

NORTH ISLAND COLLEGE

BYLAW NO. 2, 2023

A BYLAW TO ESTABLISH BOARD OF GOVERNORS CODE OF CONDUCT AND CONFLICT OF INTEREST GUIDELINES

Introduction

North Island College (NIC) is committed to the highest standards of ethics and integrity. The purpose of this Board Code of Conduct (the “Code”) is to establish minimum standards of conduct expected and required of all Board Members, and to support ethical decision-making at NIC. The Code is not exhaustive, and it is acknowledged that no articulation of policies, guidelines and procedures to govern conduct can anticipate all situations. The Code applies to all Board Members of NIC.

The provisions of the Code are in addition to, and not in substitution for, any Board Member’s obligation to NIC imposed upon by common law, equity or statute. Compliance with the Code shall not relieve a Board Member from any such obligation. Consequently, a Board Member uncertain of their duties in any particular circumstance should raise this concern with the Board Chair in order to obtain appropriate guidance and advice.

This Code of Conduct:

- a. reviews Board Members’ fundamental duties, including the fiduciary duty and duty of care;
- b. explains conflict of interest and identifies potential conflicts of interest specific to NIC and also of a general nature;
- c. provides guidance to all Board Members with respect to matters of compliance, conflict of interest, confidentiality, accounting practices and communications, complaints procedure and responsibility to disclose;
- d. outlines the consequences of a breach of the Code; and
- e. provides a Form of Declaration for Board Members to sign to confirm their agreement to comply with the Code.

Definitions

In the Code:

- a. “private interest” means a pecuniary or economic interest or advantage and includes any real or tangible benefit that personally benefits the Board Member or their associate;

- b. “Appointed Board Member” means an individual who is appointed to the Board by the Lieutenant Governor in Council by Order in Council;
- c. “associate” means:
 - i. a spouse of the Board Member;
 - ii. a child of a Board Member or of the spouse of a Board Member;
 - iii. a relative of the Board Member, other than their child, who is living in the family residence;
 - iv. a friend of the Board Member;
 - v. a corporation of which the Board Member beneficially owns, directly or indirectly, more than 20% of the voting rights attached to all outstanding voting securities of the corporation;
 - vi. a trust or estate in which the Board Member has a substantial beneficial interest or for which the Board Member serves as trustee;
 - vii. a member of a professional association of which a Board Member is an executive member;
- d. “Elected Board Member” means an individual who is elected to the Board by the faculty, staff or students;
- e. “friend” includes an individual with whom the Board Member is connected by frequent or close association;
- f. “relative” means a relative by blood, adoption or marriage; and
- g. “spouse” means a person to whom the Board Member is married or with whom the Board Member is living in a marriage-like relationship, including a person of the same gender, but does not include a person from whom the Board Member is separated or living apart and with whom the Board Member has entered into an agreement to live apart or who is the subject of an order of a court recognizing the separation.

Duties

NIC’s Board Members’ duties include the fiduciary duty and the duty of care, which require the following:

- a. **Duty of Loyalty:** Board Members must act honestly, in good faith and in the best interests of NIC. In placing the interests of NIC ahead of their own personal or business interests, Board Members must:
 - i. be honest in their dealings with NIC and with others on behalf of NIC;

- ii. avoid situations where they could profit at the expense of NIC, appropriate a business opportunity of NIC or otherwise put themselves in a position of conflict between their own private interests and the best interests of NIC;
 - iii. avoid actively undermining any decision of the Board, regardless of whether the Board Member agrees with or voted for that decision;
 - iv. avoid engaging in activity or speaking publicly on matters where this could be perceived as an official act or representation of NIC unless specifically authorized to do so by NIC;
- b. **Duty of Care:** Board Members owe a duty of care to NIC and must exercise the degree of skill and diligence reasonably expected from an ordinary person of their knowledge and experience;
 - c. **Duty of Confidentiality:** Board Members must not divulge confidential information that they receive as Board Members to anyone other than persons who are authorized to receive the information. The duty to maintain information in confidence continues after a Board Member ceases to be a Board Member;
 - d. **Duty to Disclose:** Board Members have a duty of continuing disclosure. If a Board Member becomes aware of a matter which they have a duty to disclose or report under this Code, the Board Member must advise the Board Chair as soon as is reasonably practicable. In the case of the Board Chair becoming aware of a matter which they have a duty to disclose or report under this Code, the Board Chair must advise the Chair of the Governance and Board Development Committee;
 - e. **Duty of Compliance:** Board Members shall comply with all applicable laws and regulations and with NIC's Bylaws and policies adopted by the Board from time to time, including this Code. No Board Member shall commit or condone an illegal act or instruct another Board Member to do so. All Board Members are expected to follow the spirit as well as the letter of the law; and
 - f. **Duty of Knowledge:** Board Members must familiarize themselves with the relevant legislation applicable to NIC and to Board Members and to satisfy themselves that appropriate safeguards are in place to assure NIC of their compliance with that legislation.

