

II. Governance

Section 12 – Code of Conduct and Conflict of Interest Procedures

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12.1 Purpose

The purpose of this policy is to establish and document guidelines for conduct required of all members of the Municipal Employees’ Pension Commission. The guidelines have been developed to create and sustain a business culture that promotes sound decision-making by the Commission.

The purpose of establishing conflict of interest procedures goes beyond ensuring compliance with minimum statutory requirements. They provide a workable process for identifying, minimizing and resolving conflicts of interest, in order that Commission members may fulfill their fiduciary obligations effectively while maintaining their independence and integrity.

The following guidelines and procedures have been developed to ensure that Commission members have a full understanding of the Commission’s principles and values, and to assist Commission members in determining appropriate business practices and behavior.

The Commission recognizes the need to review these guidelines and procedures on an annual basis and has determined that all Commission members are to acknowledge the guidelines and procedures by signing them upon appointment to the Commission, each time they are amended and, in any event, no less than upon each annual review.

12.2 Application

These guidelines and procedures govern the operation and conduct of members of the Commission in the execution of their duties and responsibilities under *The Municipal Employees' Pension Act and Regulations*.

12.3 Fiduciary Duties

These duties apply to the members of the Commission in their capacity as trustees of the Pension Fund and as administrators of the Pension Plan.

- *Duty of Loyalty*

The duty of loyalty requires members of the Commission to act honestly and in good faith, and in the best interest of all Plan members. Furthermore, members of the Commission must consider the effect of their individual actions on the integrity and credibility of the Commission as a whole.

- *Opportunities Acquired Through Commission Business*

Members of the Commission must not take personal advantage of business opportunities of which they become aware in the course of carrying out their duties as Commission members.

Similarly, confidential information obtained as a result of Commission business must not be used for personal profit, or for the personal benefit of others.

- *Duty to Protect Confidential Information*

Commission members must at all times keep confidential all information, proprietary material and records received by them in their capacity as members of the Commission. Confidential information may only be disclosed if it is otherwise generally available to the public, if the disclosure is required by law, or if the disclosure is consistent with the purpose for which the information was obtained.

- *Post Service Restrictions*

Commission members who cease to serve on the Commission must continue to refrain from taking improper advantage of their previous position. Former members of the Commission must continue to observe the duty to protect confidential information, unless they have received written authorization from the Chairperson of the Commission to disclose the information. Furthermore, former members of the Commission must not use confidential information or opportunities acquired as a result of Commission business for personal gain, or for the personal benefit of others.

12.4 Duty of Care

In exercising their powers as trustees of the pension fund and administrators of the pension plan, it is the explicit duty of every member of the Commission to exercise the care, skill and diligence that a reasonably prudent person would exercise in comparable circumstances.

In fulfilling this duty, members of the Commission have a responsibility to ensure that they obtain expert advice to acquire the necessary information required to make informed decisions for the effective and timely operation of the Plan.

Commission decisions must be made pursuant to sound business practices respecting established policies and procedures.

Improper or ill-advised decisions can be costly to the Plan. Commission members should undertake the training or educational opportunities necessary to ensure that they have a sufficient level of knowledge and understanding to fulfill their duties.

The Commission has established its mission, and Commission members should take actions which are consistent with the mission and the policies which support it.

Though the Commission may delegate activities to its service providers, the Commission retains responsibility for oversight of the Plan, and Commission members should be engaged in reviewing the performance of the Plan and its success in meeting its goals.

12.5 Ethical Standards

Members of the Commission should adhere to the following standards when exercising all of their duties and responsibilities:

- *Preferential Treatment*

Commission members must not use their position to benefit persons or organizations in their dealings with the Plan if this may be perceived to result in preferential treatment to such persons or organizations.

- *Gifts, Benefits and Entertainment*

Commission members should not accept gifts, benefits, entertainment or other personal favors, which would create, or appear to create, a favored position for persons or organizations doing business with the Plan.

