



## Conflict of Interest for Directors and Committee Members Policy

This Policy has been developed to address the need for MSC to avoid conflicts of interest at all levels of operation, including in the actions of the organization as a whole, in decisions of committees and the Board, and in the work of the professional staff.

The MSC Conflict of Interest Policy is part of the overall code of ethics and position descriptions for the directors and committee members who are involved in MSC activities.

The Skate Canada Ethics Review Panel will be responsible for issuing guidelines and examples to assist in applying this Policy at the National, Section, Region and Club levels.

### 2.0 APPLICATION OF THE POLICY

This Policy applies to:

- every member of the Board of Directors (“Board”)
- every member of any committee established at the Club level.

This Policy applies regardless of whether the director or committee member is an employee, official, coach, athlete, or volunteer.

### 3.0 GENERAL OBLIGATIONS OF DIRECTORS and COMMITTEE MEMBERS

Understanding conflict of interest requires some understanding of the general duties of directors and committee members.

Directors are fiduciaries, meaning that they owe a duty of good faith, skill, and care.

Generally, directors must, at all times:

- act honestly and in good faith, in the best interests of the organization
- exercise their powers properly, and their discretion reasonably
- exercise their powers and discretion for the purpose for which they are conferred
- avoid conflict of interest.

While committee members are not always fiduciaries, the organization still requires that its committee members, at all times:

- act honestly and in good faith, in the best interests of the organization
- exercise their powers properly, and their discretion reasonably
- exercise their powers and discretion for the purpose for which they are conferred
- avoid conflict of interest.



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*The Duty to Act Honestly and in Good Faith* - Acting honestly and in good faith means that the director or committee member is not seeking to gain an advantage for him or herself, or for someone else; is not intending to deceive anyone, and is not blindly following the lead of others on the Board or the committee.

*The Duty to Properly Exercise Powers* - Properly exercising powers conferred on the director or committee member, means the person is not acting upon some personal "hidden agenda", but is exercising his or her powers for legitimate purposes which serves the best interests of the organization.

*The Duty to Avoid Conflicts of Interest* - Conflict of interest arises when a person has (or could have) divided loyalties. Directors and committee members owe the organization their undivided loyalty. Therefore, they need to be conscious of the potential for conflict of interest, and they need to act with candour and care in those situations.

"Avoiding" conflict of interest does not mean that a director or committee member will never be in a conflict of interest position - it means that when the person is (or could be) in a conflict of interest position, the situation is recognized and properly handled.

It is important to remember that conflicts of interest arise naturally, and often, in ordinary circumstances. There is nothing inherently wrong or illegal about the mere existence of a conflict of interest involving a director or committee member. The mere existence of a conflict of interest does not automatically reflect badly on the integrity of the director or committee member, or the integrity of the Board or the committee.

Conflicts of interest only become problematic if the director or committee member, or the Board or committee, fail to recognize the conflict of interest, or fail to deal with the situation properly.

Avoiding conflict of interest, in the narrow sense, means putting the duty to the organization ahead of any other interest or duty.

Generally, conflict of interest in this narrow sense arises when the director or committee member (or a person, company, or group associated with the director or committee member) wants to obtain some benefit (financial, professional, personal, or otherwise) from the organization.

Avoiding conflict of interest, in the broader sense, means that the director or committee member must assess his or her views and proposals in light of their benefit to the organization. Every Board or committee member should contribute his or her unique skills and perspective, and his or her honest views, to any Board or committee discussion. However, when it comes to decision-making, the person's actions will be judged in terms of the benefit to the organization as a whole.

For example, a committee member who is a coach is entitled - and expected - to bring the coaching perspective to the table. However, when that member is called upon to make a committee decision, he or she must give priority to the best interests of the organization as a whole, even if that means the decision being made is not in the best interests of the coaching "constituency".

*Need to Avoid both Actual and Perceived Conflicts of Interest* - A conflict of interest may be actual and obvious. Most commonly, this will arise when the director or committee member has a material interest in a proposed contract or transaction to which the organization may be a party.



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This material interest may arise directly because the director or committee member is personally involved with the contract or transaction. Or, the material interest may arise more indirectly, because the director or committee member has an employment or investment relationship with the entity dealing with the organization, or because of some family or other personal relationship.

Material interest is generally interpreted to mean an interest which is sufficient to result in some benefit - even a minimal one - to the director or committee member. Usually, although not always, that benefit is (directly or indirectly) a financial one.

The corporate and trust laws which govern MSC and other organizations impose certain disclosure obligations on a director who is in any way, whether directly or indirectly, interested in any contract or proposed contract with the organization. Those same laws require the director abstain from any discussion, debate and vote related to the contract or proposed contract.

There can be serious legal consequences when such “legal” conflicts of interest are not properly handled. For example, the decision about the contract may be vulnerable to court challenge, and insurance protection under Directors and Officers (D&O) insurance may be placed in jeopardy, if an undeclared conflict leads to a lawsuit.

Sometimes, even though there may be no “legal” conflict of interest, there is still potential for the reasonable perception of a conflict of interest, when viewed from the perspective of an objective outside observer.

