



CONFLICT OF INTEREST POLICY

Approved by the Board Directors on 24 Mar 2024

A. INTERPRETATION

For purposes of this Policy, the following terms have the following meanings:

1. “**affiliate**” has the meaning assigned to it in the ONCA;
2. “**By-laws**” means to the By-laws of the Corporation as they may be amended from time to time;
3. “**CAA**” means the *Charities Accounting Act (Ontario)*, R.S.O. 1990, c. C.10, as from time to time amended and every statute that may be substituted for it;
4. “**Chair**” means the chair of the board of Directors;
5. “**Connected Person**” means a person connected to a Director, including the following persons:
 - (a) A Family Member;
 - (b) The employer of the Director or of a Family Member;
 - (c) A corporation with share capital, if, singly or jointly, the Director or a Family Member beneficially owns, controls or has direction over more than 5 per cent of the corporation’s shares;
 - (d) A corporation without share capital, if singly or jointly, the Director or a Family Member beneficially owns, controls or has direction over more than 20 per cent of the outstanding voting membership interests of the corporation;
 - (e) A corporation with or without share capital for which the Director or a Family Member acts as director or officer;
 - (f) A partnership in which the Director or a Family Member is a partner, or in which a corporation described in paragraphs 4 (c), (d), or (e) above is a partner; and/or
 - (g) A partner in a partnership described in paragraph 4 (f) above;

6. “**Corporation**” means “M.I.N.D. Program Moving in New Directions Inc.”;
7. “**Directors**” means the directors of the Corporation from time to time and “**Director**” means any one of them;
8. “**Family Member**” means a family member of a Director, including a spouse, child, parent, grandparent or sibling;
9. “**Officers**” means the officers of the Corporation from time to time who are not Directors, and “**Officer**” refers to any one of them;
10. “**person**” includes an individual, sole proprietorship, partnership, unincorporated association, unincorporated syndicate, unincorporated organization, trust, body corporate and a natural person in their capacity as trustee, executor, administrator, or other legal representative;
11. “**Staff Member**” means an individual employed by the charity, either full-time or part-time, on a permanent, temporary, or contractual basis. This includes, but is not limited to, individuals in management, administrative, and operational roles, regardless of their level or position. Staff Members are responsible for executing the charity's day-to-day operations and activities in alignment with its mission and values.
12. “**ONCA**” means the *Not-for-Profit Corporations Act, 2010*, S.O. 2010, c. 15 as from time to time amended and every statute that may be substituted for it; and
13. “**Policy**” means this Conflict of Interest Policy, as it may be amended from time to time.

B. OVERVIEW

The Corporation is a not-for-profit corporation governed by the ONCA, and a registered charity under the *Income Tax Act* (Canada) that operates in Ontario. As such, the Corporation is subject to the legal requirements for conflicts of interest applicable to the Directors and Officers under the ONCA and to the Directors and Connected Persons under charities laws.

This Policy sets out the key legal requirements for conflicts of interest under corporate and charities laws, however, it is important to note that the Corporation and its Directors and Officers may also be subject to additional conflict of interest requirements that are not covered under this Policy. For example, certain funders may impose requirements for conflicts of interest under a funding agreement with the Corporation.

The ONCA requires the Directors and the Officers to disclose conflicts of interest to the Corporation and it requires that a conflicted Director not attend any part of a Directors’

meeting where the matter at issue will be discussed or voted on. The ONCA also sets out the process and requirements for considering and approving contracts or transactions where there is a conflict of interest, however, the process and requirements under the ONCA are altered and supplemented by the requirements under charities laws with respect to conflicts of interest involving the Directors or Connected Persons.

The Directors have a fiduciary duty to the Corporation, which includes a duty to always act in the best interests of the Corporation, and not to allow their own personal or financial interests to affect their conduct or decision-making.

The Corporation cannot pay someone for serving as a Director, and it generally cannot compensate a Director or Connected Person unless it is authorized to do so under the regulation to the CAA,¹ with court approval, or by an order made under section 13 of the CAA. To do so would be a conflict of interest and potentially a breach of fiduciary duty by the Director(s). If the Directors decide to approve a contract or transaction where a Director has a conflict of interest without valid authorization, the conflicted Director must either resign immediately or be removed as a Director in accordance with the procedures in the ONCA and the By-laws, if any, for removing Directors.

C. APPLICATION AND INTERPRETATION

This Policy applies to all Directors and Officers in the course of their participation in, and activities with, the Corporation, each of whom is required to act in the best interests of the Corporation and to avoid being in a conflict of interest with the Corporation. This Policy establishes the requirements that must be observed by the Directors and Officers to reduce the risk of conflicts of interest and to identify and resolve such conflicts of interest should they arise.

