

REFERENCE DOCUMENT #B6.2

(supporting material for Cégep Heritage College Bylaw #6 concerning the Ethics and Professional Conduct of Board Administrators)

Revised on: June 19, 2012

The first paragraph of article 12 of the *General and Vocational Colleges Act* decrees that:

12. *Every member of the board, except the Director General and the Academic Dean, who has a direct or indirect interest in an enterprise that places his personal interest in conflict with that of the college must, on pain of forfeiture of office, disclose his interest in writing to the director general, abstain from voting on any matter concerning the enterprise and avoid influencing the decision relating to it. The member must, in addition, withdraw from a meeting while the matter is discussed or voted on. ...*

This article applies to all members of the Board of Governors to the exclusion of the Director General and the Academic Dean. With respect to these two members, they are governed by article 20.1 and by the second and third paragraphs of article 12 of the *General and Vocational Colleges Act*.

This first paragraph of article 12 reiterates the principle that a member of the Board must avoid placing himself in a situation of conflict of interests. When the College must take a decision, “the direct or indirect interests” of the Board administrator in an enterprise must not conflict with those of the College. The term enterprise is not defined in the Act. However, the *Québec Civil Code* gives us a definition in article 1525:

The carrying on by one or more persons of an organized economic activity, whether or not it is commercial in nature, consisting of producing, administering or alienating property, or providing a service, constitutes the carrying on of an enterprise.

The legislative disposition does not distinguish in any way between the different legal forms of an enterprise. It only requires that the enterprise be engaged in “an organized economic activity, whether or not it is commercial in nature”. Consequently, it could be a public or private corporation, a profit or non-profit company, a civil or commercial company, a craftsman or an autonomous worker.

Article 12 of the Act requires a member of the Board, except the Director General and the Academic Dean, to declare in writing to the Director General the conflict of interest, on pain of forfeiture of office. Moreover, the same member of the Board may not vote and must withdraw from the meeting of the Board for the duration of the deliberations and of the vote. The member of the Board shall therefore withdraw from the meeting room where the Board sits until it has come to a decision.

Furthermore, a member of the Board who is in a situation of conflict of interest cannot, at any time, and not only at meetings of the Board, try to influence the decision of the Board concerning the enterprise in which he has an interest.

The member of the Board who fails to declare his interest and who participates in the vote, or who declares his interest but tries to influence the decision of the Board or does not withdraw from the meeting of the Board for the duration of the deliberations, could be dismissed from his functions as Board administrator. Otherwise, a college may always grant a contract to an enterprise in which a member of the Board has an interest. That Board administrator could not be dismissed of his functions if he has declared that interest, abstained from the deliberations and the vote and did not try to influence the Board.