From: Wendy Hassen [mailto:wendy@wendyhassen.ca]
Sent: July-27-17 10:31 PM
To: Joanne Munro; Michelle Simpson
Cc: Paul Conway; Stan Galbraith; Marshall, Barrie; Tammy Borowiecki; Sharon Wilson
Subject: RE: By-laws or policies regarding Conflict of Interest and Board members (or staff) accepting ADRI contracts

Hi all!

Yes, my memory is that the discussions revolved around whether there was any restriction of Instructors being on the Board given they were also in a contract position. Apparently there was some perception by Senior Staff that there was a policy *excluding* ADRIA members who had a contract with ADRIA from being a Board member and as long as they were Board members, they were prevented from making application on any openings (this would include Rosters, instruction, referrals, etc.) No written policy was found to be in place to that effect and the Board rejected supporting such a policy given that would mean members who volunteered to serve as Board members could be penalized and this would be a deterrent to members volunteering and eliminate some very strong\talented potential Board members as a result. At the same time, the had been a " perception" – before my time – that Board members got preferential treatment – which the Board also did not want to continue. As Joanne and Paul have suggested, conflict of interest principles and transparent contractor selection processes would be applied to ensure fairness for everyone. While this may have been covered through a motion in past minutes, I do not believe a policy specifically on Board members accepting contracts has been written. I agree that this would be very useful.

Hope this helps!

Wendy

From: Joanne Munro [mailto:joannepmunro@gmail.com]
Sent: July 27, 2017 8:52 AM
To: Michelle Simpson <Michelle@simpsonlaw.ca>
Cc: Paul Conway <paul@adralberta.com>; Stan Galbraith <stan@galbraith.ab.ca>; Marshall, Barrie <Barrie.Marshall@gowlingwlg.com>; Wendy Hassen <wendy@wendyhassen.ca>; Tammy Borowiecki <tammy@adralberta.com>; Sharon Wilson <resources2020@gmail.com>
Subject: Re: By-laws or policies regarding Conflict of Interest and Board members (or staff) accepting ADRI contracts

I recall discussing this many times but don't recall if it was put in policy. Wendy?

Sent with clumsy fingers from my IPhone

On Jul 27, 2017, at 7:13 AM, Michelle Simpson <Michelle@simpsonlaw.ca> wrote:

Hello
I am at a hearing in Medicine Hat this today I will check our current policies and bylaws and get back to you. I will also check with Joanne and Wendy because I know that this policy was previously discussed by former boards and I believe that the policy does exist.

Thank you,

Michelle Simpson
Lawyer/Chartered Arbitrator/Chartered Mediator
Simpson Law
1600, 8215 112 Street
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On Jul 26, 2017, at 4:31 PM, Paul Conway <paul@adralberta.com> wrote:

Michelle - in speaking with Jim Musgrave this morning (Chair of the ADRIC Governance Committee), and in reviewing the earlier emails on this issue, it will have come to you as no surprise that they are crafting a policy (as an extension or amplification of their Conflict of Interest Bylaw) to address the issue of whether or not ADRIC Board members can accept or compete for ADRIC contracts. There have been two such potential conflicts at ADRIC recently. Jim likes and intends to draw upon my "summary statement" of ADRIA's "policy" in this regard (pasted below), but I've also indicated to him that to the best of my knowledge we have never formalized our "policy". Jim has indicated that he will gladly share with ADRIA the outcome of his committee discussions in draft form, even before he takes it forward for ADRIC Board consideration. That might save us some work. He also sent me a link to the ADRIC Bylaws regarding conflict of Interest (below).

This same question tends to arise every 12-18 months at ADRIA, notably when we're recruiting new Board members, some of whom are ADRIA contractors. I also note that, although we have formally added "Declarations of Conflict of Interest" to our regular Board proceedings, my scan of ADRIA Bylaws and Board Policies seems to confirm that we have no formal written Conflict of Interest policies. Note that staff members can also find themselves in similar conflicts. Perhaps it is time to lay down our policies in writing.

Should these two related policy issues added to the Governing Committee and/or Board agenda for the year ahead?

NOTES:
Jim's question to ADRIA:
Hi,
I hope your summer is going well.
I chair the ADRIC governance committee, and we have some rules in place on director conflict of interest already. Our constitution says for example that directors must disclose conflicts and must not vote when their interest is in conflict or potential conflict with the best interests of ADRIC. There has been a suggestion that we add another component – likely not an amendment to the by-laws, but an administrative policy -- along the lines of an express requirement that ADRIC directors not enter into money-making contracts with ADRIC until the contract has been advertised to ADRIC members and they put their names forward along with any other members interested in doing the work.
There is a division of practice out there, and in the end our committee's recommendation will come down to what is best for ADRIC. The committee has asked me to check to see what, if any conflicts rules, are in place for ADRIA? Would you mind sending along to me?
Many thanks, Paul.
Really appreciate it.
Jim

James Musgrave, Q.C. | Cox & Palmer | Partner

Paul's initial response to Jim:

Jim - I'll investigate to see what extent this is directly written into our ADRIA policies, but it was decided several years ago that ADRIA Board members (and staff) were not precluded from accepting ADRIA work provided that they were selected as part of a fair & transparent process that was open to all qualified members. Also, Board members disclose any conflicts of interest at the beginning of any Board meeting, and recuse themselves from discussions and/or votes for which they are in conflict. More to follow.

