

## **BY-LAW NUMBER 2**

### A by-law relating to the Code of Conduct of **ONTARIO ELECTRONIC STEWARDSHIP**

1.	Interpretation.....	2
	<b>1.1</b> Meaning of Words .....	2
	<b>1.2</b> Statutory Terms.....	3
	<b>1.3</b> Conflict of Interest .....	3
	<b>1.4</b> Exclusion for Sectoral Interests .....	4
	<b>1.5</b> Indirect Interest .....	4
	<b>1.6</b> Confidential Information .....	5
2.	Statement of Principles .....	5
3.	Confidentiality .....	6
	<b>3.1</b> Not Use Confidential Information .....	6
	<b>3.2</b> Not Disclose Confidential Information.....	6
	<b>3.3</b> Not Communicate Corporation’s Business.....	6
	<b>3.4</b> Non-Disclosure Exceptions .....	6
4.	Disclosure of Conflict of Interest.....	6
	<b>4.1</b> Conflict Disclosure Obligation .....	6
	<b>4.2</b> Additional Obligation .....	6
	<b>4.3</b> Avoidance of Conflict Situations.....	7
	<b>4.4</b> Where Conflict Suspected.....	7
	<b>4.5</b> Subsequent Discovery of Conflict .....	7
	<b>4.6</b> Withholding of Corporation Information.....	8
5.	Prohibited and Permitted Transactions .....	8
	<b>5.1</b> Corporation Not to Contract Where Conflict.....	8
	<b>5.2</b> Permitted Corporation Contract Where Conflict .....	8

5.3	Affected Person Not to Vote.....	8
6.	Gifts .....	9
6.1	Modest Gifts Acceptable.....	9
6.2	Where Greater Than Modest Gift Received .....	9
6.3	Gift Considerations .....	9
6.4	External Fees to be Remitted .....	9
6.5	Exceptions Respecting Entertainment .....	9
7.	Breach .....	9
7.1	Sanctions On Breach.....	9
7.2	Pre-conditions to Sanctions.....	10
8.	Acknowledgement/Compliance Statement .....	10
9.	Effective Date .....	10
	<b>SCHEDULE “A” — ACKNOWLEDGEMENT/COMPLIANCE STATEMENT .....</b>	<b>11</b>

## 1. Interpretation

### 1.1 Meaning of Words

In this by-law and all other by-laws and resolutions of the Corporation unless the context otherwise requires:

- 1.1.1 the singular includes the plural;
- 1.1.2 the masculine gender includes the feminine;
- 1.1.3 “**Act**” means the *Waste Diversion Act, 2002*, S.O. 2002, c.6, as the same may be amended from time to time;
- 1.1.4 “**Board**” means the Board of Directors of the Corporation;
- 1.1.5 “**By-laws**” means By-law No. 1 of the By-laws of the Corporation, this By-law and any other By-law of the Corporation which may be enacted, repealed, amended, altered, added to or re-enacted by the Board from time to time;
- 1.1.6 “**Code of Conduct**” means the Code of Conduct adopted by the Corporation by By-law approved by the Board from time to time, and which outlines the Corporation’s requirements regarding personal accountability, conflict of interest and confidentiality. The Code of Conduct applies to Directors and Officers of the Corporation, Committee Members and such other persons as determined by the Board of Directors;
- 1.1.7 “**Committee**” means a Committee of the Board established pursuant to the By-laws of the Corporation and has the same meaning as “sub-committee” as defined in the Act;

