite small, the fact that Raymond's project is right next-door and threatens to eliminate Jacques' monopoly may raise doubts about whether his loyalties are divided.

This is a borderline case. Out of an abundance of caution, Jacques should disclose the fact that he has a basement rental unit that he rents for \$1,000 per month that is right next-door, and then recuse himself from the discussion and abstain from the vote. This example is meant to illustrate how a seemingly small outside interest can become more significant depending on the issue before the Board and the particular facts of the case.

Usually part-time landlords in Sandy Hill – residents whose primary source of income is not rental income – will not be precluded from participating in discussions and decisions about planning issues. However, part-time landlords need to be vigilant about the issues before the Board and think about whether their outside interest could create a reasonable perception of a conflict of interest.

### **Example #3 – From pro development to profiting from development**

#### Facts:

Marjorie and her husband have lived in Sandy Hill for thirty years. After she retired, Marjorie joined the ASH Board. Now that her children have all moved out, Marjorie and her husband want to cash in on all the development that's going on in the community. They've always dreamed of selling their home and moving to Aruba, where it's warm and sunny all year.

a) Marjorie is very supportive of most development proposals that come before the ASH Board. Marjorie believes that these projects will increase the value of her home, which means she'll make more money when she finally decides to sell. Does Marjorie have a conflict of interest?

b) Big Time Development, Inc. is proposing to build a large apartment building on Marjorie's street. In order to complete the project, Big Time has offered to buy Marjorie's house for twice its fair market value. Big Time has applied to the City for a zoning variance and it is up for discussion at the next meeting of the ASH Planning Committee, of which Marjorie is a regular participant. What are Marjorie's obligations with respect to this proposal?

#### Analysis:

The fact that Marjorie favours development in general because it will increase the value of her home is not a conflict of interest. In taking this position, she is reflecting a legitimate point of view, which would likely be shared by many residents of Sandy Hill. As a Community Association, ASH cannot expect its Directors and Officers to completely disregard the personal financial interests that are inherent in being an ordinary resident of Sandy Hill.

To understand why Marjorie's support for development is not a problem, it may be helpful to distinguish between interests and motivations. Marjorie's *motivation* for supporting development in general is that it will increase the value of her home. But her *interest* is still that of an ordinary resident of Sandy Hill. We must take for granted that all residents of Sandy Hill have baseline financial motivations, be it the value of their homes or how much they pay in rent. These kinds of motivations will usually not give rise to a conflict of interest.

However, once Big Time offered to buy Marjorie's home she acquired an outside interest that conflicts with those of ASH. Specifically, the ASH Planning Committee will be discussing the very project from which she stands to gain financially. As a potential party to this transaction, she is no longer expressing the ordinary motivations of a resident of Sandy Hill. Even though her position and motivation is the same, she has now acquired an outside financial interest, namely Big Time's offer to buy her home.

In this case, Marjorie should disclose the fact that Big Time has offered to buy her home, recuse herself from the discussion, and abstain from the vote on the variance when it reaches the Board. If Big Time's offer is confidential, then Marjorie must disclose as much as she can about the nature and extent of the transaction and take no part in the discussion and vote.

#### **Example #4 – The Professional Developer**

##### Facts:

Sandra is the President of Big Time Development and a resident of Sandy Hill. Sandra prides herself on investing in projects that are socially and environmentally sustainable. She also admires the heritage of Sandy Hill and wants to try to preserve it. When she moved to the neighbourhood, Sandra joined the Board of ASH in order to help rejuvenate her community.

Within a year, she had developed a plan and secured financing to purchase and transform the stretch of Friel St. between Daly Ave. and Besserer St. into luxury low-rise condos and townhomes geared towards executives and families. The plan called for the purchase of several apartment buildings, heritage buildings, as well as single-family homes. In total, Big Time would invest \$30 million in the project, which would take two years to complete.

While Sandra was working on the project, she participated actively in the Planning Committee, as well as Board level decisions relating to small conversions and large condo projects. But Sandra could not reveal the nature of her project because her competition might learn about it and buy up the property she needed.

Once she had secured all the property she needed, Sandra presented her proposal to the ASH Board. She indicated that she required a variance to certain parking requirements, and that the project would be disruptive to residents on surrounding streets. However, she urged ASH to support her proposal. "This is exactly the kind of urban development that we've been waiting for. I hope that I can count on your help to make it a reality," she said at the Board meeting

When should Sandra have disclosed her project to ASH? If she has a conflict of interest, at what point did it arise?

##### Analysis:

The general rule is that a Director should disclose his or her conflicting interest at the first meeting after the interest is acquired. If Sandra were extra careful, she would have informed the Board that she intended to invest in Sandy Hill even before the plan and financing were in place.

