



NGEN CONFLICT OF INTEREST POLICY FOR BOARD MEMBERS, OFFICERS, AND OBSERVERS

1. Application

This Policy applies to all Directors, Board Observers, Officers, and non-Director Board committee members (collectively, “Decision-Makers”) of NGen (the “Corporation”). “Officers” means officers appointed by the Board and others who perform functions for the Corporation similar to those normally performed by such officers.

2. Purpose

All Decision-Makers have a duty to ensure that the integrity of the decision-making processes of the Board are maintained by ensuring that they and other Decision-Makers are free from actual, potential, or perceived conflicts of interest in their decision making (collectively, “conflict of interest”). It is important that all Decision-Makers understand their obligations when a conflict of interest arises. The purpose of this Policy is to provide direction so that conflicts of interest are managed appropriately and in a timely manner. The Policy establishes a framework within which the Corporation requires its Decision-Makers to act in accordance with the requirements of the *Canada Not-for-profit Corporations Act* (the “Act”) which governs the Corporation.

3. Statutory Obligations

The Act stipulates that:

- (1) A director or an officer of a corporation shall disclose to the corporation, in writing or by requesting to have it entered in the minutes of meetings of directors or of committees of directors, the nature and extent of any interest that the director or officer has in a material contract or material transaction, whether made or proposed, with the corporation, if the director or officer
 - (a) is a party to the contract or transaction;
 - (b) is a director or an officer, or an individual acting in a similar capacity, of a party to the contract or transaction; or
 - (c) has a material interest in a party to the contract or transaction.

- (2) The disclosure required by subsection (1) shall be made, in the case of a director,
 - (a) at the meeting at which a proposed contract or transaction is first considered;

- (b) if the director was not, at the time of the meeting referred to in paragraph (a), interested in the proposed contract or transaction, at the first meeting after the director becomes so interested;
 - (c) if the director becomes interested after a contract or transaction is made, at the first meeting after the director becomes so interested; or
 - (d) if an individual who is interested in a contract or transaction later becomes a director, at the first meeting after the individual becomes a director.
- (3) The disclosure required by subsection (1) shall be made, in the case of an officer who is not a director,
 - (a) immediately after the officer becomes aware that the contract, transaction, proposed contract or proposed transaction is to be considered or has been considered at a meeting;
 - (b) if the officer becomes interested after a contract or transaction is made, immediately after the officer becomes so interested; or
 - (c) if an individual who is interested in a contract or transaction later becomes an officer, immediately after the individual becomes an officer.
- (4) If a material contract or material transaction, whether entered into or proposed, is one that, in the ordinary course of the corporation's activities, would not require approval by the directors or members, a director or an officer shall, immediately after they become aware of the contract or transaction, disclose in writing to the corporation, or request to have entered in the minutes of meetings of directors or of committees of directors, the nature and extent of their interest.
- (5) A director required to make a disclosure under subsection (1) shall not vote on any resolution to approve the contract or transaction unless the contract or transaction
 - (a) relates primarily to the director's remuneration as a director, an officer, an employee, an agent or a mandatary of the corporation or an affiliate;
 - (b) is for indemnity or insurance under section 151 of the Act; or
 - (c) is with an affiliate.
- (6) For the purposes of this section, a general notice to the directors declaring that a director or an officer is to be regarded as interested, for any of the following reasons, in a contract or transaction made with a party, is a sufficient declaration of interest in relation to the contract or transaction:
 - (a) the director or officer is a director or an officer, or acting in a similar capacity, of a party referred to in paragraph (1)(b) or (c);

- (b) the director or officer has a material interest in the party; or
 - (c) there has been a material change in the nature of the director's or the officer's interest in the party.

- (7) The members of the corporation may examine the portions of any minutes of meetings of directors or of committees of directors that contain disclosures under this section, and of any other documents that contain those disclosures, during the corporation's usual business hours.

- (8) A contract or transaction for which disclosure is required under subsection (1) is not invalid, and the director or officer is not accountable to the corporation or its members for any profit realized from the contract or transaction, because of the director's or officer's interest in the contract or transaction or because the director was present or was counted to determine whether a quorum existed at the meeting of directors or of the committee of directors that considered the contract or transaction, if
 - (a) disclosure of the interest was made in accordance with this section;
 - (b) the directors approved the contract or transaction; and
 - (c) the contract or transaction was reasonable and fair to the corporation when it was approved.