Conflict of Interest

A conflict of interest is a situation in which the private interests of a Board Member conflict, potentially conflict or appear to conflict directly or indirectly with their duties to NIC, including their duty to act in the best interests of NIC.

An **actual conflict of interest** exists where a Board Member exercises an official power or performs an official duty, at the same time knowing that, in exercise of such performance, there is the opportunity to further a private interest.

A **potential conflict of interest** exists where there is some private interest that could influence the performance of a Board Member's duty or function or the exercise of power, provided that they have not yet exercised that duty or function.

An **apparent conflict of interest** exists where informed people might reasonably hold the apprehension that a conflict of interest exists on the part of the Board Member.

Each Board Member should avoid any situation in which there is an actual, potential, or perceived conflict of interest, which could interfere with the Board Member's judgment in making decisions in NIC's best interest.

General Conflict of Interest Situations - Examples

The following examples have been developed to provide guidance to Board Members in areas where actual, potential or apparent conflicts of interest or other ethical issues may arise. They do not constitute an exhaustive list and each individual instance is subject to review and determination by the Board.

Corporate Opportunity – No Board Member should receive personal financial benefit through the use or misuse of confidential information in relation to the business of NIC.

Non-Profit Associations and Professional Associations – From time to time, a Board Member may reach a position of leadership in a non-profit or professional association where they may be viewed as a spokesperson for that group. In such situations, the Board Member should take reasonable steps to ensure that when speaking on behalf of such an association they are seen as speaking for the organization and not as a spokesperson of NIC.

Use of NIC Property – NIC assets must not be misappropriated for personal use by Board Members. Board Members are entrusted with the care, management and cost-effective use of NIC's property, including the use of NIC's name, and should not make use of these resources for their own personal benefit or purposes. Board Members should ensure that any NIC property assigned to them for business purposes is maintained in good condition, and should be able to account for such property.

Potential Conflicts of Interest Relating to Elected Board Members

Elected Board Members are in a unique situation in relation to conflict of interest considerations. By reason of their membership in a particular constituency of NIC, or by reason of their position within NIC, they may be more likely than Appointed Board Members to have an actual, potential or perceived conflict. Given that the Board structure is prescribed by the *College and Institute Act*, certain conflicts in relation to the Elected Board Members are deemed to be acceptable and should not require the Elected Board Member to be excluded from the discussion or voting. On the other hand, because of the unique position of Elected Board Members, there will be situations where the conflicts are significant enough to require that they be excluded from discussion or voting.

The following are intended to provide general guidelines and examples of conflict of interest for Elected Board Members. These examples do not constitute an exhaustive list and each individual instance is subject to review and determination by the Board.

Constituency Membership - A conflict of interest due to representation of or relation to a specific constituency may occasionally arise. In general, voting on matters which have an effect on a broad group (i.e., students, staff, faculty) by a member of that group, who is not a director, officer, or member of the executive of that group, is not considered to be a conflict of interest.

Conflict could reasonably be considered to exist however, for the following identified groups in the following situations:

- a. Deliberations and decisions directly affecting a specific instructional program in which
 - i. student Elected Board Members are enrolled in the program;
 - ii. faculty or staff Elected Board Members are employed in the program;
 - iii. Elected Board Members with related persons are enrolled in or employed in the program;
- b. Deliberations and decisions related to labour negotiations and labour relations
 - i. for faculty and staff Elected Board Members;
 - ii. for Elected Board Members with related persons who hold faculty and/or staff positions at the College;
 - iii. for Elected Board Members with related persons who hold positions at other institutions who could be seen to gain benefit from information divulged on these matters;
- c. Deliberations and decisions related to labour disputes regarding faculty and staff
- d. For faculty and staff Elected Board Members who have the responsibility, or joint responsibility with others, to adjudicate disputes regarding faculty and staff, represent faculty or staff or their interests in disputes or are involved in any deliberations, decision-making or implementation of any such decisions by or on behalf of faculty or staff unions;
- e. Deliberations and decisions related to any matter in which NIC's interest may not be aligned with those of the faculty or staff unions for Elected Board Members who hold executive positions with faculty and staff unions.

The Board also manages conflicts of interest in its consideration of the appropriate composition for each of the Board Committees.

Protocol for Dealing with Conflicts of Interest

The Board Chair and Board Secretary will advise on any conflicts of interest based on this bylaw.

Board Members must arrange their private affairs in a manner to avoid a conflict of interest. A Board Member has an obligation to declare a conflict of interest at the earliest possible time and, in any event, prior to discussion or decision of an issue. Upon declaration of a conflict at, or prior to, a Board meeting, the person recording the meeting's proceedings notes the declaration in the meeting minutes and the Board Member must generally refrain from participation in any activities involved with the matters, including to absent themselves from the proceedings during discussion or voting on that particular matter.

Where a Board Member is unsure of whether they are in conflict, that Board Member should raise the potential conflict with the Board, and the Board determines by majority vote whether or not a conflict of interest exists. The Board Member with the potential conflict does not vote. The Board Member absents oneself during discussion and voting by the remaining Board Members.

