

**BY-LAW NO. 2 and Policy CPM-05-04**

A BY-LAW AND POLICY RELATED TO FIDUCIARY RESPONSIBILITY AND MATTERS WHICH CONFLICT WITH THE INTERESTS OF THE NIAGARA PARKS COMMISSION (NPC). THIS BYLAW AND POLICY APPLY TO COMMISSIONERS AND EMPLOYEES OF NPC.

**A. Definitions**

Definitions are provided in Appendix A attached.

**B. Statement of Fiduciary Responsibility to The Niagara Parks Commission**

Commissioners and employees must uphold their fiduciary responsibility to The Niagara Parks Commission by acting honestly, in good faith and solely in the best interests of the Commission.

All Commissioners have the same roles and responsibilities and the same fiduciary responsibility. In accepting their appointment, Commissioners shall exercise the powers conferred solely in the interests of the Commission and shall not use their role or position for their own personal interest or that of any other organization. Decisions made on behalf of the Commission must be based solely on the interests of the Commission. Decisions must not be influenced by desire for personal profit, loyalty to other organizations, or other extraneous considerations.

Conflicts of interest arise where Commissioners and employees have personal, financial, business or professional interests or responsibilities that may interfere with their duties on behalf of the Commission. As public servants, they must avoid all actual, perceived or potential conflicts of interest.

Some Commissioners and employees in positions of responsibility may be bound by other codes of ethical conduct or professional requirements through their memberships in professional associations. For Commissioners this may also extend to their position with other organizations.

If a Commissioner feels that there is a conflict between the requirements of his or her association and those of the Commission, he or she must declare a conflict of interest with the Commission and discuss the matter with the Chair (Ethics Executive) of the Commission. In the case, where a Commissioner may have a serious, ongoing and irreconcilable conflict, where the relationship to an outside organization so seriously impedes the Commissioner's ability to carry out the fiduciary responsibility to the Commission, resignation from the position with the Commission or the conflicting organization (entity) is appropriate.

Employees are also bound in these instances to discuss their conflict with the General Manager, as their Ethics Executive, and seek out an immediate resolution of the conflict.

### C. Principles of Professional and Ethical Conduct

Commissioners and employees shall adhere to the principles of conduct founded on the professional and ethical values of the provincial public service which are set to uphold the public trust. The following principles promote a standard of conduct that will preserve and enhance the integrity, objectivity and impartiality of the affairs and decision-making processes of NPC. These principles are in keeping with the ethical framework and values set out in the Code of Conduct for NPC.

#### Principles\*

1. **Compliance with Laws** – act in accordance with all applicable laws and shall not commit or condone an unethical or illegal act or invoke another to do so.
2. **Duty of loyalty** – uphold fiduciary duties of loyalty to NPC and to the Board by acting honestly, in good faith and in the best interests of the Commission. No other personal or professional interests can take precedence to this obligation.
3. **Confidentiality** – protect the privacy interests of individuals and act in accordance with applicable laws and refrain from disclosing information that NPC considers to be confidential.
4. **Diligence: Quality and Consistency** – commit the time and effort to fulfill the strategic goals and objectives of NPC.
5. **Expertise/Competence** – exercise a duty of care to NPC by acting with diligence and skill and maintain the professional competence and knowledge required to discharge their obligations and duties.
6. **Integrity** – act with honesty, integrity and high ethical standards in personal and professional matters to ensure public confidence and trust in NPC.
7. **Fairness/Courtesy** – treat others with dignity and respect and in a manner that builds trust.
8. **Timeliness** – act in a manner to address applicable matters in order to maximize effect and effort and mitigate risk and be aware of and ensure that accountability obligations are met with specified timelines.
9. **Transparency** – act in an open, fair and accountable manner and in such a fashion that would bear close public scrutiny.
10. **Optimum Cost** – respect the public trust by ensuring plans and initiatives strike the right balance between prudent use of Commission resources and the provision of quality services to the public.
11. **Objectivity/Impartiality** – exercise respect for the contributions and participation of others, an ability to think independently and a desire to reach consensus.