Paul Conway | Executive Director

Joanne's feedback on the issue:

Hi all,

The ADRIA board has historically discussed this issue numerous times and concluded that to prevent ADRIA directors from receiving work contracts could potentially reduce the pool of directors upon which to draw. It was also determined that the board member should not receive preferential treatment.

The proposal described [by Jim] seems fair in that ADRIC is saying to its directors that they can receive contracts but they will compete for those contracts with other applicants.

Joanne

Paul Conway | ***Executive Director***

From: Musgrave, James (Halifax) [mailto:JMusgrave@coxandpalmer.com]
Sent: July-26-17 11:02 AM
To: Paul Conway
Subject: By-laws

Hi Paul,

Thanks for the chat. As discussed, here is the ADRIC by-law. The relevant conflicts wording is highlighted, and I reproduce it below in text format.

My best,

Jim

P.S. Here it is:

I. CONFLICTS OF INTEREST, INDEMNITIES, AND INSURANCE

1. Dealing with conflicts

a. A Director or officer of the Institute who:

i. is a party to a material contract or transaction or proposed material contract or transaction with the Institute (in any such case, a "Contract" or a "Transaction", as the case may be); or

ii. is a Director or an officer of, or has a material interest in, any person who is a party to a Contract or Transaction,

shall disclose to the Institute, or request to have entered in the minutes of meetings of the Board, the nature and extent of his or her interest.

b. The disclosure required by XIX.1.a must be made, in the case of any Director:

i. at the Board meeting at which a proposed Contract or Transaction is first considered;

ii. if the Director was not then interested in a proposed Contract or Transaction, at the first Board meeting after he or she becomes so interested;

iii. if the Director becomes interested after a Contract is made or a Transaction is entered into, at the first Board meeting after he or she becomes so interested; or

iv. if a person who is interested in a Contract or Transaction later becomes a Director, at the first Board meeting after he or she becomes a Director.

c. The disclosure required by XIX.1.a must be made, in the case of any officer who is not a Director:

i. forthwith after the officer becomes aware that the Contract or Transaction or proposed Contract or Transaction is to be considered or has been considered at a meeting of Directors;

ii. if the officer becomes interested after a Contract is made or a Transaction is entered into, forthwith after he or she becomes so interested; or

iii. if a person who is interested in a Contract or Transaction later becomes an officer, forthwith after he or she becomes an officer.

d. Despite XIX.1.b and c, if XIX.1.a applies to a Director or officer in respect of a Contract or Transaction or proposed Contract or Transaction that, in the ordinary course of the Institute's business, would not require approval by the Board or the Members, the Director or officer shall disclose to the Institute or request to have entered in the minutes of meetings of the Board, the nature and extent of his or her interest forthwith after the Director or officer becomes aware of the Contract or Transaction or proposed Contract or Transaction.

e. A Director referred to in XIX.1.a shall not attend any part of a Board meeting during which the Contract or Transaction is discussed and shall not vote on any resolution to approve the Contract or Transaction unless the Contract or Transaction is one for indemnity or insurance.

f. If no quorum exists at a Board meeting for the purpose of voting on a resolution to approve a Contract or Transaction only because a Director is not permitted to be present at the Board meeting by reason of XIX.1.e, the remaining Directors are deemed to constitute a quorum for the purposes of voting on the resolution.

g. A general notice to the Board by a Director or officer disclosing that he or she is a Director or officer of or has a material interest in a person, or that there has been a material change in the Director's or officer's interest in the person, and is to be regarded as interested in any Contract made or any Transaction entered into with that person, is sufficient disclosure of interest in relation to any such Contract or Transaction for the purposes of XIX.1.

h. A Contract or Transaction for which disclosure is required under XIX.1.a is not void or voidable, and the Director or officer is not accountable to the Institute or its Members for any profit or gain realized from the Contract or Transaction, because of the Director's or officer's interest in the Contract or Transaction or because the Director was present or was counted to determine whether a quorum existed at the meeting of Directors or of the committee of Directors that considered the Contract or Transaction, if:

i. disclosure of the interest was made in accordance with XIX.1;

ii. the Board approved the Contract or Transaction; and

iii. the Contract or Transaction was reasonable and fair to the Institute when it was approved.

i. Despite anything in XIX.1, a Director or officer, acting honestly and in good faith, is not accountable to the Institute or to its Members for any profit or gain realized from any Contract or Transaction by reason only of his or her holding the office of Director or officer, and the Contract or Transaction, if it was reasonable and fair to the Institute at the time it was approved, is not by reason only of the Director's or officer's interest in it void or voidable if:

i. the Contract or Transaction is confirmed or approved by special resolution at a meeting of the Members duly called for that purpose; and

ii. the nature and extent of the Director's or officer's interest in the Contract or Transaction are disclosed in reasonable detail in the notice calling the Members' meeting.

James Musgrave, Q.C. | Cox & Palmer | Partner
Lawyer | Chartered Mediator | Qualified Arbitrator | Workplace Investigator

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From: Musgrave, James (Halifax)
Sent: July-26-17 2:00 PM
To: Musgrave, James (Halifax) <JMusgrave@coxandpalmer.com>
Subject: HFXDOCS-#2060302-v2-ADRIC_General_By-law_No_1_September_10_2014

<HFXDOCS-#2060302-v2-ADRIC_General_By-law_No_1_September_10_2014.pdf>