- 1.1.8 “**Committee Member**” means a member of a Committee;
- 1.1.9 “**Corporation**” means Ontario Electronic Stewardship;
- 1.1.10 “**Director**” means a person who has been named to the office of Director in accordance with the Act, the Regulation or the By-laws of the Corporation;
- 1.1.11 “**documents**”, includes deeds, mortgages, hypothecs, charges, conveyances, transfers and assignments of property, real or personal, immovable or movable, agreements, releases, receipts and discharges for the payment of money or other obligations, conveyances, transfers and assignments of shares, bonds, debentures or other securities and all paper writings;
- 1.1.12 “**Group**” means, in connection with a Sectoral Interest, a broad group of which the Director, Officer or Committee Member is a member, and includes the interest of all or substantially all businesses in an economic sector;
- 1.1.13 “**meeting**” includes any regular, special, committee, Committee, or other meeting of the Corporation;
- 1.1.14 “**Minister**” means Her Majesty the Queen in right of Ontario as represented by the Minister of the Environment;
- 1.1.15 “**Modest Gift**” means a gift, present, honorarium, gratuity, favour or similar asset offered without compensation that has a current market value of \$100.00 or less and “Gift” has a corresponding meaning but without a value attribution;
- 1.1.16 “**Officers**” means the persons who hold the offices enumerated in the By-laws of the Corporation or any other person appointed to an office of the Corporation;
- 1.1.17 “**Regulation**” means O.Reg. 393/04, as amended by O.Reg. 245/08, published under the Act, as it may be further amended or replaced from time to time;
- 1.1.18 “**related person**” includes a person, firm, body, or corporation described in section 1.5;
- 1.1.19 “**Sectoral Interest**” means a pecuniary or non-pecuniary interest of the Director, Officer or Committee Member held in common with a Group;
- 1.1.20 “**Stakeholder Organization**” means any body entitled to appoint members to the Board, including Retail Council of Canada and Electronics Product Stewardship Canada

## 1.2 Statutory Terms

All terms defined in the Act and not otherwise defined herein have the same meanings in this By-law.

## 1.3 Conflict of Interest

A conflict of interest arises when the personal or business interests of a Director, Officer, Committee Member or a related person supersede or compete with his or her official duties and responsibilities. Personal and business interests include pecuniary and non-pecuniary interests.

A conflict of interest may be a real conflict of interest, a potential conflict of interest or an apparent conflict of interest:

- 1.3.1 A “real conflict of interest” exists when a Director, Officer, or Committee Member has a direct or indirect personal or business interest that is sufficiently connected to his or her duties and responsibilities that it influences the exercise of these duties and responsibilities;
- 1.3.2 A “potential conflict of interest” exists when a Director, Officer, or Committee Member has a direct or indirect personal or business interest that could influence the performance

of any of his/her duties or responsibilities at a time when he or she has not yet exercised that duty or responsibility;

- 1.3.3** An “apparent conflict of interest” exists when reasonably well-informed persons could properly have a reasonable belief that a Director, Officer, or Committee Member has a real conflict of interest, direct or indirect, even where there is no real conflict in fact.

Generally, pecuniary interests lead to conflict of interest when a Director, Officer, or Committee Member or related person is in a position to benefit financially or avoid financial loss, either directly or indirectly, as a result of a contract or other matter of a monetary nature in which such person is involved.

Other personal interests lead to a conflict of interest when a Director, Officer, or Committee Member has non-economic interests such as religious, political, corporate and/or institutional interests which supersede or compete with the duties and responsibilities of a Director, Officer, or Committee Member.

- 1.3.4** Notwithstanding the foregoing, conflict of interest should not be deemed to exist where a pecuniary or non-pecuniary interest is so remote or insignificant in nature that it cannot reasonably be regarded as likely to influence the Director, Officer or Committee Member.

#### **1.4 Exclusion for Sectoral Interests**

It is acknowledged and recognized that a Director, Officer, or Committee Member may hold a position of influence in a member of a Group or Stakeholder Organization representing a Sectoral Interest. Such Stakeholder Organizations may have taken positions on issues related to ones under discussion by the Corporation. A Director, Officer, or Committee Member shall not be deemed to have a conflict of interest simply by virtue of such stated positions.