(\*Adapted from *Code of Conduct, Operational Business and Operational Enterprise Agencies*, Province of Ontario)

**D. Conflict of Interest Rules for NPC Public Servants (Commissioners and Employees)**

Commissioners and employees of NPC are public servants under the *Public Service of Ontario Act*, (PSOA) and are subject to the conflict of interest rules in this Act and the ethical standards set out in Ontario Regulation 381/07. The PSOA and regulation can be found at [www.e-laws.gov.on.ca](http://www.e-laws.gov.on.ca).

As public servants, Commissioners and employees must be aware of situations that may present an actual or potential conflict of interest and know to take appropriate action when these situations arise. Conflicts of interest include any personal or business interest, relationship, association or activity that is incompatible with or in conflict with the public servant's obligations and responsibilities to NPC.

These conflict of interest rules for Commissioners and employees are based on those in the Regulation. Where a provision in these rules is inconsistent with a provision in the regulation, the provision in the regulation prevails. For this purpose, a provision in these rules is inconsistent with a provision of the Regulation where a provision in the rules establishes a degree of ethical conduct that is lower than is established by the Regulation. An inconsistency does not arise where a provision in these rules exceeds the degree of ethical conduct established by the Regulation.

Further, the political activities of Commissioners and employees are governed by the *PSOA*. Individuals must not engage in political activity at work and must not associate their positions with political activity. The statute restricts Commissioners or employees from engaging in political activity that would conflict with the interest of NPC. For complete details on the rights and prohibitions relating to political activity for Commissioners and employees, refer to Part V of the *PSOA*.

These rules apply in conjunction with the Code of Conduct for The Niagara Parks Commission and In particular the Conflict of Interest provisions in this Code.

**Part I**

**CONFLICT OF INTEREST RULES FOR NPC COMMISSIONERS AND EMPLOYEES  
(PUBLIC SERVANTS)**

**Benefiting self, spouse or children**

1. Commissioners and employees shall not use or attempt to use his or her position with NPC to directly or indirectly benefit himself or herself or his or her spouse or children.

2. Commissioners and employees shall not allow the prospect of his or her future employment by a person or organization to affect the performance of his or her duties to NPC or the Crown.

### **Accepting gifts**

3. Commissioners and employees shall not accept a gift from any of the following persons or organizations if a reasonable person might conclude that the gift could influence the Commissioner or employee when performing his or her duties to NPC or the Crown:
  - a) a person, group or organization that has dealings with NPC or the Crown
  - b) a person, group or organization to whom the Commissioner or employee provides services in the course of his or her duties to NPC or the Crown
  - c) a person, group or organization that seeks to do business with NPC or the Crown.
4. This rule shall not prevent a Commissioner or employee from accepting a gift of nominal value given as an expression of courtesy or hospitality if doing so is reasonable in the circumstances.
5. A Commissioner or employee who receives a gift in the circumstances described above, with the exception of a nominal gift, shall notify his or her ethics executive.

### **Disclosing confidential information**

6. A Commissioner or employee shall not disclose confidential information during the course of his or employment by NPC unless authorized to do so by law, NPC or the Crown.
7. A Commissioner or employee shall not use confidential information in a business or undertaking outside of his or her work for NPC.
8. A Commissioner or employee shall not accept a gift directly or indirectly in exchange for disclosing confidential information.

### **Giving preferential treatment**

9. A Commissioner or employee shall not give preferential treatment to any person or organization including those where the Commissioner or employee or a member of his or her family or a friend has an interest.
10. A Commissioner or employee shall avoid creating the appearance that preferential treatment is being given to a person or organization.

11. A Commissioner or employee shall not offer assistance to a person or organization in dealing with NPC other than assistance given as part of his or her duties with NPC or the Crown.

### **Hiring family members**

12. A Commissioner or employee shall not, on behalf of NPC, hire his or her spouse, child, parent or sibling.
13. A Commissioner or employee shall not, on behalf of NPC, enter into a contract with his or her spouse, child, parent or sibling or with a person or organization in which any of them has a substantial interest.
14. A Commissioner or employee who hires a person on behalf of NPC shall ensure that the person does not report to or supervise the work of the person's spouse, child, parent or sibling.
15. If a Commissioner or employee reports to, or supervises the work of his or her spouse, child, parent or sibling, he or she must notify the ethics executive.

