YESAB

Yukon Environmental and
Socio-economic Assessment Board

Policy No: **2020-21**

Policy Name: **BOARD CONFLICT OF INTEREST POLICY**

Effective Date: **December 3, 2020**

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1. Application

1.1 This policy applies to all members of the Board established under s.8 of the *Yukon Environmental and Socio-economic Assessment Act* (YESAA).

1.2 This policy continues to apply a member whose term has expired and who has agreed to continue performing their functions under sections 10(4) or 11(4) of YESAA.

2. Objectives

The objectives of this policy are to:

2.1 ensure that in situations of real, potential or perceived conflict of interest, Board decisions are made in a manner that upholds the public interest;

2.2 facilitate impartial decision-making within the Board that is free of conflicts between private and public interests; and

2.3 establish measures to help Board members prevent, manage and resolve conflicts of interest or apprehensions of bias that could damage either the reputation or interests of YESAB or the public's perception of its impartiality.

3. Context

3.1 One of the purposes of the YESAA is to provide a neutrally conducted impact assessment process in Yukon. Board members must help fulfill this purpose by remaining impartial and non-partisan throughout the term of their appointment with the Board.

3.2 Board members are bound by the principles of natural justice and administrative fairness in carrying out their duties under YESAA.

3.3 The highest standard of conduct among Board members is essential to maintain and enhance public trust and confidence in YESAB and the neutrality of assessments conducted under YESAA. Preventing, managing and resolving conflict of interest and

apprehension of bias situations is a primary mechanism for maintaining public trust and confidence in the impartiality of YESAB.

3.4 This policy provides direction and measures to assist the Board and its members to deal effectively with real, potential and perceived conflict of interest situations which may arise during a member's tenure at YESAB.

4. Implementation

4.1 The determination of whether a conflict of interest exists must be context specific and depends on the nature and extent of a Board member's private interests and the role and decision making powers of the affected Board member.

4.2 Whether a conflict of interest exists will depend in part on a member's position with the Board and his or her ability to make or influence a particular decision. Where Board members do not have decision making powers in relation to a specific project, the potential for a conflict of interest is more remote and may not arise.

4.3 This policy should be read in conjunction with the Conflict of Interest Guidelines developed and approved by the Board. The Guidelines provide greater detail on the application of this policy as well as examples of conflicts of interest and reasonable apprehension of bias.

4.4 The approach and actions set out in this policy to address and resolve instances of conflict of interest or apprehension of bias are generally the same, subject always to the specific context and facts of a situation.

4.5 A Board member is not in a conflict of interest merely because of any status or entitlement conferred under the Umbrella Final Agreement, the Gwich'in Comprehensive Land Claim Agreement, or any First Nation Final Agreement between a first nation and Her Majesty in right of Canada.

5. Definitions

In this policy,

"Board" means the board established under s.8 of YESAA.

"Board member" includes the Chair of the Board as the context requires.

"conflict of interest" for purposes of this policy includes a reasonable apprehension of bias and means a situation in which a Board member has private interests that could influence the performance of his or her duties and responsibilities as a Board member; in

which the Board member uses his or her position for personal gain; or a situation where a member has conflicting fiduciary obligations.

Conflict of interest may be real, potential or perceived. Real conflicts already exist because of current or past circumstances or relationships. Potential conflicts are those that can reasonably be foreseen to exist in the future. Perceived conflicts are those situations that are reasonably seen by informed outside parties as raising a potential concern.

Mere familiarity between a Board member and a party, proponent, government official or stakeholder does not by itself create a conflict of interest.

"financial interest" includes but is not limited to:

(i) direct payments or compensation, including honoraria payments;

(ii) shares in privately held or publicly traded corporations;

(iii) an interest in a partnership, proprietorship, joint venture or private company that owns or controls shares in a public company;

(iv)a pecuniary interest in a partnership, proprietorship, joint venture or private company;

(v) secured or unsecured loans to a person; and

(vi) direct or contingent liabilities in respect of any interest described in this section, but does not include a financial interest held through a mutual fund, an exchange traded fund, or rights in a pension fund.

"Guidelines" mean the Conflict of Interest Guidelines developed and approved by the Board in association with this policy.

"immediate family" includes a spouse (civil or common law) regardless of gender, partner regardless of gender, parent, child regardless of age, sibling, mothers-in-law, fathers-in-law, brothers-in-law or sisters-in-law.

"political activities" under this policy does not include voting, donating funds to a campaign consistent with applicable laws for donations from members of the public, holding a membership to a political party, or attending political meetings.

"private interest" includes a financial or immediate family interest.

"reasonable apprehension of bias" exists where an informed person, viewing the matter realistically and practically, and having thought the matter through, thinks that it is more likely than not that the Board member, consciously or unconsciously, would not act or decide a matter fairly.

"YESAB" means the entire organization; the Board, management and staff, and the Designated Offices.

