



YUKON WATER BOARD CONFLICT OF INTEREST RULES

These Rules are made under the authority of Section 22 of the *Waters Act* and section 2.12.2.10 of the Yukon First Nations Final Agreements.

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PART 1 INTRODUCTION AND PURPOSE

The Yukon Water Board is a quasi-judicial administrative tribunal and as such is bound by the principles of natural justice and administrative law. The Board is committed to the highest standards of ethics and integrity. It recognizes the need to foster values described as balanced, ethical, collaborative, transparent, and open.

The purpose of these Conflict of Interest Rules is to establish a procedure to identify and resolve conflict of interest issues and real or apparent bias of a Member with regard to any business of or matter before the Board. These Rules will assist Members in fulfilling their duties in a manner that is fair and unbiased in both practice and appearance.

PART 2 INTERPRETATION

Definitions

2.1 In these Rules,

"Act" means the Waters Act, S.Y. 2003 c.19 and includes Waters Regulation, O.I.C. 2003/58 and OIC 2014/63;

"Applicant" means any Person who makes an application to the Board other than a Claimant or an Intervener.

"Benefit" includes a fee, money, gift, service, personal benefit or other advantage which could be reasonably perceived to exert influence or give preferential treatment.

"Board" means the Yukon Water Board.

"Business Day" means a day that is neither a Saturday nor a Sunday, nor another holiday.

"Chairperson" means the Chairperson of the Board or, in the absence of the Chairperson, the Vice Chairperson.

"Claimant" means a Person seeking compensation under the Act or under Chapter 14 of the Umbrella Final Agreement.

"Intervener" means a Person who has made a written submission to the Board regarding an application.

"Member" means a member of the Board.

"Licensee" means a Person who has been issued a current water use licence under the Act.

"Party" means a Person who is an Applicant, a Claimant, an Intervener or a Licensee.



“Person” includes an individual, association, partnership, society, board, committee, council, organization, corporation, a government (including municipal, territorial, First Nation and federal government), and an agency of a government.

PART 3 GENERAL

Conflict identification

- 3.1 The Chairperson will meet with new Members, and will consult with legal counsel as necessary, in order to identify any potential for conflicts of interest or bias and to advise the Member of their responsibilities regarding these Conflict of Interest Rules.

Reasonable steps to avoid

- 3.2 The Board and its Members will at all times take reasonable steps to avoid any real or perceived conflict of interest or bias.

Responsibility to inform

- 3.3 Members have a responsibility to inform the Chair as soon as possible of any circumstances that may have a negative or harmful impact on their respective abilities to perform the duties required of their appointment.

Use of confidential information

- 3.4 Members shall not knowingly take personal advantage of confidential information obtained in the course of their duties as a Member.

Precautionary approach

- 3.5 A precautionary approach will be taken when deciding a specific situation given it is not always possible to know in advance which fact situations constitute a real or perceived conflict of interest or bias.

Reasonable person test

- 3.6 The test to determine whether there is a real or apparent conflict of interest or bias is whether a reasonably informed and right-minded person would reasonably conclude that a Member, whether consciously or unconsciously, may not decide a question fairly because of a conflict of interest or bias.

Conflict not an adverse statement

- 3.7 A determination of real or perceived conflict of interest or bias is not an adverse statement about the conduct or character of a Member; rather it is recognition of strong emphasis by the Board and each of its Members in maintaining the highest level of both real and perceived impartiality.



PART 4 PRINCIPLES

Board interests a priority

- 4.1 It is important that the Board members always place the interests of the Board above their own when engaged in business of the Board.

No participation

- 4.2 No Member shall participate in a proceeding if:
- (a) They have a personal interest which is, or could reasonably be perceived to be, incompatible with an unbiased exercise of their judgement.
 - (b) For any other reason, they are of a reasonably held opinion, that they would be unable to render an impartial decision.
 - (c) Their continuing, or prior associations or relationships (including family and other close personal relationships), would reasonably be perceived as not enabling them to render an impartial decision.
 - (d) They have directly or indirectly, received a Benefit or other advantage which is, or could reasonably be perceived to be, incompatible with an unbiased exercise of their judgement.

PART 5 PROCEDURES

Decision making

- 5.1 The Board shall subscribe to the principles of consensus decision making on matters related to conflict of interest.

