

BC TRANSIT ADMINISTRATIVE POLICY STATEMENT

FUNCTION:	NUMBER:	ISSUE DATE:	AMENDMENT DATE:
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SUBJECT: CONFLICT OF INTEREST - EMPLOYEES AND CONTRACTORS

Sponsored by:	Vice President, Customer Service and Corporate Secretary
Accountable Manager:	Vice President, Customer Service and Corporate Secretary
Working Contacts:	Vice President, Finance and Chief Financial Officer Vice President, Customer Service and Corporate Secretary

PURPOSE:

The purpose of the policy is to state the standards of ethical behaviour, relating to conflict of interest, expected of all employees and contractors.

POLICY:

No employee shall allow a situation to exist where:

1. the opportunity for personal gain, or
2. the fiduciary obligations of a position held outside BC Transit,

could influence the way in which his or her employment duties and responsibilities are carried out.

POLICY APPLICATION:

Each person who works for BC Transit has a duty to make business decisions that are in the best interests of BC Transit. Decisions must not be influenced in any way by the opportunity for personal gain, personal relationships or fiduciary responsibilities held outside BC Transit. The conflict of interest policy and procedures are designed to ensure that BC Transit Employees are not involved in real or potential conflict of interest situations.

Conflict of interest exists if the opportunity for personal gain influences, influenced, or could have influenced, the way in which an Employee carries or has carried out his or her employment duties and responsibilities.

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Potential conflict of interest exists if the opportunity for personal gain could influence the way in which an Employee carries out his or her employment duties and responsibilities, when the Employee has not yet carried out such duty or responsibility.

Apparent conflict of interest exists if there is a reasonable perception that a conflict of interest exists, even when in fact there is neither a potential nor a real conflict of interest.

Conflict of interest may also arise without the element of personal gain when a person holds a fiduciary position outside BC Transit. Under certain circumstances, a decision or action which is in the best interests of the outside organization may be contrary to the best interests of BC Transit.

The conflict of interest policy and procedures are designed to eliminate actual and potential conflict of interest situations, without having to examine whether or not an Employee was *in fact* influenced by the opportunity for personal gain.

DEFINITIONS: Definitions for key capitalized terms are included following section 18.

PROCEDURE:

Prohibitions

1. No Employee (as defined) shall allow a situation to exist wherein the way in which his or her employment duties and responsibilities are carried out could be influenced by:
 - a) the opportunity for personal gain; or
 - b) the fiduciary obligations of a position held outside BC Transit.
2. No Employee shall, directly or indirectly:
 - a) use his or her position at BC Transit to further his or her own interest or the interest of an Associate (as defined);
 - b) enter into any contract with BC Transit unless the contract is examined and approved under sections 6 and 7;
 - c) seek any gift, or accept any gift having more than token value, from any person or company which has dealings with BC Transit;
 - d) participate in a social function, paid for by a person or company which deals with BC Transit, if the value is not appropriate to the circumstances;

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- e) accept any other personal benefit (including remuneration, profit, discounts, goods and services), no matter what the value, other than what he or she may be entitled to as an Employee; or
- f) use non-public information about BC Transit, or companies actually or potentially involved with BC Transit, to gain a personal benefit for the Employee or his or her Associate.

Disclosure

- 3. Every Employee within the following groups must file an annual Employee Disclosure Statement (form attached) with the Corporate Secretary:
 - a) Managers (as defined); and
 - b) Employees who make assessments, recommendations or decisions with respect to the purchase or sale of land, goods or services, product specifications, or claims against third parties.

The annual Employee Disclosure Statement is to be filed each year, no later than March 31, and updated during the year if circumstances change.

Employees required to file annual Employee Disclosure Statements must disclose any enterprise, in which the Employee or the Employee's Associate is involved as an owner, manager or employee, if that business has, or is pursuing, a contract with BC Transit, or has any other business dealings with BC Transit. "Owner" refers to sole ownership or ownership of shares or a partnership position in a company. Ownership of shares through a mutual fund is not included. If the Employee has no such business relationships, he or she must indicate this on the Employee Disclosure Statement.

- 4. Any Employee who, or whose Associate, is the owner or manager of a business which has, or is pursuing, a contract with BC Transit, or has any other business dealings with BC Transit, must report the relevant facts as soon as possible to the Corporate Secretary in writing.

Note: The fact that an Employee or an Employee's Associate is involved in the ownership or management of a business which contracts with BC Transit does not necessarily mean that the Employee is in a conflict of interest. However, the Employee does have a requirement to disclose such an involvement so that the Conflict of Interest Committee has the opportunity to examine the situation and determine whether any steps should be taken to avoid or eliminate any conflict of interest (example: require that the Employee, in his or her role at BC Transit, refrain from any direct involvement with the contract).

