

PhysSec Education

Policy on Conflict of Interest

0.0 General

0.1A Notes: Text in red, including this paragraph, is not a part of this policy. They are instead only meant to provide clarity and context to the policy

0.1 Purpose

The purpose of this policy is to protect this organisation's interest when it is contemplating entering into a transaction or arrangement that might benefit the private interest of an officer or director of the organisation or might result in a possible excess benefit transaction. This policy is intended to supplement but not replace any applicable provincial or federal laws governing conflict of interest applicable to non-profit organisations, as well as any other such laws that might exist in other jurisdictions the organisation operates in.

0.2 Definitions

0.2.1 "The organisation" or "organisation" means PhysSec Education.

0.2.2 "The policy" means this policy

0.2.3 "Interested person" means any director, principal officer, or member of a committee with powers delegated by the Board of Directors, who has a direct or indirect financial interest, as defined below.

0.2.4 "Financial interest": Any person who, directly, through business investment, or family:

- a. An ownership or investment interest in any entity with which the organisation has a transaction or arrangement,
- b. A compensation arrangement with the corporation or with any entity or individual with which the organisation has a transaction or arrangement, or
- c. A potential ownership or investment interest in, or compensation arrangement with, any entity or individual with which the organisation is negotiating a transaction or arrangement.

has a "financial interest".

0.2.5 "Compensation" includes direct or indirect remuneration, as well as gifts or favours that are not insubstantial.

0.2.6 "No substantial cost" means the minimum reasonable amount required to make a contract of sale or a contract to provide services binding, and shall not be greater than 1 CAD.

Paragraphs 0.2.3 through 0.2.5 are taken from the IRS Sample 501(c)3 conflict of interest policy

1.0 Procedures

1.1 Duty to Disclose

In connection with any actual, possible or perceived conflict of interest, an interested person must disclose the existence of the financial interest or any competing interest, even if not financial, and be given the opportunity to disclose

all material facts to the directors and members of committees with powers delegated by the Board of Directors considering the proposed transaction or arrangement.

1.2. Determining Whether a Conflict of Interest Exists

After disclosure of the financial interest and all material facts, and after any discussion with the interested person, they shall leave the Board of Directors or committee meeting while the determination of a conflict of interest is discussed and voted upon. The remaining board or committee members shall decide if a conflict of interest exists.

1.3. Procedures for Addressing a Conflict of Interest

1.3.1 An interested person may make a presentation at the Board of Directors or committee meeting, but after the presentation, they shall leave the meeting during the discussion of, and the vote on, the transaction or arrangement involving the possible conflict of interest.

1.3.2 The chairperson of the Board of Directors or committee shall, if appropriate, appoint a disinterested person or committee to investigate alternatives to the proposed transaction or arrangement.

1.3.3 After exercising due diligence, the governing board or committee shall determine whether the organisation can obtain, with reasonable efforts, a more advantageous transaction or arrangement from a person or entity that would not give rise to a conflict of interest.

1.3.4 If a more advantageous transaction or arrangement isn't reasonably possible under circumstances not producing a conflict of interest, the governing board or committee shall determine by a majority vote of the disinterested directors whether the transaction or arrangement is in the Organization best interest, for its own benefit, and whether it is fair and reasonable. In conformity with the above determination, it shall make its decision as to whether to enter into the transaction or arrangement.

1.4 Violations of the Policy

1.4.1 If the Board of Directors or a committee has reasonable cause to believe that one or more of its members have failed to disclose actual or possible conflicts of interest, it shall inform the member or members of the basis for such belief and to explain the alleged failure to disclose.

1.4.2 If, after hearing the member's response and making further investigation as warranted by the circumstances, the Board of Directors or the committee determines that the member has failed to disclose an actual or potential conflict of interest, it shall take appropriate disciplinary and corrective action.

Subsections 1.0 through 1.4 are taken from the IRS Sample 501(c)3 conflict of interest policy

1.5 Determining Fair Market Rate

1.5.1 General Procedure

When determining the fair market rate of a service, property or loan, quotations or offers for a similar property, service, or loan must be

obtained from at least three sources at arms length from the organisation, subject to this subsection.

1.5.2 Special Cases for Services

The following may be assumed to be at or below fair market value for a service, without the need for the investigation in subsection 1.5.1:

- a. Services provided at no substantial cost.
- b. Services provided at or below the minimum wage in the jurisdiction the service is being provided in or the registered office of the organisation is located in, whichever is higher.

1.5.3 Special Cases for Properties

The following may be assumed to be at or below fair market rate for a property, without the investigation in subsection 1.5.1:

- a. Properties provided at no substantial cost.

1.5.4 Special Cases for Loans

The following may be assumed to be at or below fair market rate for a loan, without the investigation in subsection 1.5.1:

- a. Loans given at a 0% interest rate

2.0 Records of Proceedings

2.1 Information That Must Be Recorded

The minutes of the Board of Directors and all committees with powers delegated by the Board of Directors shall contain:

- a. The names of the persons who disclosed or otherwise were found to have a financial interest in connection with an actual or possible conflict of interest, the nature of the financial interest, any action taken to determine whether a conflict of interest was present, and the governing board's or committee's decision as to whether a conflict of interest in fact existed.
- b. The names of the persons who were present for discussions and votes relating to the transaction or arrangement, the content of the discussion, including any alternatives to the proposed transaction or arrangement, and a record of any votes taken in connection with the proceedings.