For example, if a committee is considering which skaters to nominate to a list for skater development sessions, and one of the skaters belongs to the same club as one of the members, an objective outside observer might expect the committee member to be biased toward that skater. In that case, even if the committee member in fact has no actual bias, there is a potential for the perception of a conflict of interest. Whether the perception is reasonable or not in a given situation will depend on the facts and circumstances, including what is “at stake” in the decision being considered.

Again, there can be serious consequences when a reasonable perception of a conflict of interest exists, and the situation is not properly handled. The integrity of the Board or committee may be undermined, and their decision may also be vulnerable to court challenge, if the conflict is not properly handled.

For all of these reasons, the rules set out below for awareness, disclosure, objective review, and resolution of disputes must be followed by all directors or committee members.

### 4.0 AWARENESS

All directors and committee members must be vigilant to identify:

- whether they have any material interest in the contract or transaction which is being considered by the Board or the committee (“legal conflict of interest”)
- whether, even if there is no legal conflict of interest, there is some other factor which does, or could, prevent them from exercising objective judgment (“potential conflict of interest”)
- whether, even if there is no potential conflict of interest, there is some other factor which might give an objective outside observer a reasonable basis to perceive that the director or committee member might not exercise objective judgment (“reasonably perceived conflict of interest”).



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### 5.0 DISCLOSURE

A director or committee member who is employed by, performing services for or has a financial interest in any business enterprise doing business with or seeking to do business with MSC has a general and ongoing duty to disclose that interest in writing to MFSC.

*Legal Conflict of Interest* - Where a director or committee member has a legal conflict of interest, the person must disclose that interest as soon as possible to MSC by completing a Declaration of Conflict of Interest in the form set out in Appendix "A" to this Policy, and submitting it to:

- the President of the Board or his/her designate (in the case of directors)
- the Committee Chair (in the case of committee members)
- the Executive Committee (in the case of a President of the Board).

The nature of the interest must be disclosed in sufficient detail to allow the other directors or committee members to understand what the interest is and how far it goes.

*Potential or Perceived Conflict of Interest* - Where a director or committee member has a potential conflict of interest, or there is some basis for a perceived conflict of interest, the person must at least disclose that interest to the Board or the committee, in sufficient detail to allow the other directors or committee members to understand what the interest is and how far it goes.

### 6.0 OBJECTIVE REVIEW

Objective review means that only those directors or committee members who are objective and disinterested can participate in a decision being made by the Board or committee.

When a director or committee member:

- has disclosed a conflict of interest in a matter
- is found, as a result of the Resolution Process, to have a legal, potential or reasonably perceived conflict of interest in a matter  
...then that director or committee member is not "disinterested" and must not participate in or influence the discussion, debate, or vote relating to the matter.

Where a decision/direction regarding the conflict of interest is obtained under the Resolution Process, the decision/directions must be implemented.

In many circumstances, it will be appropriate that the director or committee member who has the conflict of interest physically removes him or herself from the room, while the particular matter is being discussed, debated and voted upon.

The minutes of the Board or committee meeting should record the director's or committee member's absence from the discussion and debate, and his or her abstention or reclusion from any related votes (or compliance with the decision/direction obtained under the Resolution Process, as the case may be).

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### **7.0 RESOLUTION OF DISPUTES**

Once a dispute about a possible conflict of interest arises, the applicable Resolution Process should be initiated as soon as possible to determine what actions should be taken to address the possible conflict. The time frames to be followed must be reasonable, in all circumstances.

### **7.1 RESOLUTION PROCESS**

For disputes which arise at the Club level, the director or committee member must first seek the assistance of the Club President or his or her designate to resolve the dispute. If a resolution is not possible, then the Resolution Process below will apply.

- a) The recipient of the Declaration of Conflict of Interest form shall consult with the Club Investigative Committee consisting of 3 members (President or Vice-President, one non-executive board member, and the Coach on the Board) with respect to the nature of the possible conflict, and what actions should be taken to address it. If the President or Coach have the conflict of interest then he/she would be replaced by either Treasurer or Secretary.
- b) As part of this consultation process, the director or committee member may be required to provide additional information concerning the nature of the conflict of interest.
- c) If the director or committee member, or the Chair of the Board or committee in question, objects to the decision/direction, then a written letter stating the reasons for the objection must be delivered to the President or Vice-president.
- d) Upon receiving a letter of objection, the President or Vice-president shall escalate the matter to Skate Ontario to review the matter.
- e) As part of this review process, the director or committee member may be required to provide additional information to the Skate Ontario advisor.
- f) The Skate Ontario advisor shall deliver to the President of the Club in question or his/her designate recommendations regarding the conflict of interest, in writing, within 15 days of being appointed.
- g) The President, or his/her designate, shall communicate a decision/direction regarding the conflict of interest, in writing, to the director or committee member, and to the Chair of the Board or committee in question, within 5 days of receiving the recommendations of the Skate Ontario advisor.

### **8.0 BREACH OF THIS POLICY**

Any breach of this policy (including the failure to abide by any final decision/direction obtained under the Resolution Process) is a disciplinary matter to be dealt with under the MSC Discipline Policy.