### **Engaging in business**

16. A Commissioner or employee must avoid activities outside of NPC, where such involvement may lead to a conflict with his or her work responsibilities with NPC.
17. Commissioners and employees shall not become employed or engage in a business or undertaking outside of his or her employment or appointment by NPC in any of the following circumstances:
- (a) If the Commissioner's or employee's private interests in connection with the employment or undertaking could conflict with his or her duties to NPC or the Crown.
  - (b) If the employment or undertaking would interfere with the Commissioner's or employee's ability to perform his or her duties to NPC or the Crown.
  - (c) If the employment is in a professional capacity and is likely to influence or detrimentally affect the Commissioner's or employee's ability to perform his or her duties to NPC or the Crown.
  - (d) If the employment would constitute full-time employment for another person. This does not apply to an employee who is employed part-time or to a Commissioner who is appointed on a part-time basis. This also does not apply to a Commissioner or employee on an authorized leave of absence provided the employment is not contrary to the terms of the leave of absence.
  - (e) If, in connection with the employment or undertaking, any person would derive an advantage from the Commissioner's or employee's employment with NPC.

- (f) If NPC or government premises, equipment or supplies are used in the employment or undertaking.

### **Participation in decision-making**

18. A Commissioner or employee shall not participate in decision-making by NPC or the Crown where he or she could benefit from the decision, unless prior approval has been given by the ethics executive.
19. A Commissioner or employee who in the course of his or her employment or appointment with NPC, is a member of a group, must not participate in or attempt to influence decision-making by the group, if the Commissioner or employee could benefit from the decisions or if, as a result of the decisions, the interests of the group could conflict with the interests of NPC or the Crown. A Commissioner or employee shall inform the group if he or she is in this circumstance.

### **Matters that might involve the private sector**

20. A Commissioner or employee is required to adhere to Sections 11 and 12 of Ontario Regulation 381/07 (Appendix B), if he or she routinely works on one or more matters that might involve the private sector and he or she has access to confidential information about the matter obtained during the course of his or her employment by NPC.

“Matters that might involve the private sector” means a matter,

- (a) that relates to services currently provided under a program of NPC or the Crown (Provincial Government) where it is possible that a private organization will provide all or part of the financing for the services or will provide some or all of the services, and
- (b) that has been referred to NPC by the Cabinet of Ontario or a Minister for review or implementation.
21. When a Commissioner or employee begins work on a matter that might involve the private sector, he or she must make a declaration to the Conflict of Interest Commissioner respecting his or her financial interests, in accordance with Section 11 in Appendix B. He or she is also subject to the restrictions on certain purchases as set out in Section 12 of Appendix B.

**Part II**

**CONFLICT OF INTEREST RULES FOR  
FORMER COMMISSIONERS AND EMPLOYEES (PUBLIC SERVANTS) WHO  
WORKED IN NPC**

The following rules apply to every former Commissioner or employee.

**Seeking preferential treatment etc.**

22. A former Commissioner or employee shall not seek preferential treatment by, or privileged access to, Commissioners or employees who work in NPC or other public servants in a Minister's office, ministry or other public body.

**Disclosing confidential information**

23. A former Commissioner or employee shall not disclose confidential information obtained during the course of his or her appointment or employment by NPC to a person or organization unless the former Commissioner or employee is authorized to do so by law, the NPC or Crown.
24. A former Commissioner or employee shall not use confidential information in a business or undertaking.

**Restriction re certain transactions**

25. Former Commissioners or employees who, during their appointment or employment with NPC, advised NPC or the Crown about a particular proceeding, negotiation or transaction, must not advise or otherwise assist any public body or any other person or organization in connection with the particular proceeding, negotiation or other transaction until NPC or the Crown ceases to be involved. However, these Commissioners and employees may continue to advise or otherwise assist NPC or the Crown in connection with the particular proceeding, negotiation or other transaction.

**Restriction on lobbying, employment etc.**

26. In the case of Commissioners, the General Manager and the senior managers (Executive Directors) they are also subject to the specific restrictions on lobbying and employment etc. provided for under sections 18. and 19. of Ontario Regulation 381/07.