6. Policy Requirements

6.1 Managing a conflict of interest

6.1.1. All Board members must review and subscribe to this policy and the Guidelines. All Board members must sign and submit a Certificate certifying that the Board member has read and understands this policy and the Guidelines.

6.1.2. A Board member shall take all possible steps to identify, prevent, report and resolve real, potential or perceived conflicts of interest between his or her duties and responsibilities as a Board member and any of his or her private interests.

6.1.3. A Board member shall make financial disclosure in writing to the Chair in accordance with the Guidelines including all outside financial activities, assets, liabilities and interests that might give rise to a real, potential or perceived conflict of interest in relation to his or her duties and responsibilities as a Board member not later than 60 days after the Board member's appointment to the Board.

6.1.4. A Board member may not engage in any Board decision-making until the written disclosure required by section 6.1.3 has been provided to the Chair. The Chair shall confirm to the Board in writing that the member's financial disclosure has been received.

6.1.5. Annually thereafter, and immediately following any material change to his or her private financial interests, every Board member shall review their obligations under this policy and update the written financial disclosure provided to the Chair.

6.1.6. Board members have an ongoing duty to disclose any conflicts of interest, and prior to engaging in any new matter before the Board, every Board member shall review their obligations under this policy and make timely disclosure of any conflict of interest to the Board.

6.1.7. All information pertaining to a Board member's disclosure of a conflict of interest is confidential and will be protected and retained by the Board in accordance with the *Access to Information Act* and the *Privacy Act.* All financial information shall be held by the Chair in strict confidence and shall only be disclosed to the Board to the extent necessary where a conflict arises.

6.1.8. Upon receipt of a Board member's disclosure of a conflict under this policy, the Board shall discuss the matter with the Board member and attempt to resolve any conflict of interest concerns by agreement.

6.1.9. Where agreement cannot be reached between the Board and a Board member on how to deal with a conflict of interest they may agree to seek outside assistance to determine an appropriate course of action to achieve a fair and effective resolution of the disagreement and conflict.

6.1.10. The Board and the Board member must ensure that any conflict arising between the private interest and the duties and responsibilities of a Board member is resolved in favour of the public interest.

6.1.11. The Board and the Board member should fulfill the responsibility in 6.1.10 by considering the nature and risk of the conflict of interest and the measures required to resolve the conflict.

6.1.12. If the conflict of interest cannot be resolved by agreement, the Board, with the assistance of legal counsel, shall provide the Board member with written direction regarding the appropriate arrangements to resolve the conflict of interest situation.

6.1.13. Where a Board member is in a conflict of interest that cannot be resolved, or the Board member refuses to acknowledge the conflict that Board member shall not act in relation to that matter. The Board should seek advice from legal counsel where it is determined that a conflict cannot be resolved.

6.1.14. Where there is a conflict of interest declared, the meeting minutes of the Board will note the fact that there is a conflict and that the member with the conflict did not participate in the related decisions.

6.1.15. Decisions made by the Board about conflicts shall be made by a majority vote, in accordance with the Board's by-laws.

6.1.16. The Board and/or a Board member may seek advice from YESAB's legal counsel at any time, including where

a. a Board member is unsure if he or she has a real, potential or perceived conflict of interest,

b. a Board member is considering pursuing political activities,

c. the Board and the Board member need guidance to determine the best approach to resolving a conflict, or

d. an agreement cannot be reached between the Board and Board member on how to resolve a conflict of interest.

6.1.17. At any time, the Board and the Board member may agree to seek advice from outside legal counsel to assist with assessing and resolving any potential or actual conflicts.

6.1.18. A conflict of interest declared by a Board member for a specific project or matter before YESAB or the Board does not impair that member's ability to continue to perform the member's duties for all other Board matters.

6.2 Duty of members of the Board to Avoid Conflicts of Interest

Financial interests

6.2.1. A Board member shall not knowingly take advantage of, or benefit from, information that is obtained in the course of his or her duties and responsibilities and that is not public information.

6.2.2. A Board member shall evaluate and take into consideration the nature of his or her financial interests in light of their duties and responsibilities as a Board member. If there is any real, potential or perceived conflict of interest between carrying out Board duties and responsibilities and his or her financial interests, he or she shall disclose the matter to the Board in a timely manner.

6.2.3. Where the Board determines that any financial interest of a Board member has resulted in a real, potential or perceived conflict of interest in relation to the duties and responsibilities of that Board member, the Board may require that appropriate arrangements be made to resolve the conflict. A Board member may not sell or transfer assets or other financial interests to anyone while still maintaining direct or indirect control of those interests, simply for the purpose of circumventing these policy requirements.

Interfering in Fair Process

6.2.4. A Board member shall not assist any organization, person or entities in any way in their dealings with YESAB where this assistance would result in preferential treatment of those organizations, persons or entities in the YESAB process.

6.2.5. A Board member shall not interfere in dealings between organizations, persons or entities and YESAB for the purpose of inappropriately influencing any outcomes.

