



Upper Canada Skating Club – Policy and Procedure

Conflict of Interest Policy

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POLICY purpose:

This Policy has been developed to address the need for Upper Canada Skating Club (UCSC) 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. This policy provides the board of directors and committee members with why a conflict-of-interest policy is important and the process for disclosure.

POLICY statement:

Board and committee members have an obligation to conduct business within guidelines that prohibit actual or perceived conflicts of interest. This policy establishes the framework within which UCSC wishes its business to operate. The purpose of these guidelines is to provide general direction so that board and committee members can seek further clarification on issues related to the subject of acceptable standards of operation.

An actual or perceived conflict of interest occurs when a board or committee member is in a position to influence a decision that may result in personal gain or gain for a relative as a result of UCSC's operations. For the purpose of this policy, a relative is any person who is related by blood or marriage, or whose relationship with the board or committee member is similar to that of persons who are related by blood or marriage.

Board and committee members have the responsibility of administering the affairs of UCSC honestly and prudently, and of exercising their best care, skill, and judgment for the sole benefit of UCSC. Those persons shall exercise the utmost good faith in all transactions involved in their duties, and they shall not use their positions with USCS or knowledge gained there from for their personal benefit or the benefit of a related party. The interests of the organization must have the first priority in all decisions and actions.

In connection with any actual or possible conflict of interest, a board or committee member must disclose the existence of the interest and be given the opportunity to disclose all material



facts to the board and committee members. After disclosure of the interest and all material facts, and after any discussion with the interested board or committee member, they shall leave the board 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.

If a board or committee member has reasonable cause to believe a member of the meeting has failed to disclose actual or possible conflicts of interest, they shall inform all members of the meeting of the basis for such belief and afford the member of interest an opportunity to explain the alleged failure to disclose. If, after hearing the member's response and after making further investigation as warranted by the circumstances, the board or committee members determines the member of interest has failed to disclose an actual or perceived conflict of interest, it shall take appropriate disciplinary and corrective action.

This policy provides examples and explains in details about conflict of interest, how to handle, disclose and resolve disputes.

POLICY Application:

This Policy applies to:

- a) every member of the UCSC Board of Directors (Board)
- b) every member of any committee (which includes sub-committees and task forces).

This Policy applies regardless of whether the director or committee member is a contractor, coach, skater, volunteer, or vendor.

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:

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

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

- a) act honestly and in good faith, in the best interests of the organization;
- b) exercise their powers properly, and their discretion reasonably;



c) exercise their powers and discretion for the purpose for which they are conferred; and avoid conflict of interest.

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 themselves, 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 candor 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 disclosed 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 disclose 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, committee member or trustee) 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 director 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 coaching representative 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.

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 laws which govern UCSC 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 to abstain from any discussion, debate and vote related to the contract or proposed contract. (Because committee members can also find themselves in these types of conflict situations, under this Conflict of Interest Policy, UCSC applies the same rules to directors and committee members.)

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 and committee members.

Awareness

All directors and committee members must be vigilant to identify:

- a) 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)
- b) 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)
- c) 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, committee member or trustee might not exercise objective judgment (reasonably perceived conflict of interest).

Disclosure

Financial - 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 UCSC has a general and ongoing duty to disclose that interest in writing to the President/Chairman of the Board (in the case of directors), to the Committee Chair (in the case of committee members), or to Board (in the case of a President/Chairman of the Board).

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 the President/Chairman of the Board (in the case of directors), to the Committee Chair (in the case of committee members), or to the Board (in the case of a President/Chairman of the Board) by completing a Declaration of Conflict of Interest in the form set out in Appendix “A” to this policy. The interest must be disclosed in sufficient detail to allow the recipient to understand the nature and scope of the interest. In some cases, the director or committee member may have a legal conflict of interest but be unable, because of duties to others, to disclose the full nature and scope of the interest. In that case, the person must still complete and submit the Declaration of Conflict of Interest form, and at least disclose that an unidentified interest exists.



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 the nature and scope of the interest. The Chair of the Board or the committee may then require the director or committee member to complete a Declaration of Conflict of Interest form (Appendix A) and submit it to the President/Chair of the Board or his/her designate (in the case of directors), to the Committee Chair (in the case of committee members), or to the Board (in the case of a President/Chairman of the Board)

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 and is found 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/directions 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 themselves from the room, while the particular matter is being discussed, debated and voted upon.

However, having had the conflict or potential conflict declared, the Chair of the Board or committee, in consultation with the Board or committee, may decide/recommend that the director or committee member may participate in all or any part of the discussion but shall not vote.

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

Resolution of Disputes

The awareness and disclosure rules must always be followed. However, UCSC recognizes that it is not always clear whether a particular fact situation does or does not amount to a legal, potential or a reasonably perceived conflict of interest. In addition, it is not always clear what steps should be taken to deal with the conflict of interest. In such cases, 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 the circumstances.

The following Resolution Process applies where the director or committee member is acting at the level:

- a) The recipient of the Declaration of Conflict of Interest form shall consult with the UCSC President with respect to the nature of the possible conflict, and what actions should be taken to address it.
- 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) The President shall communicate a decision/direction regarding the conflict of interest, in writing, to the director or committee member in question, and to the Chair of the Board/President or the Chair of the committee in question.
- d) If the director or committee member in question, object to the decision/direction, then a written letter stating the reasons for the objection must be delivered to the Board.
- e) Upon receiving a letter of objection, the Board, in consultation with the President, shall appoint an independent advisor to review the matter.
- f) As part of this review process, the director or committee member may be required to provide additional information to the independent advisor.
- g) The independent advisor shall deliver to the Chair of the Board/President or the Chair of the committee in question or his/her designate(s) their recommendations regarding the conflict of interest, in writing, within 15 days of being appointed.
- h) The UCSC Chair of the Board/President, or his/her designate(s), or the Chair of the Committee, shall communicate a decision/direction regarding the conflict of interest, in writing, to the director or committee member, within 5 days of receiving the recommendations of the independent advisor.

Breach of this Policy

Any breach of this Conflict of Interest Policy (including the failure to abide by any final decision/directions obtained under the Resolution Process) is a disciplinary matter to be dealt with under the UCSC General Dispute Reporting and Resolution Policy.

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