Commission members must not solicit or accept gifts, benefits, entertainment or other personal favors in exchange for, or as a condition of, the exercise of their duties or as an inducement for performing an act associated with the duties and responsibilities of their position.

Members of the Commission may generally accept gifts, hospitality or other benefits, of nominal value, associated with the duties and responsibilities of their position, if such gifts, hospitality or other benefits:

- are within the bounds of propriety, a normal expression of courtesy, or within the normal standards of hospitality;
- would not bring suspicion on the Commission member's objectivity and impartiality; and
- would not compromise the integrity of the Commission.

- *Communication and Public Comment*

The Plan has the responsibility to communicate with its members and beneficiaries in a timely, accurate, and transparent manner. This communication is generally provided by the Plan, rather than by individual Commission members.

In the instance where communication directly from the Commission is necessary, public announcements or comments will be the responsibility of the Chairperson, unless approved otherwise by the Commission.

Members of the Commission must refrain from making public announcements or comments regarding the activities of the Commission and

the operation of the Plan, unless the member has been authorized by the Chairperson to do so or the information being disclosed has already been made available to the public by the Commission. Commission members must avoid making public comments which are likely to bring the Commission into disrepute or adversely affect the operation of the Plan.

Commission members must not misrepresent the Plan in any communications, including oral representations, electronic communications, or written materials, whether publicly disseminated or not.

- *Commission Independence*

Although members of the Commission are appointed by various appointing bodies and associations, their primary duty and responsibility is to all members of the Plan. Commission members must not serve the interests of specific groups or associations.

- *Compliance with Laws*

Members of the Commission must at all times be aware of all laws, rules and regulations applicable to the Plan and comply with those laws, rules and regulations in the course of performing their duties with respect to the Plan.

Members of the Commission must conduct their personal affairs with integrity, and must report any violation of:

- (a) the Code of Conduct and Conflict of Interest Procedures;
- (b) any statute that may apply, directly or indirectly, to the administration of the Plan; or
- (c) any charge or conviction under the *Criminal Code* (Canada) that involves dishonesty or would affect the ability of the member to fulfill his or her duties with respect to the Plan.

Where a violation or conviction occurred prior to, or a charge is outstanding on the date of the appointment of the member to the Commission, the report must be made prior to the first meeting that the member of the Commission attends. Where a violation, charge or conviction occurs after the appointment of the member to the Commission, the report must be made prior to the first meeting after it occurs.

Commission members must report criminal or other illegal or unethical conduct by any other Commission member of which they may become aware, including any potential violations of the Code of Conduct and Conflict of Interest Procedures.

Such reports shall be made at the earliest possible opportunity and in any case no later than the next following regularly scheduled Commission meeting.

Reports are to be made to the Commission Chairperson. Where the individual with the duty to report is the Commission Chairperson, that individual shall report to the Vice-Chairperson. In the event that a member is uncertain as to whether any action or conduct falls within the duty to report, the member must consult the Chairperson whose determination of the question will be final.

The Chairperson (or Vice-Chairperson) may determine that the violation, charge or conviction renders the participation of the member in decisions of the Commission inappropriate, and may exclude or restrict the member of the Commission from participating in some or all of the decisions of the Commission. Unless it becomes necessary for the report to be used for this purpose, the report and any information provided for the purpose of consultation respecting a report shall be kept confidential by the person to whom it is provided.

Subsection 15(1) of *The Trustee Act, 2009* provides the conditions under which a person becomes disqualified to act as a trustee. Specifically, a person becomes disqualified to act as a trustee if that person:

- a) Dies;
- b) Disclaims the trust or refuses to act as trustee;
- c) Lacks capacity;
- d) Is a minor;
- e) Is convicted of an offence involving dishonesty;
- f) Is an undischarged bankrupt;
- g) Resigns from the trust; or
- h) Is a corporate trustee that is not registered, if required by the law to be registered, or is not licensed, if required by law to be licensed.