Family Interests

6.2.6. A Board member must not take part in a decision where the outcome might reasonably be expected to further the private interests of the member's immediate family. A member shall forthwith disclose to the Board if any immediate family members work for, or on behalf of, a present or likely participant in a matter before YESAB.

Outside employment, consultancy or volunteering

6.2.7. A Board member may engage in employment (including acting as a member of a Board of Directors), consultancy or volunteering outside of YESAB and take part in outside activities unless the employment or activities are likely to give rise to a real, potential or perceived conflict of interest, undermine the impartiality of YESAB or the objectivity of the Board member. Where there is a conflict between a Board member's employment and a matter before the Board, the Board member will declare the conflict and will not act in that matter. A Board member may not act in a situation where that member has conflicting fiduciary obligations.

6.2.8. A Board member shall disclose to the Board any outside employment, consulting, or volunteering activities that might result in demands incompatible with his or her duties and responsibilities or cast doubt on his or her ability to perform Board responsibilities in a completely objective manner.

6.2.9. A Board member may be required to modify or terminate outside activities if the Board determines that a real, perceived or potential conflict of interest exists, or recuse themselves from any decision-making roles at the Board relating to the matter where the conflict arises.

Gifts

6.2.10. A Board member shall not accept any gift, hospitality or benefit that may create a real, perceived or potential conflict of interest.

6.2.11. A Board member may accept gifts, hospitality and other benefits only where they are incidental. This includes situations where the gift, hospitality or other benefit is a normal expression of courtesy and does not exceed a value of $200. There must be no suspicion that the gift, hospitality or benefit was made to influence the Board member's judgment.

Public Statements

6.2.12. A Board member shall not comment publicly on:

a. a project being assessed by YESAB;

b. prospective activities that are reasonably expected to be submitted as project proposals;

c. on parties or specific issues before YESAB; or

d. on public issues related to ongoing assessments or prospective activities,

except where authorized to do so in accordance with the YESAB Communications Protocol.

6.2.13. In making public statements, a Board member shall not criticize YESAB policies, decisions, actions or recommendations.

Political activities

6.2.14. A Board member may not engage in the following political activities:

a. Use YESAB premises, equipment or supplies for political activities

b. Involvement in political activity during work hours

c. Distribute or display campaign literature at YESAB premises

6.2.15. A Board member who wishes to engage in political activities, other than seeking nomination or being a candidate, may only do so if the Board member has obtained permission from the Board.

6.2.16. The Board may grant permission for the purpose of 6.2.15. In deciding whether to grant such permission, the Board will take into consideration factors such as the nature of the political activities, the nature of the Board member's duties and responsibilities at YESAB and the level and visibility of the Board member's

position. The Board member and the Board must ensure that the political activity will not jeopardize the impartiality or neutrality, real or perceived, of YESAB.

6.2.17. A Board member who has received permission pursuant to 6.2.16 shall disclose any changes or updates to the proposed activities to the Board if the political activities are likely to give rise to a real, potential or perceived conflict of interest in relation to his or her duties and responsibilities.

Running as a Candidate in a Provincial or Federal Election

6.2.18. A Board member who wishes to seek nomination as a candidate in a federal or territorial election shall prior to the date for the close of nominations established by law

a. disclose his or her intention to the Board; and

b. apply for leave of absence without pay prior to publicly announcing or communicating his or her intention to seek the nomination or candidacy.

6.2.19. If a Board member is nominated or becomes a candidate before the official election period, the leave of absence referred to in 6.2.18 shall begin when the Board member is named as an official candidate.

6.2.20. If a Board member is nominated or becomes a candidate after the first day of the official election period, the leave of absence referenced to 6.2.18 shall begin on the date that the Board member is nominated or becomes a candidate.

6.2.21. The leave of absence referenced to in 6.2.18 will terminate on the earlier of the date of the official declaration of the results of the election or on the date that the Board member officially withdraws as a candidate from the election.

6.2.22. A Board member shall resign from his or her appointment with the Board on the date that he or she is declared elected or is appointed in a federal or territorial election.

Running as a Candidate in a Municipal or First Nation Government Election

6.2.23. A Board member who wishes to stand as a candidate in a First Nation or municipal election shall prior to the date for the close of nominations established by law disclose his or her intention to the Board.

6.2.24. A Board member who is declared elected or who is appointed in a municipal or First Nation election shall immediately disclose the matter to the Board.

6.2.25. If a Board member is elected to a municipal or First Nation government, he or she shall declare a conflict in relation to any matter relating to the municipality or First Nation in which the Board member serves.

6.2.26. If the Board member is elected as a Mayor of a municipality or a Chief of a First Nation, that Board member shall resign from his or her appointment with the Board on the date that he or she is declared elected or is appointed.

Approved by: Yukon and Socio-economic Assessment Board –
Meeting #161 – December 3, 2020 – Motion #2020-15