Each Director and Officer must comply at all times with the conflict of interest provisions set out in the ONCA, the By-laws, and this Policy, as applicable.

If there is a conflict between the requirements under the ONCA and other laws regarding conflicts of interest, including without limitation charities laws, the other legal requirements prevail over the requirements in the ONCA.

D. DEFINITION OF CONFLICT OF INTEREST

A conflict of interest arises if a Director or Officer has, may have, or may be perceived to have a personal or financial interest in a decision made by the Corporation. Conflicts of

¹ Section 2.1 of regulation 4/01 to the CAA allows the Corporation to compensate the Directors and Connected Persons under certain limited circumstances.

interest may be real, perceived, or potential, and may evolve at any time before, during or after an individual becomes a Director or Officer.

Without limiting the terms of the general definition above, a Director or Officer is in a conflict of interest with the Corporation under the following circumstances:

1. They are in any way directly or indirectly interested in a contract or transaction or a proposed contract or transaction with the Corporation;
2. They are a director or an officer of, or have an interest in, any person who is a party to a contract or transaction or a proposed contract or transaction with the Corporation; or
3. They use or could reasonably be perceived to have used information gained in their capacity as a Director or Officer for personal gain or benefit, including to gain employment, to hold office in any other organization, to secure a benefit for a Connected Person, or to benefit in any personal undertaking (e.g., an investment, business, etc.)

Practical examples of the above situations regarding director and officers, that would constitute a conflict of interest:

- a) a Director or Officer whose personal company sells products or services to the Corporation, resulting in the Director or Officer receiving income from the profits (#1 and #2);
- b) if the Corporation were to hire a Director or Officer, related family members, or a highly paid staff member in their personal business capacity to complete contract labor such as web design, construction, or investment consulting services. (#1);
- c) a Director who deliberates or decides on the salary or compensation of a related family member who is employed by the Corporation (i.e., a non-arm's length relationship) (#2);
- d) a Director or Officer of the Corporation wants to enter into a contract with an unrelated company, for example, a company that develops websites. If the website development company owes the Director or Officer compensation for prior work from a former job, a conflict of interest exists. The Director or Officer has a personal interest in whether the company obtains the contract (#2);

- e) a Director or Officer of an organization is offered a pair of concert tickets as a token of friendship by a member of the Corporation. This happens a few days before the Directors are set to make a decision concerning this member (#3); and
- f) if the Corporation rents out one of its properties, a Director or Officer cannot use it for personal use without paying a reasonable rent. Otherwise, the director would be depriving the organization of money by putting personal interests first (#3).

The recognition of a real, perceived, or potential conflict of interest is a matter of judgment, and the primary responsibility for recognizing a conflict of interest rests with each individual Director and Officer.

If at a meeting of the Corporation there is uncertainty on whether or not a Director or Officer is in a conflict of interest with the Corporation, the matter shall be determined by the Chair, or, if the matter pertains to the Chair, then by the Directors (other than a Director who may be in a conflict) shall document by recorded vote whether or not such Director or Officer is in a conflict of interest. If the persons designated with the responsibility of determining whether or not a Director or Officer are conflicted are also in a conflict of interest, the matter may be referred to legal counsel for advice.

E. DUTY TO DISCLOSE CONFLICTS OF INTEREST

A Director or Officer who believes that they have an actual, perceived, or potential conflict of interest shall disclose the nature and extent of their interest by providing a written declaration to the Corporation or by making the disclosure at a meeting of the Directors in accordance with the requirements for timing of disclosures set out below.

If the disclosure was made through a written declaration, the nature and extent of the conflict shall be recorded in the minutes of the next meeting of the Directors held following receipt by the Corporation of the declaration. If the disclosure was made at a meeting of the Directors, the nature and extent of the conflict shall be recorded in the minutes of the relevant meeting.

Timing of Disclosure by a Director

The timing for disclosure by a Director depends upon when the conflict of interest arises. A Director must make such disclosure:

1. At the meeting of the Directors at which the proposed contract or transaction is first considered;

2. If the Director did not have a conflict of interest at the time of the meeting described in paragraph 1 above, at the first meeting of the Directors after they become interested;
3. If a Director becomes interested after a contract or transaction is entered into, at the first meeting after they become interested; or
4. If a person who is interested in a contract or transaction later becomes a Director, at the first meeting of the Directors after they become a Director.

The Chair shall declare their conflict of interest to the Treasurer or Secretary and all other Directors and Officers shall declare their conflicts of interest to the Chair.

Timing of Disclosure by an Officer

The timing for disclosure by an Officer depends upon when the conflict of interest arises. An Officer must make such disclosure:

1. Immediately after they become aware that the contract or transaction or the proposed contract or transaction is to be considered or has been considered at a meeting of the Directors;
2. If they become interested after a contract or transaction is entered into, immediately after they become interested; or
3. If a person who is interested in a contract or transaction later becomes an Officer, immediately after they become an Officer.