Where a conflict of interest is discovered after consideration of a matter, the conflict must be declared to the Board and appropriately recorded at the first opportunity. If the Board determines that the Board Member's involvement has, or could be perceived to have, influenced the decision of the matter, the Board must re-examine the matter and may rescind, vary or confirm its decision.

A Board Member who perceives another member to be in conflict should identify the potential conflict to the Board at the first opportunity. The Board determines by a simple majority vote whether or not a conflict of interest exists, and the person with the potential conflict does not vote.

At the discretion of the Board, the Board may invite a Board Member in conflict to state their position on the issue prior to absenting themselves.

Confidentiality of Board Information

All information shared by Board Members and those presenting information to the Board shall be treated with utmost confidentiality, except when it is clearly understood that the information is in the public domain.

NIC Board Members may only disclose confidential information to external third parties when disclosure is authorized or required by law or an enactment in a court proceeding. Any other external disclosure of confidential information is subject to prior approval of the Board Chair and President.

The duty of confidentiality continues after an individual ceases to be a Board Member.

Board Member Communication Protocol

Board Members may, from time to time, be approached by a community member(s), employee(s) or student(s) regarding a concern or problem. The protocol for dealing with these issues is as follows:

- a. **Community member** – the Board Member may suggest that contact be made with the President or other senior leader (if known). If the community member is not prepared to do the follow-up, it would be appropriate to suggest contact with the Board Chair. If the community member is not prepared to take further action, the Board Member should inform the Board Chair/President about the concern, maintaining whatever discretion and confidentiality is deemed appropriate.
- b. **Student** – the Board Member, in the following order, may suggest that contact be made with the instructor, department head, senior administrator, President, or Board Chair regarding the concern. If the student is not prepared to take further action, the Board Member should inform the Board Chair/President about the concern maintaining whatever discretion and confidentiality is deemed appropriate.
- c. **Employee** – the Board Member, in the following order, may suggest that contact be made with the employee, department head, senior leader, President, or Board Chair regarding the concern. If the employee is not prepared to take further action, the Board Member should inform the Board Chair/President about the concern, maintaining whatever discretion and confidentiality is deemed appropriate.

Accounting Practices and Communications

NIC's policy is that strict compliance with prescribed accounting procedures and controls will be practiced at NIC at all times. All assets, liabilities, income and expenses shall be correctly identified and recorded in the appropriate books of account. No Board Member shall make any false or misleading statement to internal or external auditors or conceal or omit information necessary to make statements to such auditors meaningful. No Board Member will withhold any books or records relevant to any subject under review from the internal or external auditors.

Complaints Procedure

All complaints received by NIC in respect of the Code shall be referred to the Board Chair. In the case of a complaint regarding the Board Chair, such complaint shall be referred to the Chair of the Governance and Board Development Committee. The Board Chair, or the Chair of the Governance and Board Development Committee, as the case may be, shall conduct (or cause to be conducted) such investigation as they consider appropriate and retain any documentation obtained as part of the investigation. The privacy of an individual who makes a complaint in respect of this Code will be respected as much as is possible in the circumstances. Senior leadership is responsible for ensuring that any individual who, in good faith, has made a disclosure of a breach or potential breach of this Code does not suffer any adverse consequences as a result.

All disclosures will be kept confidential unless the matter disclosed constitutes an actual or potential threat of serious harm to NIC, its students or employees or to the general public.

NIC prohibits discrimination, harassment, or retaliation against anyone who provides information or otherwise assists in an investigation or proceeding regarding an alleged breach of the Code. An individual who legitimately, and in good faith, makes a complaint regarding a breach or perceived breach of the Code shall not, as a result of those activities, be discharged, demoted,

suspended, threatened or harassed, or otherwise discriminated or retaliated against in the terms or conditions of employment or the terms of any contractual relationship with NIC.

However, since such allegation of impropriety may result in serious personal repercussions for the subject of the complaint, the individual making the allegation of impropriety should have reasonable and probable grounds before making a complaint and should undertake such reporting in good faith, in the best interests of NIC, and not for personal gain or motivation.

Any individual who retaliates against a person who has made a complaint regarding the Code is subject to discipline up to and including termination of that person's position on the Board.

In the event that an investigation reveals that a complaint was made frivolously or undertaken for improper motives or in bad faith or without a reasonable basis, as determined by the Board, appropriate disciplinary action may be taken.

Breaches

Should a Board Member be found to have contravened any provision in this Code, the Board has the power to impose punitive action, including one or more of the following:

- a. issue a letter of reprimand;
- b. for elected Board Members, make a recommendation that they resign from the Board; or
- c. pass a resolution (on a vote of at least a two-thirds majority of the Board) providing the Lieutenant Governor in Council with the authority to remove a Board Member from the Board for cause.

Approved this 29th day of JUNE, 2023.

Chair, Board of Governors

Executive Assistant, Board of Governors