Consensus

- 5.2 When consensus is not reached the Board will decide the matter by vote.

Legal advice

- 5.3 The Chairperson may seek legal advice at any time if it is determined that advice would be helpful in determining a question of real, perceived or potential conflict of interest or bias on the part of a Member or the Board.

Legal advice obtained in writing

- 5.4 Any legal advice that is obtained on a matter relating to a Member will be obtained in writing and will be copied to the Member.



Application and matters before the Board

- 5.5 A Member who is affiliated, through membership, with any association, partnership, society, board, committee, council, or organization that is a Party shall not participate in any discussion or decision relating to any business of or matter before the Board involving that Party, and shall not discuss such business or matter with any other Member.

Member employment

- 5.6 A Member who is employed by or providing services, paid or unpaid, for a Party shall not participate in any discussion or decision relating to any business of or matter before the Board involving that Party regardless of the nature, location, or level of influence of the Member's employment or work circumstances with that Party, and shall not discuss such business or matter with any other Members.

Advise on real, perceived or potential conflict

- 5.7 A Member who recognizes that they have a real, perceived or potential conflict of interest or bias regarding an application or matter before the Board will immediately advise the Chairperson and the Chairperson will accept this declaration without further consideration. The Member will not participate any further in Board deliberations for that application or matter.

Disclosure when uncertain about conflict

- 5.8 A member who is unsure about whether they or another Member may have a real, perceived, or potential conflict of interest or bias must disclose the concern to the Chairperson as soon as possible.

Conflict disclosure discussion

- 5.9 The Chairperson will discuss the concern with the Member in question and make such inquiries as the Chairperson considers appropriate and with the affected Member, determine if the concern, whether a real or perceived conflict of interest or bias exists or is likely to exist, can be mutually resolved.

Resolution by the Board

- 5.10 Where it cannot be mutually resolved the Chairperson shall refer that question to the Board for determination.
- (a) Pending a resolution, the Member in question shall not participate any further in Board deliberations for the application or matter giving rise to the concern of a conflict of interest or bias, actual or perceived.

Communication to affected member

- 5.11 The decision shall be communicated to the affected Member who shall comply with the Board's decision.



Disqualification “cooling off” period

- 5.12 In the event that a determination has been made that a Member is disqualified from participating in a particular application or other matter before the Board because of a real or apparent conflict of interest or bias arising out of the Member’s prior relationship to a Party, then the Board may in appropriate circumstances, apply the following principles in determining a “cooling off” period of time after which the Member may no longer be considered disqualified:
- (a) For each year the Member provided services for or was associated with a Party to the application or other matter before the Board, the Member may be considered disqualified for the period of one month/year of service or association beginning after the last month when the Member had any decision making ability, authority or other material involvement with regard to the Party.

PART 6 PUBLIC HEARINGS

Publish panel names

- 6.1 In those instances when an application or other matter will be dealt with by way of a public hearing then, prior to the public hearing, the Board will publicize the names of the panel of Members who will preside and hear evidence regarding the application or other matter.

Party notification

- 6.2 A Party must notify the Board at least five clear Business Days prior to the commencement of the public hearing and give reasons in writing of any concern that a Member may have a conflict of interest or that a perception of bias exists with respect to that Member’s participation in the public hearing.

Party concerns

- 6.3 If a concern is raised by a Party regarding a possible conflict of interest or bias on the part of a Member, then the Board will:
- (a) Consider the reasons giving rise to the Party’s concern.
 - (b) Allow other Parties to the application or public hearing to make submissions with respect to the concern of possible conflict of interest or bias on the part of a Member.
 - (c) Pending a resolution, the Member in question shall not participate any further in Board deliberations for the application or matter giving rise to the concern of a conflict of interest or bias, actual or perceived.



- (d) The Board will make a ruling whether or not a conflict of interest exists, or reasonable perception of bias exists, and provide written reasons for its decision.
- (e) The decision will be communicated to the affected Member who shall comply with the Board's decision.

PART 7 CONTRAVENTION OF RULES

Failure to disclose

- 7.1 Where the Board determines under these Rules that there has been wilful failure by a Member to disclose a material conflict of interest, the Board may make a recommendation of termination of the Members appointment to the Minister.