Subsection 2.1 is taken from the IRS Sample 501(c)3 conflict of interest policy

3.0 Compensation

3.1 Members Barred From Voting

A voting member of the Board of Directors or a committee whose jurisdiction includes compensation matters is precluded from voting on matters pertaining to that member's compensation.

3.2 Information Regarding Compensation

No voting member of the Board of Directors or any committee whose jurisdiction includes compensation matters and who receives compensation, directly or indirectly, from the organisation, either individually or collectively, is prohibited from providing information to any committee regarding compensation.

Subsections 3.1 and 3.2 are taken from the IRS Sample 501(c)3 conflict of interest policy

3.3 When All Members Are Compensated

- 3.3.1 If all members of the organisation are compensated, directly or indirectly, discussion of the compensation shall be structured in such a way to allow the greatest number of members to vote under subsection 3.1, including by limiting any discussion items or motions to one member's compensation at a time.
- 3.3.2 If this is not possible, members will be allowed to vote notwithstanding subsection 1.3 and 3.1 in a General or Special Meeting of the Members, subject to paragraphs 3.3.3, 3.3.4, 3.3.5, and 3.3.6.
- 3.3.3 A bona fide investigation must be conducted and results presented to the membership, before the vote described in this subsection is taken, to determine the fair market rate for the service provided or item purchased by the members compensated.
- 3.3.4 No member shall be compensated under this subsection at a rate greater than the fair market rate identified for the service they provide or the item they sell. Members are encouraged to err on the side of providing too little compensation, in order to protect the purity of the non-profit motives of the organisation, as well as the organisation and themselves from liability.
- 3.3.5 The results of the investigation, the methods used, as well as any records or notes produced must, in their entirety, be made a part of the minutes of the meeting they are presented in.
- 3.3.6 Nothing in this section shall be interpreted to allow any member or members to vote in matters relating to their own compensation in any meeting other than a Meeting of the Members.

This subsection is meant to not bar the organisation from paying all of its members, for example in a situation where we're compensating members to cut keys. If we're all clear that we're providing the service at or below market value and we all approve, then it makes sense to not have to have a third party provide the service.

4.0 Annual Statements

4.1 Statements By Key Individuals

Each director, officer, and member of a committee with Board of Directors delegated powers shall, within 30 days of their election or appointment, sign the statement below. Failure to do so shall be considered a violation of the policy and they shall be subject to expulsion or removal under subsection 3.03 of Bylaw 1.

"I have received a copy of, read and understood The Policy on Conflict of Interest. I agree to comply with the policy. I understand that PhysSec Education is a Non-Profit Organisation under the Canada Non-Profit Organisations Act, as well as a charitable tax-exempt organisation under section 501(c)3 of the Internal Revenue Code or the United States of America. I understand that in order to maintain

these designations, PhysSec Education must engage primarily in activities that accomplish one or more of its tax-exempt purposes.”

Signing this statement is required by the IRS. Subsection taken from the IRS Sample 501(c)3 conflict of interest policy.

4.2 Transitional

Until the organisation attains 501(c)3 designation, the statement referred to in subsection 4.1 shall be replaced by the following:

“I have received a copy of, read and understood The Policy on Conflict of Interest. I agree to comply with the policy. I understand that PhysSec Education is a Non-Profit Organisation under the Canada Non-Profit Organisations Act. I understand that in order to maintain this designation, PhysSec Education must engage primarily in activities that accomplish one or more of its tax-exempt purposes.”

4.3 Idem

Any director, officer, and member of a committee with Board of Directors delegated powers in office at the time this policy comes into effect shall, within 30 days of the policy effect, sign the statement in subsection 4.1 or 4.2, as applicable. Failure to do so shall be considered a violation of the policy and they shall be subject to expulsion or removal under subsection 3.03 of Bylaw 1.

5.0 Periodic Reviews

5.1 Content of Periodic Reviews

To ensure the organisation operates in a manner consistent with charitable purposes, and doesn't engage in activities that could jeopardise its tax-exempt status, periodic reviews shall be conducted. The periodic reviews shall, at a minimum, include the following subjects:

- a. Whether compensation arrangements and benefits are reasonable, based on competent survey information, and the result of arm's length bargaining.
- b. Whether partnerships, joint ventures, and arrangements with management organisations conform to the organisation's written policies, are properly recorded, reflect reasonable investment or payments for goods and services, further charitable purposes and don't result in insurance, impermissible private benefit, or in an excess benefit transaction.

Required by the IRS. Subsection taken from the IRS Sample 501(c)3 conflict of interest policy. Also less specifically required by the CRA. See below.

5.2 Use of Outside Experts

5.2.1 When Use of Outside Experts is Required

When conducting the periodic reviews, as provided for in subsection 5.1, the organisation may, but need not, use outside advisors. If the annual gross revenues of the organisation is greater than 1,000,000 Canadian Dollars, an audit engagement with outside independent experts is

required in order to comply with regulations of the Canada Not-for-Profit Corporations Act.

Required by the CRA

5.2.2 Board Still Responsible

If outside experts are used, their use shall not relieve the Board of Directors of its responsibility of ensuring periodic reviews are conducted.

The IRS/The US Internal Revenue Code says that the board of directors is still responsible for ensuring these reviews are conducted. While I couldn't find explicit language saying this in the Canada Not-for-Profit Corporations Act, it does require yearly reviews/audit engagements, and there isn't an exception that allows the board to pass it on to a professional, so this applies for the CRA obligations as well.