Commission members must report when they satisfy a condition, aside from item (a), which would disqualify them from acting as a trustee.

Reports are to be made to the Commission Chairperson. Where the individual with the duty to report is the Chairperson, that individual shall report to the Vice-Chairperson.

The Chairperson (or Vice-Chairperson) shall report to the body or bodies appointing the Commission member that the member is no longer qualified to be a trustee.

12.6 Conflict of Interest Procedures

These procedures apply to members of the Commission with respect to their responsibilities as trustees of the pension fund, administrators of the pension plan, and decision-maker with respect to disputes regarding the Plan.

Members of the Commission shall not knowingly permit their interests, actual or perceived, monetary or otherwise, direct or indirect, to conflict with the proper exercise of their duties and responsibilities.

Commission members should familiarize themselves with the range of actions which may be taken to respond to a conflict of interest or ethical issue. Although not exhaustive, the following actions may be taken to remedy or avoid a possible conflict of interest or ethical issue.

Disclosure

Members of the Commission shall disclose in writing the nature and details of any actual, perceived or possible conflicts of interest, which could impair their ability to make unbiased decisions affecting the Plan. Such disclosure shall be made to the Chairperson or Executive Secretary of the Commission as soon as practicable after the conflict of interest has been discovered by the Commission member. In the event that the member is the Chairperson, disclosure must be made to the Vice-Chairperson or Executive Secretary.

The Chairperson or Executive Secretary will table the matter at the next regularly scheduled Commission meeting. The Chairperson, in consultation with the Commission (excluding the member who is in conflict of interest), will determine the appropriate action under the circumstances.

Should a Commission member discover an actual or perceived conflict of interest during the course of a Commission meeting, the member must immediately declare the conflict of interest. The Chairperson, in consultation with the Commission (excluding the member who is in conflict of interest), will determine the appropriate action under the circumstances.

- *Register*

The Executive Secretary of the Commission shall maintain a register of all actual, perceived or possible conflicts of interest disclosed by members of the Commission.

The register shall contain a description of each conflict of interest and the name of the Commission member to whom the conflict of interest applies, the date upon which the conflict of interest arose and was subsequently disclosed by the Commission member, and the manner in which the conflict of interest was dealt with by the Commission.

- *Abstaining from Vote and Discussion*

Members of the Commission who have disclosed a conflict of interest, or who are required to disclose an actual or perceived conflict of interest, shall not participate in any discussion, decision or vote relating to any transaction involving the aforementioned conflict of interest. Such members must consult with the Commission to determine whether or not it is appropriate to leave the meeting during discussion of the matter.

Where a Commission member has disclosed a conflict of interest, the member may continue to participate in the discussion, decision or vote, despite the conflict of interest, by obtaining prior approval from the Commission. The approval to participate should be noted by the Executive Secretary in the register.

- *Other Business Activities*

Members of the Commission engaging in any other business activities, directly or indirectly, which may conflict with or are in competition with their duties and responsibilities as Commission members, must make full disclosure of such activities to the Chairperson or Executive Secretary of the Commission.

Adhering to the *Disclosure* procedures in this section, a resolution to the matter will be undertaken by the Commission. The Commission should determine whether an actual or perceived conflict of interest exists, and the appropriate action under the circumstances.

The Chairperson will advise the Commission member, who is in conflict of interest, to comply with one of the following options determined by the Commission:

- discontinuation of the activity;
 - appropriate action to remedy the situation; or
 - consent to the activity.
- *Gifts, Benefits and Entertainment*

It is deemed a conflict of interest if, without the consent of the Commission, a member of the Commission accepts gifts, benefits, entertainment or other personal favors of more than token or nominal value from persons or organizations doing business with the Plan. Any person or organization offering such inducements must be advised to discontinue the practice immediately if a sustained business relationship is to continue with the Plan.