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5. Any Employee, whether or not required to file an Employee Disclosure Statement under section 4, who believes he or she may be in a potential conflict of interest situation under this policy, or may have breached any part of this policy, must report the relevant facts as soon as possible to the Corporate Secretary in writing.

All disclosures made by Employees under sections 3, 4 and 5 and filed with the Corporate Secretary will only be disclosed as follows:

- a) to the Conflict of Interest Committee;
- b) to other Employees, as required to avoid or eliminate potential or actual conflicts of interest; and
- c) to other Employees or persons outside BC Transit, as required by law (example: *Freedom of Information and Protection of Privacy Act*).

Contracts with Employees or Associates of Employees

6. BC Transit will not enter into any contract, in the absence of compelling financial or operational reasons, with any business which is:
- a) owned by a BC Transit Manager, or his or her Associate;
 - b) owned by a former BC Transit Manager who left BC Transit within the previous 12 months, or his or her Associate;
 - c) owned or managed by a BC Transit Employee, or his or her Associate, if the Employee is in a position to influence decisions with respect to that contract; or
 - d) owned or managed by a former BC Transit Employee who left BC Transit within the previous 12 months, or his or her Associate, if the former Employee was in a position to influence decisions with respect to such contracts. The Corporate Secretary must refer the reasons for granting an exception for current or former employees or associates under Claim 6 to the BC Transit Board of Directors for approval.
7. The conflict of interest review process for examining contracts under section 6 is as follows:
- a) Full details of the contract (including the extent of any likely personal benefit to the Employee, former Employee, or the Associate), and any alternatives to entering into that contract, must be provided to the Corporate Secretary in writing for review by the Conflict of Interest Committee. This information shall be provided by the BC Transit Manager sponsoring the proposed contract.
 - b) If, in the opinion of the Conflict of Interest Committee, there is no compelling argument in support of the proposed contract, the Corporate Secretary will notify the Employee, former Employee or Associate in writing that BC Transit will not enter into that contract.

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- c) If, in the opinion of the Conflict of Interest Committee, a compelling argument can be made in support of a proposed contract, the Committee will advise the parties that the contract can be entered into. The Committee may impose certain conditions on the Employee, former Employee or the Associate (examples: require that the Employee or former Employee disclose any personal benefit; require that the Employee, in his or her role at BC Transit, refrain from any direct involvement with the contract).

Third Party Contract Clauses

8. Every contract entered into by BC Transit with a non-government entity must include the following clauses:

"The (contracting party) covenants as follows:

- a) *The (contracting party) shall not offer or provide any gifts of more than token value or personal benefit to any director, officer or employee of BC Transit; and*
- b) *except as disclosed in writing by the (contracting party) prior to the signing of this contract, no director, officer or employee of BC Transit or associate of such director, officer or employee:*
- i) *has any interest in the (contracting party) by way of ownership or management, or*
- ii) *has or is entitled to have any interest in this contract or any benefit arising therefrom.*

And the (contracting party) further covenants and agrees that the above provision is a fundamental condition to this contract, and any breach thereof shall entitle BC Transit, at its sole discretion, to terminate this contract whereupon:

- c) *the (contracting party) shall reimburse BC Transit for any loss which it sustains as a result of the termination, and*
- d) *the (contracting party) shall waive and be deemed to have waived any right or recourse or claim for compensation against BC Transit thereby arising."*

Any modifications to the above clauses must be approved by the Corporate Secretary.

9. Every personal services contract entered into by BC Transit with a person or company must include the following clause:

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"The (contracting party) acknowledges that it has been informed and confirms its understanding of the policy statement, sections 1 through 7, adopted by BC Transit with respect to conflict of interest, and covenants and agrees that strict compliance with those sections of the policy by the contracting party and its employees, is a fundamental condition to this contract, and any breach thereof shall entitle BC Transit, at its sole discretion, to terminate this contract, whereupon:

- a) *the (contracting party) shall reimburse BC Transit for any loss which it incurs as a result of the termination, and*
- b) *the (contracting party) waives any right of recourse or claim for compensation arising from such termination."*

Any modifications to the above clauses must be approved by the Corporate Secretary.