A Director, Officer or Committee Member shall not be deemed to have a conflict of interest simply because he or she holds a position of influence in a member of a Group or Stakeholder Organization representing a Sectoral Interest which may be affected by a decision of the Corporation and shall be permitted to advocate the positions of such Group or Stakeholder Organization in discussions before the Board. However, once the Board has made a decision with respect to any matter, any statements or actions of a Director, Officer or Committee Member which are directed at opposing or preventing the carrying out of such decision, except for motions or statements of a Director, Officer or Committee Member made in a meeting of the Board or a Committee, will be considered to be a breach of the Director, Officer or Committee Member’s duty of loyalty to the Corporation.

Notwithstanding Section 1.3, conflict of interest should not be deemed to exist where a pecuniary or non-pecuniary interest of the Director, Officer, or Committee Member is a Sectoral Interest, and the Director, Officer, or Committee Member does not prefer his/her individual personal or business pecuniary or non-pecuniary interests over those of other members of the Group.

#### **1.5 Indirect Interest**

For the purposes of this Code of Conduct, a Director, Officer or Committee Member has an indirect pecuniary or non-pecuniary interest in any matter in which the Corporation is concerned, if,

- 1.5.1** the Director, Officer or Committee Member or his or her nominee,  
**1.5.1.1** is a shareholder in, or a director or senior officer of a corporation, or  
**1.5.1.2** is a member of a body,  
that has a pecuniary or non-pecuniary interest in the matter; or

- 1.5.2** the Director, Officer or Committee Member is a partner of a person or is in the employment of a person or body that has a pecuniary or non-pecuniary interest in the matter; or
- 1.5.3** the spouse, child, parent or sibling of the Director, Officer or Committee Member has a pecuniary or non-pecuniary interest in the matter.

The persons, firms and corporations described in Sections 1.5.1.1, 1.5.1.2, 1.5.2 and 1.5.3 are considered to be “related persons” of the Director, Officer or Committee Member.

## **1.6 Confidential Information**

Confidential information (which may be paper-based, electronic, or in other formats) is information that is not available generally to the public. Such information belongs exclusively to the Corporation, and includes but is not limited to, data and information received by the Corporation from industry funding organizations, municipalities and others, information required to be maintained in confidence by the Corporation under any law or regulation relating to privacy, programs and policies of the Corporation prior to public disclosure and the financial position of the Corporation.

Confidential information does not include

- 1.6.1** information which has become known to the public without any breach of the restriction on the disclosure of such information by a party who owes a duty of confidentiality to the Corporation;
- 1.6.2** information developed independently by another party as evidenced by written documentation in its possession;
- 1.6.3** information received by a party from another party who was not under a duty of confidentiality to the Corporation; and
- 1.6.4** information which is required to be disclosed by applicable law or by an order of a court or regulatory tribunal with jurisdiction over the party disclosing such information.

## **2. Statement of Principles**

Each Director, Officer and Committee Member by virtue of his/her position of control over the affairs of the Corporation, stands in a fiduciary relationship to the Corporation. The common-law imposes upon a fiduciary the duty to act in good faith towards his/her beneficiaries. A fiduciary must act in a manner consistent with the best interests of the beneficiaries in all matters related to the undertaking of trust and confidence and must avoid placing him/herself in a position of conflict of interest.

The general rule regarding conflicts of interest is that no one who has duties of a fiduciary nature to perform is allowed to enter into engagements in which such person has or can have a personal interest conflicting with the interests of those whom such person is bound to protect. Even where the fiduciary acts in good faith, the foregoing restriction applies. A fiduciary cannot benefit, directly or indirectly, from any opportunity which comes to the fiduciary through performing the fiduciary role. A fiduciary must not use any aspect of the beneficiary’s property for his/her gain, directly or indirectly.

A fiduciary must not use his/her position to benefit persons closely associated with him/her. Where a benefit is conferred upon a person who is a related person, the fiduciary benefits indirectly.

### **3. Confidentiality**

#### **3.1 Not Use Confidential Information**

No Director, Officer or Committee Member shall use for gain, either on his or her own behalf or while acting for, by, with or through another, any of the Corporation's assets, goods, confidential information or opportunities.