Timing of Disclosure where Contract or Transaction Does not Require Approval

If a contract or transaction or a proposed contract or transaction is one that, in the ordinary course of the Corporation's activities, would not require approval by the Directors or members of the Corporation, the conflicted Director or Officer shall, immediately, after they become aware of it, disclose in writing to the Corporation, or request to have entered in the minutes of a meeting of Directors, the nature and extent of their interest.

Continuing Disclosure

It is sufficient for a Director or Officer to provide a general notice to the Directors that they are a director or officer of a person, they have an interest in a person, or that there has been a change in their interest in a person, such that they are to be regarded as interested in any contract or transaction that the Corporation enters into or may enter into with the person.

Examples:

- a) A Director declares a conflict of interest in terms of a contract that the Corporation might enter into with a service provider where the Director's sibling is a shareholder of the service provider.
- b) A Director declares a conflict of interest where a family member is a paid employee of the Corporation.
- c) An Officer declares a conflict of interest as they were once a past employee of a service provider that the Corporation intends to hire for services.

In the above examples, the conflicted Director or Officer can provide a general notice to the Directors that the conflict exists, and they don't need to keep providing this disclosure every single time the Corporation considers the specific conflict of interest situation.

F. PROHIBITION ON ATTENDANCE, PARTICIPATION, AND VOTING BY CONFLICTED DIRECTOR

A Director who has a conflict of interest must not attend any part of a meeting of the Directors where the matter at issue is being discussed and they shall not vote on any resolution to approve the matter, unless the matter:

1. Is for indemnity or insurance under section 46 of the ONCA; or
2. Is one with an affiliate.

If all of the Directors are required to disclose a conflict of interest, the contract or transaction at issue may be approved only by the members unless it is one described at paragraphs 1 or 2 above.

No Director or Officer shall discuss a matter about which another Director has a conflict of interest with such other Director.

G. QUORUM

If there is no quorum of Directors for the purpose of voting on a resolution to approve a contract or transaction only because a Director is not permitted to be present at the meeting due to the requirements in section F of this Policy, the remaining Directors are deemed to constitute a quorum for the purposes of voting on the resolution.

H. DIRECTOR AND OFFICER ACCOUNTABILITY

A contract or transaction for which disclosure of a conflict of interest is required under this Policy is not void or voidable, 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 their interest, or because the Director was present or was counted for quorum at the meeting of the Directors or a committee of Directors that considered the contract or transaction, provided that:

1. Disclosure of the interest was made in accordance with the requirements in this Policy;
2. The Directors approved the contract or transaction; **and**
3. The contract or transaction was reasonable and fair to the Corporation when it was approved.

Even if the requirements in this Policy are not met, a Director or 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 by reason only of their being a Director or Officer, and the contract or transaction, if it was reasonable and fair to the Corporation at the time it was approved, is not by reason only of the Director's or Officer's interest in it void or voidable **if**:

1. The contract or transaction is confirmed or approved by special resolution at a meeting of the members duly called for that purpose; **and**
2. The nature and extent of the Director's or Officer's interest in the contract or transaction are disclosed in reasonable detail in the notice calling the meeting described at paragraph 1 above.

Subject to the conditions and exceptions set out in this section H above, if a Director or Officer fails to disclose their interest in accordance with this Policy or otherwise fails to comply with this Policy, the Corporation or its members may apply to the Court for an order setting aside the contract or transaction and directing that the Director or Officer account to the Corporation for any profit or gain realized, and the Court may make this or any other order as it thinks fit.

I. STAFF MEMBERS

This section of the policy specifically addresses the responsibilities and expectations of staff members of the Corporation in relation to conflicts of interest.

1. **Application:** In addition to directors and officers, all stipulations and principles regarding conflicts of interest outlined in this policy equally apply to staff members. This includes full-time, part-time, temporary, and contract employees.

2. Prohibition of Undue Financial Gain:

- Staff members and their immediate family members are prohibited from deriving any direct or indirect financial benefit from transactions, contracts, or any business dealings entered into by the Corporation.
- Immediate family members include, but are not limited to, spouses, domestic partners, children, parents, and siblings.
- Any potential for financial gain, whether perceived or actual, must be fully disclosed to and reviewed by the appropriate committee or governing body within the Corporation.

3. Employment of Family Members:

- Staff members must not be involved in the hiring, supervision, or direct reporting of family members. In circumstances where such a relationship exists or is likely to occur, it must be promptly disclosed to their supervisor or the designated authority within the Corporation.
- The hiring of family members should be based solely on qualifications, performance, skills, and experience. Nepotism, or the appearance thereof, is to be strictly avoided.