The Conflict of Interest Commissioner shall make any determinations respecting post-employment activities and conflicts of interest.



**E. OBLIGATIONS OF COMMISSIONERS AND EMPLOYEES**

27. Notify Ethics Executive

If an existing or former Commissioner or employee has personal or pecuniary (financial) interests that could raise an issue under the conflict of interest rules that apply to him or her, he or she shall notify his or her Ethics Executive. For Commissioners the Ethics Executive is the Chair, and for employees the Ethics Executive is the General Manager. The Ethics Executive for former Commissioners and employees is the Conflict of Interest Commissioner.

An existing or former Commissioner or employee may request that his or her Ethics Executive determine a question about the application of conflict of interest rules to him or her.

A manager or supervisor of an employee may request that the employee's Ethics Executive determine a question about the application of conflict of interest rules to the employee.

A Commissioner or employee shall comply with a direction of the Ethics Executive or the Conflict of Interest Commissioner.

28. If the Chair, as Ethics Executive for Commissioners, has an opinion that a conflict of interest has not been declared by a Commissioner, the Ethics Executive shall make a determination.

Similarly, if the General Manager, as Ethics Executive for employees, has an opinion that a conflict of interest has not been declared by an employee, the Ethics Executive shall make a determination.

Commissioners and employees shall comply with the direction or ruling made by their Ethics Executives.

29. Conflict of Interest Disclosure Statement for Commissioners

On his or her appointment to NPC, a Commissioner shall complete a Conflict of Interest Disclosure Statement, which forms part of these rules and is attached as Appendix C. The Chair of NPC is to be notified forthwith if there is any material change to the information provided by a Commissioner on his or her disclosure statement. If there is a legal or professional conduct requirement which restricts the Commissioner from disclosing the names of clients, the names will not have to be disclosed in the disclosure document. In



these cases, the Commissioner is still required to declare a conflict of interest and not participate in any discussions pertaining to the matter.

**30. Meetings of the Commission**

Where a Commissioner, either or on his or her behalf or while acting for, by, with or through another, has any conflict of interest, in any matter and is present at a meeting of the Commission and its Committees at which the matter is being considered, he or she shall declare that he or she has a conflicting interest in the matter, and;

- a) shall, prior to any consideration of the matter at the meeting, disclose his or her conflict of interest and the general nature thereof;
- b) shall not take part in the discussion of, unless permitted by the Chair;
- c) shall not vote on any resolution in respect of the matter; and
- d) shall not attempt in any way whether before, during or after the meeting to influence the voting on any such resolution.

In addition to complying with the above requirements, the Commissioner shall forthwith leave the meeting or the part of the meeting during which the matter is under consideration.

Where a conflict of interest has not been disclosed by reason of his or her absence from the meeting when the matter was considered by the Commission, the member shall disclose his or her interest at the first meeting of the Commission attended by him or her after the meeting when the matter was considered by the Commission.

Commission employees shall follow these same requirements and shall not participate in or attempt in any way to influence decision making on any NPC matter where they have a conflict of interest.

**31. Ethics Executives**

The Ethics Executives for NPC Commissioners and employees shall,

- ensure that Commissioners and employees are familiar with the conflict of interest rules that apply to them; and
- promote ethical conduct by Commissioners and employees.

The Ethics Executive may make such inquiries as he or she considers appropriate in response to a request, a notification or where the Ethics Executive has concerns that a conflict of interest rule has been or is about to be contravened by a Commissioner or employee.

An Ethics Executive shall,

- a) make a determination with respect to any matter that is brought to the attention of the Ethics Executive or is the subject of inquiry; and
- b) in the case of determination that there is a conflict of interest or potential conflict of interest, give the existing or former Commissioner or employee directions, if any, that the Ethics Executive considers appropriate to address the conflict of interest or potential conflict of interest.

If an Ethics Executive considers it appropriate to do so, the Ethics Executive may refer any matter that is brought to the Ethics Executive's attention or that is the subject of inquiry, to the Conflict of Interest Commissioner.

If an Ethics Executive or the Conflict of Interest Commissioner makes a determination that the Chair or Commissioner has contravened a conflict of interest rule, the Ethics Executive or the Conflict of Interest Commissioner, as the case may be, shall notify the Minister responsible for NPC of the contravention.