#### **3.2 Not Disclose Confidential Information**

No Director, Officer or Committee Member shall disclose any information that is confidential to the Corporation during or after his/her tenure as a Director, Officer or Committee Member except as may be authorized by the Corporation.

#### **3.3 Not Communicate Corporation's Business**

No Director shall communicate or purport to communicate to the public on behalf of the Corporation without the prior approval of the Board, and shall direct all inquiries about the business and affairs of the Corporation to the Chair or Vice-Chair of the Board or to the Executive Director.

#### **3.4 Non-Disclosure Exceptions**

Notwithstanding the foregoing, confidential information may be disclosed by a Director, Officer or Committee member on a need-to-know basis only to one or more Stakeholder Organizations, provided that each such Stakeholder Organization has first agreed in writing with the Corporation to hold such information in confidence.

In addition, the Board may from time to time, in its discretion, consent to the use or disclosure by Board members or others of information or categories of information in the possession or control of the Corporation and such information shall thereafter cease to be considered confidential information.

### **4. Disclosure of Conflict of Interest**

#### **4.1 Conflict Disclosure Obligation**

Whenever a person governed by this Code of Conduct has a conflict of interest as described in this Code of Conduct, such person shall disclose such interest at the earliest practical time:

- 4.1.1** in the case of Directors or Officers, to the Chair (or designate);
- 4.1.2** in the case of a Committee Member, to the Chair of such Committee (or designate);
- 4.1.3** in the case of any other persons to whom this Code of Conduct is made applicable, the Executive Director (or designate);
- 4.1.4** in any case when at a meeting, to the chair of the meeting.

#### **4.2 Additional Obligation**

In addition to the disclosure obligation set out in section 4.1, where a Director, Officer, Committee Member, either on his or her own behalf or while acting for, by, with or through another, has any pecuniary or non-pecuniary interest, direct or indirect, in any matter and is present at a meeting at which the matter is the subject of consideration, but subject to Section 5.2.1, the Director, Officer, Committee Member,

- 4.2.1** shall, prior to any consideration of the matter at the meeting, disclose the interest and the general nature thereof;

**4.2.2** shall not take part in the discussion of, or vote on any question in respect of the matter; and

**4.2.3** shall not attempt in any way whether before, during or after the meeting to influence the voting on any such question;

and in addition to complying with the above requirements,

**4.2.4** the Director, Officer, Committee Member shall forthwith leave the meeting or the part of the meeting during which the matter is under consideration and if the Director, Officer, Committee Member is participating via telephone or through other electronic means, the Chair of the meeting shall ensure that the Director is not able to listen to or participate in the discussion of the matter; and

**4.2.5** every declaration of interest and the general nature thereof made shall be recorded in the minutes of the meeting.

#### **4.3** Avoidance of Conflict Situations

Directors, Officers and Committee Members are expected to arrange their personal and business affairs and conduct themselves in a manner so to avoid conflict of interest. In cases where conflict cannot be avoided, a Director, Officer or Committee Member must declare the conflict of interest at the earliest opportunity.

#### **4.4** Where Conflict Suspected

Whenever any person present at a meeting:

**4.4.1** is unsure whether that person has a conflict of interest, such person shall raise with the chair of the meeting the issue of whether, as required in this Code of Conduct, a conflict of interest exists and must be declared; or

**4.4.2** believes that a second person has a conflict of interest that has not been declared as required by this Code of Conduct, such person may raise with the chair of the meeting the issue of whether, as required in this Code of Conduct, a conflict of interest exists and must be declared.

As soon as such question is raised, the chair of the meeting shall invite representations from any person affected, as well as from the members of the meeting entitled to vote, as to their respective views on that question. Counsel to the Corporation may, at the request of the chair, give an opinion as to whether a conflict exists, but such opinion is given to the Corporation and not to the affected person and may not be relied on by the affected person. The affected person is responsible for obtaining legal advice, if he or she requires it, from someone independent of the Corporation. Forthwith thereafter, the meeting shall, by a majority vote (from which the person whose possible conflict of interest is at issue shall be excluded), determine whether the conflict of interest exists, and that determination is final and binding.

