

## **IV. Code of Conduct/Conflict of Interest**

### **Section 11 – Code of Conduct and Conflict of Interest Procedures**

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#### **11.01 Purpose and Objective**

The purpose of this section of the governance manual is to establish and document guidelines for conduct required of all members of the Disability Income Plan Advisory Council. The guidelines have been developed to create and sustain a business culture that promotes sound decision-making by the Council.

The purpose of establishing conflict of interest procedures goes beyond ensuring compliance with minimum statutory requirements. They provide a workable process for identifying, minimizing and resolving conflicts of interest, in order that Council members may fulfill their obligations effectively while maintaining their independence and integrity.

The following guidelines and procedures have been developed to ensure that Council members have a full understanding of the Council's principles and values, and to assist Council members in determining appropriate business practices and behavior.

The Council recognizes the need to review these guidelines and procedures on an annual basis and has determined that all Council members are to acknowledge the guidelines and procedures by signing them upon appointment to the Council, each time they are amended and, in any event, no less than upon each annual review.

#### **11.02 Application**

These guidelines and procedures govern the operation and conduct of members of the Council in the execution of their duties and responsibilities under *The Executive Government Administration Act*.

#### **11.03 Fiduciary Duties**

These duties apply to the members of the Council in their capacity as delegates of the Minister of Finance and assisting that office in meeting its fiduciary obligations as trustee of the fund and as administrator of the plan.

### **11.03 Fiduciary Duties (continued)**

a) Duty of Loyalty

The duty of loyalty requires members of the Council to act honestly and in good faith, and in the best interest of plan members. Furthermore, members of the Council must consider the effect of their individual actions on the integrity and credibility of the Council as a whole.

b) Opportunities Acquired Through Council Business

Members of the Council must not take personal advantage of business opportunities of which they become aware in the course of carrying out their duties as Council members.

Similarly, confidential information obtained as a result of Council business must not be used for personal profit, or for the personal benefit of others.

c) Duty to Protect Confidential Information

Council members must at all times keep confidential all information, proprietary material and records received by them in their capacity as members of the Council. Confidential information may only be disclosed if it is otherwise generally available to the public, if the disclosure is required by law, or if the disclosure is consistent with the purpose for which the information was obtained.

d) Post Service Restrictions

Council members who cease to serve on the Council must continue to refrain from taking improper advantage of their previous position. Former members of the Council must continue to observe the duty to protect confidential information, unless they have received written authorization from the Chair of the Council to disclose the information. Furthermore, former members of the Council must not use confidential information or opportunities acquired as a result of Council business for personal gain, or for the personal benefit of others.

#### **11.04 Duty of Care**

In exercising their powers as the advisory council to the Minister of Finance for the benefit program, it is the explicit duty of every member of the Council to exercise the care, skill and diligence that a reasonably prudent person would exercise in comparable circumstances.

In fulfilling this duty, members of the Council have a responsibility to ensure that they obtain expert advice to acquire the necessary information required to make informed decisions. Council decisions must be made pursuant to sound business practices respecting established policies and procedures.

Improper or ill-advised decisions can be costly to the Plan. Council members should undertake the training or educational opportunities necessary to ensure that they have a sufficient level of knowledge and understanding to fulfill their duties.

The Council has established its mission, and Council members should take actions which are consistent with the mission and the policies which support it.

Though the Council may delegate activities to its service providers, the Council retains responsibility for oversight of the Plan, and Council members should be engaged in reviewing the performance of the Plan and its success in meeting its goals.

#### **11.05 Ethical Standards**

Members of the Council should adhere to the following standards when exercising all of their duties and responsibilities:

a) Preferential Treatment

Council members must not use their position to benefit persons or organizations in their dealings with the Plan if this may be perceived to result in preferential treatment to such persons or organizations.

b) Gifts, Benefits and Entertainment

Council members should not accept gifts, benefits, entertainment or other personal favors, which would create, or appear to create, a favored position for persons or organizations doing business with the Plan or persons or organizations that may do business with the Plan.

### **11.05 Ethical Standards (continued)**

Council members must not solicit or accept gifts, benefits, entertainment or other personal favors in exchange for, or as a condition of, the exercise of their duties or as an inducement for performing an act associated with the duties and responsibilities of their position.

Members of the Council may generally accept gifts, hospitality or other benefits, of nominal value, associated with the duties and responsibilities of their position, if such gifts, hospitality or other benefits:

- i) Are within the bounds of propriety, a normal expression of courtesy, or within the normal standards of hospitality;
- ii) Would not bring suspicion on the Council member's objectivity and impartiality; and
- iii) Would not compromise the integrity of the Council.

c) **Communication and Public Comment**

The Plan has the responsibility to communicate with its members and beneficiaries in a timely, accurate, and transparent manner. This communication is generally provided by the Plan, rather than by individual Council members.

