



SUBJECT	Management of COI in Committee Meetings
SUBMITTED TO	Governance Committee
MEETING DATE	March 12, 2024
SESSION CLASSIFICATION	Recommended session criteria from Board Meetings Policy: OPEN
REQUEST	For input only - No action requested
LEAD EXECUTIVE	Hubert Lai, K.C., University Counsel

PRIOR SUBMISSIONS

The subject matter of this submission has not previously been considered by the Governance Committee.

EXECUTIVE SUMMARY

The Governance Committee requested that the Office of the University Counsel (“**OUC**”) prepare guidance notes to assist the Board Chair and Committee Chairs in managing COI disclosures that are made in relation to items on the agenda for their meetings. This submission is in response to that request.

The following summary of the procedure to be followed is drawn from the Code of Conduct and Conflict of Interest Guidelines for the Board of Governors (the “**Code**”), which was most recently updated on June 15, 2023:

1. The Board Secretary will monitor the agendas for possible COIs and will alert affected Governors in advance.
2. Any affected Governors can then make advance declarations. If the declaration is made to the Board Chair, the matter will be managed in accordance with the Code. If the declaration is made to the meeting Chair, the matter will be managed as determined by the meeting Chair. The Board Secretary will withhold materials from affected Governors if necessary to manage/avoid their COIs, subject to directions from the Chair of the Board of Governors or the meeting Chair. If the agenda item is not time-sensitive, the Chair may elect to refer the COI concern to the Governance Committee for determination. Where this occurs, the Governance Committee will make its decisions by majority vote. This may require the agenda item to be deferred to a later meeting.
3. Each Board/Committee meeting will begin with a brief *in camera* session for the purpose of providing an opportunity for Governors to declare any COIs that were not declared in advance.
4. During this *in camera* session, the meeting Chair will invite Governors to disclose any actual, apparent, or potential COIs.
5. In response, Governors with COIs that were not declared in advance will orally disclose them.
6. For each oral disclosure, the Chair will consider whether the disclosure represents a COI and make a determination as to how to proceed in relation to the affected agenda item. Before making that determination, the Chair may Invite input from any or all Governors who are present at the *in camera* session.
 - a. If the agenda item is time-sensitive and the meeting Chair wishes to proceed with the agenda item then, without limiting the generality of the meeting Chair’s discretion, the meeting Chair may:

- i. determine that the affected Governor shall be absented from any discussions or vote concerning the agenda item that may occur during a closed or *in camera* session of the meeting;
 - ii. determine that the affected Governor shall not participate in the discussion of, or vote concerning, the agenda item even if they occur during an open session of the meeting;
 - iii. specifically call upon the Governor to attend and answer questions about the agenda item before again withdrawing from making comment or, in the case of a closed or *in camera* session, withdrawing from the session; and
 - iv. determine that the affected Governor shall be counted in the quorum for a meeting at which the Governor attends, notwithstanding that the Governor is absent for a portion of the meeting due to a COI.
- b. If the agenda item is not time-sensitive, the meeting Chair may also elect to refer the COI concern to the Governance Committee for determination. Where this occurs, the Governance Committee will make its decision by majority vote. This may require the agenda item to be deferred to a later meeting.
7. If a Governor was excluded from a closed or *in camera* discussion in relation to an agenda item, the Board Secretary will redact the copy of the minutes provided to that Governor accordingly.
 8. The Board Secretary will include in the minutes of the *in camera* session a record of the disclosure and the manner in which it was handled by the Chair.

Although not explicitly set out in the Code, it is recommended that the Governance Committee periodically consider the disclosures that have been made in this manner and how they have been handled. This will provide them with the opportunity to reflect on opportunities to enhance/improve the handling of COIs that arise during meetings.

To illustrate how the foregoing would work, the following sample speaking notes have been prepared as a resource for the Board Chair and the Committee Chairs.

- *Good morning/afternoon, fellow Governors. As usual, we are beginning today's meeting with an in camera session.*
- [IF THERE HAVE BEEN ADVANCED DECLARATIONS:] *In advance of the meeting, the following COIs were disclosed and are being managed as follows:*
 - [LIST GOVERNORS WHO DISCLOSED COIS, THE NATURE OF THE COIS, AND HOW THE COI WILL BE MANAGED, INCLUDING WHETHER THOSE GOVERNORS WILL BE RECUSED FROM THE MEETING, THE DISCUSSION, AND/OR THE VOTE.]
- *Next, I will ask whether any Governors have any [other] COIs to declare. This includes any apparent, potential, or actual COIs in relation to any items on today's agenda.*
- [IF THERE ARE NO NEW DISCLOSURES:] *Thank you very much, everyone. The Board Secretary will record that there are no new COI disclosures and we can move on to the business of the meeting.*
- [IF THERE ARE NEW DISCLOSURES:] *Thank you, Governor X. As Chair of the meeting, it is my responsibility to determine whether or not your disclosure represents a COI that requires management or avoidance and what steps, if any, are required to manage the matter. Before I make that determination, I would like to invite you to provide your views, if you wish, following which I will invite our fellow Governors to share their thoughts.*
- [LISTEN TO VARIOUS GOVERNORS.]

- *Thank you, everyone, for your input. The disclosure and appropriate management of COIs is an important element of good governance and is a core element of our fiduciary obligation to act in the best interests of UBC. We try to take a reasonable and balanced approach to dealing with COIs, recognizing the value of having active participation from all Governors. However, when we are in doubt, we will act with discretion, in a manner that upholds confidence in the integrity of the Board and its processes.*
- *In this case, having considered all of the thoughtful input you have shared, I am inclined to suggest that:*
 - *[IN CAMERA OPTION 1:] Governor X should be excused from the portion of the in camera meeting during which we will be discussing the relevant agenda item;*
 - *[IN CAMERA OPTION 2:] Governor X will be available to answer questions at the beginning of the discussion and then excused from the portion of the in camera meeting during which we will be discussing the relevant agenda item;*
 - *[OPEN/CLOSED OPTION 1:] Governor X may remain present for the meeting but will not be permitted to participate in the discussion or to vote on the agenda item;*
 - *[OPEN/CLOSED OPTION 2:] Governor X may remain present for the meeting and may participate in the discussion but will not be permitted to vote on the agenda item; or*
 - *[DEFERRAL OPTION:] This agenda item can be deferred and I think that it is worth doing so in order to enable me to refer this disclosure to the Governance Committee for consideration.*
- *Before I finalize my decision, does anyone wish to provide any final input?*
- *Thank you very much. These are important discussions and I would like to thank Governor X for his/her/their declaration and all of you for your contributions to a very thoughtful, fair, and balanced discussion. For the record, this matter will be handled as follows: [SET OUT DETERMINATION.]*
- *The Board Secretary will record in the meeting minutes both the fact of this disclosure and how the matter is being handled. She will also provide this information to the Governance Committee, which provides regular reports to the Board of Governors on COI. Many thanks again.*

To be clear, the foregoing sample speaking notes are provided merely as a resource to support the Chairs. The Chairs may elect to use them, modify them, or ignore them, as they see fit, reflecting the dynamic nature of the discussions that can occur at Board and Committee meetings.

The foregoing guidance and sample speaking notes incorporate feedback from the Board's COI Advisor and from the Board Secretary. If the Governance Committee has any additional feedback that would make them more useful to the Chairs, the OUC would also be pleased to incorporate that feedback into a further iteration of these materials.