#### **4.5** Subsequent Discovery of Conflict

Where a conflict of interest affecting a Director or Committee Member is discovered after consideration by the Board or a Committee of a matter, it must be disclosed as set out above and if the Board or Committee, as the case may be, determines that involvement of such Director or Committee Member influenced or may have influenced the decision of the Board or Committee in the matter, the Board or Committee, as the case may be, must re-examine the matter and may rescind, vary or confirm the decision.

#### **4.6 Withholding of Corporation Information**

Whenever and while a Director, Officer or Committee Member has an interest in a matter that, as described in this Code of Conduct, conflicts with his/her fiduciary obligations to the Corporation, the Executive Director shall cease to provide any minutes, reports and other material related to that matter that might otherwise be distributable to the person.

### **5. Prohibited and Permitted Transactions**

#### **5.1 Corporation Not to Contract Where Conflict**

Except in accordance with this Code of Conduct, the Corporation shall not enter into transactions with a Director, Officer, Committee member or a related person where the Director, Officer, Committee Member or related person may benefit from the transaction.

#### **5.2 Permitted Corporation Contract Where Conflict**

The Corporation may enter into a transaction with a Director, Officer, Committee Member or related person if:

- 5.2.1** the affected Director, Officer or Committee Member:
  - 5.2.1.1** declares a conflict of interest in respect of the proposed transaction;
  - 5.2.1.2** discloses to the Board the full nature and extent of his or her interest in the proposed transaction and, to the extent that he or she is able, the interest of any related person in the proposed transaction;
  - 5.2.1.3** establishes to the satisfaction of the Board that:
    - the proposed transaction is fair and reasonable to the Corporation; and
    - the proposed transaction would meet or exceed community expectations about the conduct of the Corporation; and for such purpose only, and, notwithstanding Section 4.2, the affected person shall be permitted to explain any aspect of the contract or matter in response to questions from members of the Board and to make a statement as to the potential benefit of such contract or matter to the Board, but shall not engage in debate or otherwise attempt to persuade the Board of the merits of the transaction. The chair of the meeting shall have discretion to determine the extent to which such affected person may participate in this part of the meeting;
- 5.2.2** and the Board approves the proposed transaction.

#### **5.3 Affected Person Not to Vote**

For the purposes of sections 4.2 and 5.2, an affected Director or Committee Member shall not be counted for the purpose of determining whether a quorum of Directors or Committee Members is present in relation to the vote on the proposed transaction. If no quorum exists 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 meeting by reason of this Section, the remaining Directors or Committee Members shall be deemed to constitute a quorum for the purposes of voting on the resolution.



## **6. Gifts**

### **6.1 Modest Gifts Acceptable**

Directors, Officers and Committee Members are not precluded from accepting Modest Gifts that are appropriate for official events and ceremonial occasions sanctioned by the Corporation.

### **6.2 Where Greater Than Modest Gift Received**

If a gift valued at more than a Modest Gift is received by a Director, Officer, Committee Member or a related person, the Chair of the Board (in the case of a Director or Officer) and the Chair of the Committee (in the case of a Committee Member) will determine whether it should be retained, returned or donated to charity, having regard to the principles set out in this Code of Conduct.

### **6.3 Gift Considerations**

Directors, Officers and Committee Members should consider not only the extent and frequency of the receiving or giving of gifts, but also the need and ability to reciprocate to avoid the possibility of being or appearing to be influenced by such gifts.

### **6.4 External Fees to be Remitted**

When Directors, Officers and Committee Members are invited to address or otherwise contribute to an external organization in a seminar, symposium or lecture forum, solely as a result of their position with the Corporation, fees or honoraria (if in excess of an amount equal to the value of a Modest Gift or such higher amount as the Board may stipulate) shall be turned over to the Corporation.