In the instance where communication directly from the Council is necessary, public announcements or comments are the responsibility of the Chair, unless approved otherwise by the Council.

Members of the Council must refrain from making media announcements or comments regarding the activities of the Council and the operation of the Plan, unless authorized by the Chair to do so. Council members must avoid making public comments which are likely to bring the Council into disrepute or adversely affect the operation of the Plan.

Council members must not misrepresent the Plan in any communications, including oral representations, electronic communications, or written materials, whether publicly disseminated or not.

### **11.05 Ethical Standards (continued)**

#### **d) Council Independence**

Although members of the Council are nominated by the Minister of Finance and various unions and organizations, and appointed by Minister's Order, their primary duty and responsibility is to all insured employees of the Plan. Council members must not serve the interests of specific groups, associations or organizations.

### **11.06 Conflict of Interest Procedures**

These procedures apply to members of the Council with respect to their responsibilities the advisory council to the Minister of Finance and decision-maker with respect to disputes regarding the Plan.

Conflicts of interest may arise through the normal course of the business of the Council, (e.g., a Council member may find himself or herself participating in the dispute resolution process on a matter directly or indirectly involving a family member or close personal friend or a business associate), a Council member might be approached by an individual or a group of individuals to take some action or make some decision independent of the deliberations of Council, (e.g., a Council member may be approached and be promised consideration for ensuring or attempting to ensure a dispute is decided by Council in a certain fashion), or through a personal situation (e.g. a Council member may suffer a disability and apply for benefits under the Plan).

Members of the Council shall not knowingly permit their interests, actual or perceived, monetary or otherwise, direct or indirect, to conflict with the proper exercise of their duties and responsibilities or the responsibilities of the Council.

Council members should familiarize themselves with the range of actions which may be taken to respond to a conflict of interest or ethical issue. Although not exhaustive, the following actions may be taken to remedy or avoid a possible conflict of interest or ethical issue.

#### **a) Disclosure**

Members of the Council shall disclose in writing the nature and details of any actual, perceived or possible conflicts of interest, which could impair their own ability to make unbiased decisions affecting the Plan or require the Council to make a decision on benefits for a sitting trustee.

### **11.06 Conflict of Interest Procedures (continued)**

Such disclosure shall be made to the Chair of the Council as soon as practicable after the conflict of interest has been discovered by the Council member.

In the event that the member is the Chair, disclosure must be made to the Vice-Chair or the Director or his/her designate.

The Chair will table the matter at the next regularly scheduled Council meeting. The Chair, in consultation with the Council (excluding the member who is in conflict of interest), will determine the appropriate action under the circumstances.

Should a Council member discover an actual or perceived conflict of interest during the course of a Council meeting, the member must immediately declare the conflict of interest. The Chair, in consultation with the Council (excluding the member who is in conflict of interest), will determine the appropriate action under the circumstances.

A Council member is not in a conflict of interest merely by virtue of the fact that he or she was appointed by an employer or organization, a member of which has an issue currently being considered by the Council.

b) Council member applying for benefits under the Plan

A Council member who is applying for benefits under the Plan and is also determining other members' eligibility for benefits could be perceived as a conflict of interest. As well, determining a sitting Council member's eligibility for benefits puts the other Council members in a conflict of interest. A Council member who is unable to perform the duties of their occupation and is applying for benefits under the plan must disclose the situation to the Chair and may choose to step down or take a leave from their Council appointment.

If the member does not choose to step down or take a leave from their appointment, the Chair, in consultation with the Council (excluding the member who has disclosed the situation), will review the situation and determine the appropriate action under the circumstances.

**11.06 Conflict of Interest Procedures (continued)**

c) Register

PEBA shall maintain a register of all actual, perceived or possible conflicts of interest disclosed by members of the Council.

The register shall contain a description of each conflict of interest and the name of the Council member to whom the conflict of interest applies, the date upon which the conflict of interest arose and was subsequently disclosed by the Council member, and the manner in which the conflict of interest was dealt with by the Council.

d) Abstaining from Vote and Discussion

Members of the Council who have disclosed a conflict of interest, or who are required to disclose an actual or perceived conflict of interest, shall not participate in any discussion, decision or vote relating to any transaction involving the aforementioned conflict of interest.

Such members must consult with the Council to determine whether or not it is appropriate to leave the meeting during discussion of the matter.

Where a Council member has disclosed a conflict of interest, the member may continue to participate in the discussion, decision or vote, despite the conflict of interest, by obtaining prior approval from the Council. The approval to participate should be noted by PEBA in the register.

e) Other Business Activities

Members of the Council engaging in any other business activities, directly or indirectly, which may conflict with or are in competition with their duties and responsibilities as Council members, must make full disclosure of such activities to the Chair of the Council.

Adhering to the procedures outlined in section 11.06(a) - Disclosure, a resolution to the matter will be undertaken by the Council. The Council should determine whether an actual or perceived conflict of interest exists, and the appropriate action under the circumstances.