- (9) Even if the conditions of subsection (8) are not met, a director or an officer, acting honestly and in good faith, is not accountable to the corporation or to its members for any profit realized from a contract or transaction for which disclosure is required under subsection (1), and the contract or transaction is not invalid by reason only of the interest of the director or officer in the contract or transaction, if
 - (a) the contract or transaction is approved or confirmed by special resolution at a meeting of the members;
 - (b) disclosure of the interest was made to the members in a manner sufficient to indicate its nature and extent before the contract or transaction was approved or confirmed; and
 - (c) the contract or transaction was reasonable and fair to the corporation when it was approved or confirmed.

- (10) If a director or an officer of a corporation fails to comply with this section, a court may, on the application of the corporation or any of its members, set aside or annul the contract or transaction on any terms that it thinks fit, require the director or officer to account to the corporation for any profit or gain realized on the contract or transaction or make any other order that the court thinks fit.

4. Description of Conflict of Interest

A conflict of interest arises in any situation where a Decision-Maker's duty to act solely in the best interests of the Corporation is compromised or impeded by any other interest, relationship, or duty of the Decision-Maker. The situations in which conflicts of interest may arise cannot be set out exhaustively. The distinction between a conflict of interest and a material conflict of interest cannot be set out exhaustively and must be considered on a case-by-case basis. (A "Material Conflict of Interest" exists when a reasonable person would conclude that a financial interest on the part of a Decision Maker could influence, compromise, or impede decisions or actions taken by the Corporation). Conflicts of interest generally arise in the following situations:

4.1 Transacting with the Corporation

- When a Decision-Maker transacts with the Corporation directly or indirectly.
- When a Decision-Maker has a material direct or indirect interest in a transaction or contract with the Corporation.

4.2 Interest of a Relative

When the Corporation conducts business with suppliers of goods or services or any other party of which a relative or member of the household of a Decision-Maker is a principal, officer, or representative.

3.3 Gifts

When a Decision-Maker or a member of the Decision-Maker's household or any other person or entity designated by the Decision-Maker accepts gifts, payments, services or anything else of more than a token or nominal value from a party with whom the Corporation may transact business (including a supplier of goods or services) for the purposes of (or that may be perceived to be for the purposes of) influencing an act or decision of the Corporation.

3.4 Acting for an Improper Purpose

When a Decision-Maker exercises their powers motivated by self-interest or other improper purposes.

3.5 Appropriation of Corporate Opportunity

When a Decision-Maker diverts to their own use, an opportunity or advantage that belongs to the Corporation.

3.6 Duty to Disclose Information of Value to the Corporation

When a Decision-Maker fails to disclose information that is relevant to a vital aspect of the Corporation's affairs.

3.7 Serving on Other Corporations

A Decision-Maker may be in a position where there is a conflict of "duty and duty". This may arise where the Decision-Maker serves as a director of two corporations that are competing or transacting with one another. It may also arise where a Decision-Maker has an association or relationship with another entity; for example, if two corporations are both seeking to take advantage of the same opportunity. A Decision-Maker may be in possession of confidential information received in one boardroom or related to the matter that is of importance to a decision being made in the other boardroom. The Decision-Maker cannot discharge the duty to maintain such information in confidence while at the same time discharging the duty to make disclosure. The Decision-Maker cannot act to advance any interests other than those of the Corporation.

5. Process for Managing Conflicts and Addressing Breaches of Duty

5.1 Disclosure of Conflicts

A Decision-Maker who has a conflict of interest with respect to a decision being made by the Board shall immediately disclose it to the Board by notification to the Board Chair. Where the Board Chair has a conflict, notice shall be given to another Director and every subsequent reference to Board Chair in this policy shall be deemed to be a reference to that other Director. The disclosure shall be sufficient to disclose the nature and extent of the conflict of interest. Disclosure shall be made at the earliest possible time and, where possible, before any discussion and vote on the matter.