Passed by The Niagara Parks Commission and sealed with the corporate seal this \_\_\_\_\_ of \_\_\_\_\_, to take effect as of the \_\_\_\_\_.

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Fay Booker  
Chair

## Appendix A

### Definitions

**child** - means a child born within or outside marriage and includes an adopted child and a person whom a parent has demonstrated a settled intention to treat as a child of his or her family.

**commissioners** – means all appointees to The Niagara Parks Commission.

**confidential information** - means information that is not available to the public and that, if disclosed, could result in harm to the Crown or could give the person to whom it is disclosed an advantage.

**conflict of interest commissioner** - means the Conflict of Interest Commissioner appointed by the Lieutenant Governor in Council pursuant to the *Public Service of Ontario Act*.

**crown** – means all that is owned, controlled or operated by Her Majesty in right of Ontario, or by the Government of Ontario, or under the authority of the Legislature or the Lieutenant Governor in Council.

**ethics executive** - means the Chair for Commissioners, means the General Manager for employees and the Conflict of Interest Commissioner for the Chair and General Manager.

**gift** - includes a benefit of any kind.

**parent** - means a person who has demonstrated a settled intention to treat a child as a member of his or her family whether or not that person is the natural parent of the child.

**sibling** - means one of two or more individuals having one or both parents in common, a brother or sister.

**spouse** - means,

- (a) a spouse as defined in section 1 of the *Family Law Act*, or
- (b) either of two persons who live together in a conjugal relationship outside marriage.

## Appendix B

**(From *Public Service of Ontario Act, 2006, Ontario Regulation 381/07*)**

### MATTERS THAT MIGHT INVOLVE THE PRIVATE SECTOR

#### Interpretation

**10. (1)** Sections 11 and 12 apply to every Commissioner or employee at NPC, who routinely works on one or more matters that might involve the private sector and who has access to confidential information about the matter obtained during the course of his or her employment by NPC.

**(2)** In this section and in sections 11 and 12,

“matter that might involve the private sector” means a matter,

- (a) that relates to services currently provided under a program of the Crown or by a public body, an agency of the Crown or a corporation controlled by the Crown with respect to which it is possible that a private sector entity will provide all or part of the financing for the services or will provide some or all of the services, and
- (b) that has been referred to NPC by the Cabinet of Ontario or a Minister for review or implementation.

#### Duty to declare certain financial interests

**11. (1)** When a Commissioner or employee described in subsection 10 (1) begins work on a matter that might involve the private sector, he or she shall make a declaration to the Conflict of Interest Commissioner in which the public servant discloses the following matters respecting his or her financial interests:

1. A legal or beneficial interest of the public servant in securities or derivatives of corporations or governments, other than the Government of Ontario.
2. A legal or beneficial interest of the public servant in a business entity or a commercial operation or in the assets of such an entity or operation.
3. A legal or beneficial interest of the public servant in real property.
4. A legal or beneficial interest of the public servant in a mutual fund that is operated as an investment club where,
  - i. its shares or units are held by not more than 50 persons and its indebtedness has never been offered to the public,
  - ii. it does not pay or give any remuneration for investment advice or in respect of trades in securities, except normal brokerage fees, and
  - iii. all of its members are required to make contributions in proportion to the shares or units each holds for the purpose of financing its operations.

(2) Despite subsection (1), the Commissioner or employee is not required to disclose his or her legal or beneficial interest in any of the following:

1. A mutual fund within the meaning of subsection 1 (1) of the *Securities Act* other than a mutual fund described in paragraph 4 of subsection (1) of this Regulation.
2. Fixed-value securities issued or guaranteed by a government or a government agency.
3. A guaranteed investment certificate or similar financial instrument issued by a financial institution entitled by law to issue such instruments.
4. A registered pension plan, an employee benefit plan, an annuity or life insurance policy or a deferred profit sharing plan.
5. Real property that the Commissioner or employee, or a member of his or her family, uses primarily as a residence or for recreational purposes.

(3) The Commissioner or employee shall disclose the information required by subsection (1), with necessary modifications, in respect of his or her spouse and dependent children, but only to the extent that the legal or beneficial interests of the spouse or a child could create a conflict of interest.