However, once these milestones were reached, she had acquired a substantial outside interest in planning issues in Sandy Hill. A project of this magnitude could potentially be

derailed by broader policy decisions relating to planning, zoning, heritage designation, etc. Furthermore, the approval of other projects in the neighbourhood could impact the success of Sandra's venture. If ASH's members knew that Sandra was planning a project of this scale when she was participating in discussions about such issues, they could legitimately have perceived that she was in a conflict of interest.

Therefore, Sandra waited too long to disclose the nature and extent of her project. The fact that she did not do so for competitive business reasons is evidence in itself of a conflict of interest. This example illustrates how the magnitude of a Director's interest can broaden the scope of the potential conflict. While Jacques' interest in Example #2 isn't so large that he has a material stake in municipal policy, someone like Sandra does. Unlike Jacques, Sandra's livelihood depends on development and her Sandy Hill project involves considerable financial risk. She should not have participated in discussions about planning and other municipal policy that could affect the success of her investment.

Importantly, Sandra's conflict of interest crystalized before she presented her project to the Board and asked for its support. This is because a reasonable person would have questioned her loyalties long before this meeting, had they been fully aware of her plans.

This example also illustrates that a person's intentions or reputation are irrelevant to whether they have a conflict of interest. Although many members trust Sandra and approve of her approach to development, this does not cleanse the conflict of interest, nor does it absolve her of her obligation to disclose it at the earliest possible opportunity.

### **Example #5 - Feuding Neighbours**

#### **Facts**

Neil is a Director of ASH and lives in a single-family home on Daly Ave. near King Edward. The house next door was bought by a company called Renov8, which intends to convert it into student housing with 25 rooms. Neil is opposed to Renov8's project because he believes it will further disrupt the residential character of the neighbourhood. He's also concerned that the noise and garbage associated with these types of residences will adversely affect his family's quality of life. Neil wants ASH to pass a resolution opposing the project and to lobby the City Councillor and Planning Department to reject Renovat8's proposal. Despite Neil's concerns, many ASH members and Directors are in favour of the project because it is closer to the campus than other similar proposals. Should Neil raise this issue as a Director of ASH?

#### **Analysis**

This problem is similar to Marjorie's after she received an offer from Big Time to buy her home. Since the proposed project is right next door to Neil's house, and it will implicate his personal interest in the quiet enjoyment of his home, a reasonable person could question the basis of Neil's opposition to the project. Is he really opposed to it because he wants to

protect the residential quality of the neighbourhood, or is he just looking out for the well-being of himself and his family? Of course, Neil may oppose the project for both reasons, but the fact that his personal interests are directly affected gives rise to a reasonable perception that he is using his position as a Director of the community association to further his personal interests.

One could argue that Neil is raising this issue as a member of the community and as a result there is no conflict of interest. While it is true that Sandy Hill residents have a right to bring these matters to ASH's attention, Neil is not an ordinary resident; he is a Director of the organization and therefore has fiduciary obligations. In other words, Neil cannot suspend his fiduciary obligations so that he can bring up a concern as a resident. The obligations of a Director are not like a hat that can be taken on and off. The position of Director entails sacrificing the right to pursue personal interests to ensure the integrity and good governance of the organization.

What should Neil do? The most prudent course of action in terms of avoiding the conflict of interest is for Neil not to actively pursue this issue. He should not ask for this project to be put on the agenda, lobby his colleagues on the board, or take any other steps that leave Neil vulnerable to reasonable accusations that he is using his position to further personal ends. When the project comes up for discussion, Neil should disclose that he lives next door, leave the room, and not participate in the vote or discussion. He should not say whether he is for or against the proposal.

What if the Board thinks that Neil has something valuable to contribute to the discussion? It is hard to see how Neil would have objective information -- i.e. information not related to his personal opinion -- about the project that isn't available from other sources. Even if he did, the Board must realize that as soon as Neil participates in the discussion, whether or not he does so at the Board's request, it opens Neil and the organization to reasonable accusations of bias. Importantly, the mere fact that Neil disclosed his interest makes his participation in the discussion unacceptable. The law requires Neil to *both* disclose the full extent of his interest and take no part in the discussion or vote.

What if Neil lived a block away or two doors down? Does the same standard still apply? This comes down to what would give rise to a reasonable apprehension that Neil's duty to the organization is clouded by personal interests. Admittedly, it is very hard to know where to draw the line. What is clear is that the closer one is to the project, the more caution should be taken. Someone who lives two doors down is probably in a similar position to someone who lives next door. Someone who lives a block away will likely be less affected. In these situations, individual Directors and the Board should ask themselves whether a reasonable person could think that their position is based on their personal interests, rather than those of the organization.