Similarly, Commission members must not offer gifts or favors to persons or organizations in order to secure preferential treatment for the Plan.

Inappropriate gifts or benefits that are received by members of the Commission, which violate Section 12.05 – Ethical Standards, should be returned to the donor as soon as practicable. Where the donor may perceive the return of an inappropriate gift or benefit as offensive, for cultural or other reasons, the Commission member must make full and immediate disclosure of receipt of the gift or benefit. Such gift or benefit must be delivered to the Commission, which will determine the suitable disposition of the item.

12.7 Consequences of a Breach

In the event of a breach of the Code of Conduct and Conflict of Interest Procedures, or a failure to remedy or disclose an actual or perceived conflict of interest, the consequences of such infractions should reflect the nature, magnitude and seriousness of the breach.

The following are examples of possible consequences, which the Commission may consider, when dealing with a breach of the Code of Conduct and Conflict of Interest Procedures:

- the Commission member may be offered the opportunity to resign from the Commission;
- the Commission may recommend to the appointing body and/or association to terminate the appointment of the Commission member to the Commission;

- the Commission member may be required to make full restitution to the Commission of any personal gain acquired as a result of the breach, for disposition by the Commission;
- the Commission may consider taking legal action against the Commission member;
- if the Commission member is in breach of the law, the Commission will report the Commission member's action to the proper authorities.

This list of consequences is not exhaustive, and does not preclude any other course of action, which the Commission may deem appropriate under the circumstances.

12.8 Avoidance of Bias

These procedures apply to members of the Commission with respect to their responsibilities as decision-maker (e.g. dispute resolution) with respect to disputes regarding the Plan.

Members of the Commission shall not knowingly permit any relationship or other circumstances, either in the past or the present, to be perceived as a possible reason for the member to hold a bias either in favor or against a party with respect to whom a decision is to be made.

Commission members should familiarize themselves with the range of actions that may constitute a potential bias issue, and the actions that might be taken to respond to the issue. A potential bias issue may arise as a result of circumstances such as:

- the member has a personal or business relationship with a party;
- the member is a member of an organization in which the party is also a member;
- the member has information about the party which has not been placed before the other members of the Commission as part of the decision-making process;
- the member has expressed views in public respecting the subject matter of the decision;
- the member has communicated directly with one of the parties respecting the subject matter of the decision.

This list is not exhaustive. If a member of the Commission is aware of any circumstances which might give rise to a bias issue, the member must disclose the circumstances to the Chairperson or Executive Secretary of the Commission at the earliest opportunity.

In the event that the member is the Chairperson, disclosure must be made to the Vice-Chairperson or Executive Secretary. The Chairperson may:

- remove the member from the panel of members that are making the decision;
- if the Chairperson is of the opinion that the circumstances may not warrant removal of the member, the Chairperson shall disclose the circumstances to the parties and provide them with an opportunity to make representations to the Commission with respect to the ability of the member to participate in the hearing; and
- the Commission shall determine the extent, if any, to which the member may participate in the hearing.

A member cannot be removed from the panel where doing so would mean that a quorum of members would not be present. A member is not required to disclose a relationship that is inherent in the manner of the member's appointment, such as being a member of the Plan or a member or employee of a body that is entitled to appoint a member of the Commission.

12.9 Commission Member's Acknowledgement

I ACKNOWLEDGE that I have read and considered the Code of Conduct and Conflict of Interest Procedures for members of the Municipal Employees' Pension Commission, and as a member of the Commission, agree to conduct myself in accordance with the Code of Conduct and Conflict of Interest Procedures as it applies to members of the Commission.

I UNDERTAKE to affirm in writing that I have read, understood and will comply with the most recent version of the Code of Conduct and Conflict of Interest Procedures for members of the Municipal Employees' Pension Commission.

Signature

Printed Name

Date

12.10 History

Approval date:	September 16, 2005; November 16, 2007; September 18, 2008; September 17, 2010; and November 26, 2010
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