(4) For the purpose of subsection (3), the Commissioner or employee shall make reasonable efforts to obtain information about the financial interests described in subsection (1) of his or her spouse and dependent children.

(5) The Commissioner or employee shall give the Conflict of Interest Commissioner a revised declaration whenever there is a change in any of the information required to be disclosed.

### **Prohibition on certain purchases**

**12. (1)** A Commissioner or employee described in subsection 10 (1) shall not purchase, or cause another person to purchase on his or her behalf, a legal or beneficial interest in an entity that is carrying on, or proposes to carry on, an activity relating to a matter that might involve the private sector.

(2) Despite subsection (1), a Commissioner or employee may purchase an interest in a mutual fund (within the meaning of subsection 1 (1) of the *Securities Act*) that includes securities of a person or entity described in subsection (1) but not an interest in a mutual fund described in paragraph 4 of subsection 11 (1) of this Regulation that includes such securities.

(3) The prohibition described in subsection (1) ceases to have effect with respect to the matter,

- (a) six months after the date on which the action in respect of the matter is completed; or
- (b) six months after the date the Crown ceases to work on the matter.

## Appendix C

### CONFLICT OF INTEREST DISCLOSURE STATEMENT

The information requested on this form is being collected and used by the Chair of The Niagara Parks Commission to fulfill his/her responsibility for the administration of The Niagara Parks Commission Conflict of Interest By-law. This information will not be disclosed except as required for the above-noted purpose. Questions about the collection, use or disclosure of personal information requested on this form should be directed to the Chair of The Niagara Parks Commission.

**NAME:** \_\_\_\_\_

**AGENCY:** The Niagara Parks Commission (NPC)

#### **CONFLICT OF INTEREST**

Conflicts of interest arise where Commissioners and employees have personal, financial, business or professional interests or responsibilities that may interfere with their duties on behalf of the Commission. As public servants, they must avoid all actual, perceived or potential conflicts of interest. A conflict of interest could arise in relation to several matters including:

- directorships or other employment;
- interests in business enterprises or professional practices;
- share ownership;
- beneficial interests in trusts;
- beneficial interests in real property;
- existing professional or personal associations with the NPC;
- professional associations or relationships with other organizations, personal associations with other groups or organizations, or family relationship;
- an elected or appointed office

Every public servant must disclose any obligation, commitment, relationship or interest that could conflict or may be perceived to conflict with his or her duties to or interests of The Niagara Parks Commission.

- 1) A direct or indirect conflict with my duty as an appointee to the NPC may arise because:
  - a) I hold the following offices (appointed or elected):
  
  
  
  
  
  
  
  
  
  
  - b) I, or any trustee or any nominee on my behalf, own or possess, directly or indirectly, the following interests:
  
- 2) The nature and extent of the conflicting office duty or interest is:
  
  
  
  
  
  
  
  
  
  
- 3) A real or perceived conflict of interest with my duty as a public servant could arise because I receive financial remuneration (either for services performed by me, as an owner or part owner, trustee, partner, shareholder, director or employee or otherwise) from the following sources:



- 4) Other than disclosed above, do you have any relationships or interests that could compromise, or be perceived to compromise, your ability to exercise judgment or decision-making independently and objectively with a view to the best interests of the NPC?

**Yes** \_\_\_\_\_ **No** \_\_\_\_\_

Describe:

**ACKNOWLEDGMENT AND DECLARATION:**

I have read the above information and understand the request for disclosure. The details that I have provided are accurate to the best of my knowledge.

If, at any time following the signing of this Conflict of Interest Disclosure Statement, there occurs any material change to the information given herein regarding conflict of interest, either by way of addition or deletion, I shall forthwith file a supplementary disclosure statement with the Chair of The Niagara Parks Commission describing such change. I understand that as an appointee to a public body prescribed under the *Public Service of Ontario Act*, I have an obligation to notify the Chair, my Ethics Executive, of interests that could raise an issue under the conflict of interest rules.

\_\_\_\_\_  
Signature (Required)

\_\_\_\_\_  
Date

*This form is to be sent to the Chair of The Niagara Parks Commission in a private and confidential envelope.*