Where (i) a Decision-Maker is not present at a meeting where a matter in which the Decision-Maker has a conflict of interest is first discussed and/or voted upon, or (ii) a conflict of interest

arises for a Decision-Maker after a matter has been discussed but not yet voted upon, or (iii) a Decision-Maker becomes conflicted after a matter has been approved, the Decision-Maker shall disclose the conflict of interest to the Board Chair as soon as possible thereafter and at the next Board and/or Board committee meeting.

If a Decision-Maker becomes interested in a contract or transaction after it is made or entered into, the disclosure shall be made as soon as possible after the Decision-Maker becomes so interested.

A Decision-Maker may make a general declaration of their relationships and interests in entities or persons that give rise to conflicts.

If a Decision-Maker is uncertain whether a conflict of interest exists, the Decision-Maker must err on the side of disclosure.

If there is any question or doubt concerning if there is a conflict of interest, the Board Chair will determine whether a conflict of interest exists and will inform the Board of their decision. If there is disagreement, a decision of the Board by majority resolution shall be determinative of the matter.

The disclosure and decision as to whether a conflict of interest exists shall be recorded in the minutes of the Board meeting.

5.2 Managing Conflict of Interest

Where a determination has been made that there is a conflict of interest on the part of a Decision-Maker, the Board Chair may take whatever action they deem appropriate to manage the conflict of interest and report back to the Board on the action taken. At a minimum, the conflicted Decision-Maker shall not be present during the discussion, be counted in the quorum concerning the vote, or vote in respect of the matter in which they have a conflict of interest and shall not attempt in any way to influence the voting. The time the Decision-Maker left and returned to the meeting shall be recorded in the minutes of the Board meeting.

5.3 Addressing Breaches of Duty

A Decision-Maker may be referred to the process outlined below where any Decision-Maker believes that another Decision-Maker has a conflict of interest that has not been disclosed.

- a) Refer matter to Board Chair, with notice to the Chief Executive Officer.
- b) Board Chair may either (i) attempt to resolve the matter informally, or (ii) refer the matter to either the Governance Committee or to an ad hoc Board committee established by the Board Chair, which committee shall report to the Board.
- c) If the Board Chair elects to attempt to resolve the matter informally and the matter cannot be informally resolved to the satisfaction of the Board Chair, the Decision-Maker referring the matter, the Decision-Maker involved, the Board Chair shall refer the matter to the process in (b) (ii) above.
- d) A decision of the Board by majority resolution shall be determinative of the matter.

It is recognized that if a conflict of interest cannot be resolved to the satisfaction of the Board (by simple majority resolution), a Decision-Maker may be asked to resign or may be subject to removal pursuant to the Corporate By-law and the Act.

5.4 Perceived Conflicts

It is acknowledged that not all conflicts of interest may be satisfactorily resolved by strict compliance with this Policy. There may be cases where even the perception of a conflict of interest may be harmful to the Corporation notwithstanding that there has been compliance with this Policy. In such cases, it might be in the best interests of the Corporation that the Decision-Maker be asked to resign.

6. Transparency

This policy will be published on the Corporation's website and otherwise be made available upon request.

The minutes of all Board meetings and Board committee meetings, including references to any disclosure or determination of conflicts of interest, will be made available for all members of the Corporation.

7. Compliance

Each Decision Maker has a personal responsibility to ensure that their behaviour and conduct complies with this Policy.



Each Decision Maker will attest upon election and thereafter annually that they have reviewed, understand, and affirm compliance with NGen’s Conflict of Interest Policy, as well as whether they or a family member is a director, officer, employee, or partner of:

- An organization that is receiving direct funding from NGen or providing services to NGen, or
- An organization that has provided audit services to NGen over the past three years.

If a Decision Maker fails to comply with this Policy, they will be removed from the Board. In the case of non-compliance with the Policy, the Corporation or any of its members, may apply to a court to set aside or annul any contract or transaction with the Decision Maker on any terms that it thinks fit, require the Decision Maker to account to the Corporation for any profit or gain realized on the contract or transaction, or make any other order that the court thinks fit.

8. Amendment

This Policy will be reviewed annually and may be amended from time to time by the Board.