### **11.06 Conflict of Interest Procedures (continued)**

The Chair will advise the Council member, who is in conflict of interest, to comply with one of the following options determined by the Council:

- i) Discontinuation of the activity;
  - ii) Appropriate action to remedy the situation; or
  - iii) Consent to the activity.
- f) Gifts, Benefits and Entertainment

It is deemed a conflict of interest if, without the consent of the Council, a member of the Council accepts gifts, benefits, entertainment or other personal favors of more than token or nominal value from persons or organizations doing business with the Plan or persons or organizations that may do business with the Plan.

Any person or organization offering such inducements must be advised to discontinue the practice immediately if a sustained business relationship is to continue with the Plan.

Similarly, Council members must not offer gifts or favors to persons or organizations in order to secure preferential treatment for the Plan.

Inappropriate gifts or benefits that are received by members of the Council, which violate section 11.05 – Ethical Standards, should be returned to the donor as soon as practicable. Where the donor may perceive the return of an inappropriate gift or benefit as offensive, for cultural or other reasons, the Council member must make full and immediate disclosure of receipt of the gift or benefit. Such gift or benefit must be delivered to the Council, who will determine the suitable disposition of the item.

### **11.07 Consequences of a Breach**

In the event of a breach of the Code of Conduct and Conflict of Interest Procedures, or a failure to remedy or disclose an actual or perceived conflict of interest, the consequences of such infractions should reflect the nature, magnitude and seriousness of the breach.

The following are examples of possible consequences, which the Council may consider, when dealing with a breach of the Code of Conduct and Conflict of Interest Procedures:

### **11.07 Consequences of a Breach (continued)**

- a) The Council member may be offered the opportunity to resign from the Council;
- b) The Council may recommend to the appointing body to terminate the appointment of the Council member to the Council;
- c) The Council member may be required to make full restitution to the Council of any personal gain acquired as a result of the breach, for disposition by the Council;
- d) The Council may consider taking legal action against the Council member;
- e) If the Council member is in breach of the law, the Council will report the Council member's action to the proper authorities.

This list of consequences is not exhaustive, and does not preclude any other course of action, which the Council may deem appropriate under the circumstances.

### **11.08 Avoidance of Bias**

These procedures apply to members of the Council with respect to their responsibilities as decision-maker with respect to disputes regarding the Plan.

Members of the Council shall not knowingly permit any relationship or other circumstances, either in the past or the present, to be perceived as a possible reason for the member to hold a bias either in favor or against a party with respect to whom a decision is to be made.

Council members should familiarize themselves with the range of actions that may constitute a potential bias issue, and the actions that might be taken to respond to the issue. A potential bias issue may arise as a result of circumstances such as:

- a) The member has a personal or business relationship with a party;
- b) The member has information about the party which has not been placed before the other members of the Council as part of the decision-making process;

**11.08 Avoidance of Bias (continued)**

- c) The member has expressed views in public respecting the subject matter of the decision;
- d) The member has communicated directly with one of the parties respecting the subject matter of the decision, (i.e., that member has been approached about making a determination of the matter independent of the information and the formal dispute resolution process set out by the Council).

This list is not exhaustive. If a member of the Council is aware of any circumstances which might give rise to a bias issue, the member must disclose the circumstances to the Chair of the Council at the earliest opportunity. In the event that the member is the Chair, disclosure must be made to the Vice-Chair or the Director.

The Chair may:

- a) Remove the member from the panel of members that are making the decision;
- b) If the Chair is of the opinion that the circumstances may not warrant removal of the member, the Chair shall disclose the circumstances to the parties and provide them with an opportunity to make representations to the Council with respect to the ability of the member to participate in the hearing; and
- c) The Council shall determine the extent, if any, to which the member may participate in the hearing.

A member cannot be removed from the panel where doing so would mean that a quorum of members would not be present. A member is not required to disclose a relationship that is inherent in the manner of the member's appointment, such as being a member of the Plan or a member or employee of a body that is entitled to appoint a member of the Council.

**Council Member’s Acknowledgement**

I ACKNOWLEDGE that I have read and considered the Code of Conduct and Conflict of Interest Procedures for members of the Disability Income Plan Advisory Council, and as a member of the Council, agree to conduct myself in accordance with the Code of Conduct and Conflict of Interest Procedures as it applies to members of the Council.

I UNDERTAKE to affirm in writing that I have read, understood and will comply with the most recent version of the Code of Conduct and Conflict of Interest Procedures for members of the Disability Income Plan Advisory Council.

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Signature

\_\_\_\_\_  
Printed Name

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Date

**11.10 History**

Approval Date:	February 9, 2005; January 11, 2006; January 14, 2009; and December 8, 2021
Last Review:	December 8, 2021
Next Scheduled review:	October 2022