Consequences of Breach

10. If the Corporate Secretary is of the opinion that a conflict of interest or other breach of this policy may have occurred, the Corporate Secretary will refer the matter to the Conflict of Interest Committee for a ruling.
11. If the Conflict of Interest Committee determines that an Employee may be in a conflict of interest or has breached this policy, BC Transit will require the Employee to take such action as may be available to avoid or eliminate the conflict of interest or remedy the breach. The actions required of the Employee may include, but are not limited to, one or more of the following actions:
 - a) resignation of the Employee from his or her position outside of BC Transit or resignation from BC Transit, if the conflict arises from competing fiduciary obligations;
 - b) termination of the Employee's employment, termination of the Employee's contract with BC Transit, or termination of the Associate's contract with BC Transit;
 - c) return of the gift received, if the conflict arises under section 2c); or
 - d) repayment of the value of the personal benefit received by the Employee or the Associate.
12. Compliance with this policy is a fundamental condition of employment and of every contract for services of a contract employee at BC Transit. Any Employee who breaches any part of this policy may be subject to disciplinary action, up to and including termination of employment, and may also face a claim for recovery of damages by BC Transit. As well, *the Employee may be subject to prosecution* under section 122 of the Criminal Code, which makes breach of trust by a public official an indictable offence.

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Conflict of Interest Committee

13. The Conflict of Interest Committee consists of the President and CEO, Vice President, Customer Service and Corporate Secretary, and Vice President, Finance and Chief Financial Officer. The Committee will review contract-related situations with potential conflict of interest elements, potential breaches of the Conflict of Interest Policy or Procedure and other related matters, including policy revisions. The Committee may request the attendance of Corporate Counsel and/or a representative of BC Transit's external auditors. If the situation under review involves a member of the Committee, that member will be replaced by Corporate Counsel and/or a representative of BC Transit's external auditors during pertinent discussions.

Communication of Policy

14. The Conflict of Interest Policy and Procedure shall be reviewed with the following Employees at the time they are hired or promoted:
- a) Managers; and
 - b) Employees who make assessments, recommendations or decisions with respect to the purchase or sale of land, goods or services, product specifications, or claims against third parties.

Thereafter, all department heads shall review the Policy and Procedure on an annual basis with the above-mentioned staff. The department heads will forward a list of the names of all reviewees, and the dates of review, to the Vice President, Customer Service and Corporate Secretary. The review shall take place no later than March 31 each year.

15. The Corporate Secretary shall be responsible for communicating the Conflict of Interest Policy to all other Employees not mentioned under section 14.

Policy Interpretation

16. Employees who have questions concerning the Policy or Procedure should refer first to their supervisor. If further clarification is required, Employees or their supervisors should contact the Corporate Secretary.

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Apparent Conflict of Interest

17. The Conflict of Interest Policy and Procedure refer to specific family relationships under the definition of Associate. It does not include rules governing contracts between BC Transit and friends, relatives other than those specifically noted, or persons otherwise associated with the Employee. However, it is recommended that Employees in positions of influence notify the Vice President, Customer Service and Corporate Secretary *of any* family or other personal relationships they may have with owners or managers of organizations which have business dealings with BC Transit. Any relationship that could be seen as an apparent conflict of interest, will be reviewed by the Conflict of Interest Committee.

Duty to Report

18. If an Employee becomes aware of another Employee engaging in activities that appear to contravene the Conflict of Interest Policy or Procedure, the Employee is encouraged to make that information known to the Vice President, Customer Service and Corporate Secretary.

DEFINITIONS:

- < **Associate** means:
- a spouse or cohabitee, or a son or daughter under 19 years of age, of an Employee;
 - other than a person referred to in a), a relative of an Employee or of his or her spouse or cohabitee who lives with the Employee; or
 - a corporation of which the Employee beneficially owns, directly or indirectly, more than 20% of the voting rights attached to all outstanding voting securities of the corporation ;
 - a trust or estate in which the Employee has a substantial beneficial interest or for which he or she serves as a trustee;
 - a corporation of which a person referred to in a) or b) beneficially owns, directly or indirectly, more than 20% of the voting rights attached to all outstanding voting securities of the corporation.
- < **Employee** means, for the purpose of this policy:
- any Manager or other employee at BC Transit, whether working on a full-time, part-time, permanent or temporary basis;
 - any person or employee of any person, firm or corporation which performs contract employee services for BC Transit.
- < **Employee Disclosure Statement** means a statement (form attached) setting out all business interests of an Employee and of an Employee's Associate which does, or may, result in a conflict of interest as defined in this procedure or the related policy.
- < **Manager** means the President and any Vice-President, officer, director, manager, superintendent, or other person performing a management function at BC Transit.

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- < **Policy** means this BC Transit Conflict of Interest Administrative Policy Statement.
- < **Procedure** means the specific policy applications in section 1 through 18 associated with this Policy Statement on Conflict of Interest.