### **6.5 Exceptions Respecting Entertainment**

The value limit for Modest Gifts does not apply to the giving or receiving of entertainment. The following examples may give assistance in deciding the appropriateness of entertaining:

- 6.5.1** invitations to receptions, dinners, parties, plant openings and expansions, etc., that are widely distributed are acceptable;
- 6.5.2** tickets to occasional sports events, theatres, concerts or similar functions are acceptable, provided representatives of the suppliers are present and the tickets are unsolicited and reasonable and serve a valid business purpose;
- 6.5.3** tickets to occasional sports events, theatres, concerts or similar functions where representatives of the supplier are not in attendance are gifts and must be dealt with under the guidelines for gifts; and
- 6.5.4** the need to reciprocate to avoid the possibility of being or appearing to be influenced by entertainment should be considered.

## **7. Breach**

### **7.1 Sanctions On Breach**

Where, in the reasonable opinion of the Board, a person has breached any provision of this Code of Conduct, the Board may, at a regular or special meeting called for the purpose, impose one or more of the following sanctions:

- 7.1.1** formal written reprimand
- 7.1.2** suspension from employment;

- 7.1.3 withdrawal of access (other than access afforded to the general public) of any minutes, reports and other material otherwise distributable to the person;
- 7.1.4 prohibition from attendance at one or more meetings;
- 7.1.5 removal from the Board or from a Committee;
- 7.1.6 removal as an Officer;
- 7.1.7 discharge from employment.

**7.2** Pre-conditions to Sanctions

Before imposing any sanction under the authority of section 7.1, the Board shall:

- 7.2.1 give to the person not less than 10 days prior written notice of the meeting of the Board, setting out in reasonable detail the nature of the breach alleged; and
- 7.2.2 extend to the person a reasonable opportunity to explain and/or oppose the imposition of a sanction.

**8. Acknowledgement/Compliance Statement**

Those governed by this Code of Conduct are required to formally acknowledge their agreement to comply with this Code of Conduct by completing and delivering to the Executive Director the Corporation's "Code of Conduct Acknowledgment/Compliance Statement", in the form attached as Schedule "A", at the time of becoming a Director, Officer or Committee Member (or commencing to serve the Corporation in any other capacity if the Board has determined that this Code of Conduct should apply to such person) and annually thereafter.

**9. Effective Date**

This By-law shall come into force when enacted by the Board in accordance with the Act.

Passed by the Board of the Corporation at a meeting duly called and held on the 8<sup>th</sup> day of September, 2008 and confirmed without variation at a meeting of the members of the Corporation held on the 8th day of September, 2008

"S.Devries"  
Chairman

"N.Aubry"  
Secretary

**ONTARIO ELECTRONIC STEWARDSHIP — CODE OF CONDUCT**

**SCHEDULE “A” — ACKNOWLEDGEMENT/COMPLIANCE STATEMENT**

I have read the Code of Conduct approved by Ontario Electronic Stewardship (the “Corporation”) as By-law No. 2 on September 8, 2008.

I have read, understand and agree to abide by, the Code of Conduct.

To the best of my knowledge, information and belief, neither I nor any person related to me (within the meaning of the Code of Conduct) has a direct or indirect interest (excluding any interest which is a Sectoral Interest as defined in the Code of Conduct) in a contract or transaction with, or decision to be made by, the Corporation at the date set out below.

**OR**

I have, or a person related to me (within the meaning of the Code of Conduct) has, a direct or indirect interest (excluding any interest which is a Sectoral Interest as defined in the Code of Conduct) in a contract or transaction with, or decision to be made by, the Corporation as described below:

I am a Director or Officer of the following stakeholder of the Corporation:

Name of organization: \_\_\_\_\_

Title: \_\_\_\_\_

Other relationships, interests or associations that may give rise to a conflict of interest:

[In this regard, please consider attached list of major suppliers to the Corporation

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

I understand that this Acknowledgment/Compliance Statement will remain in effect for as long as I remain a Director or Officer of the Corporation, a member of a Committee of the Board of Directors of the Corporation or serve the Corporation in any other capacity. Furthermore, I understand that I must maintain the confidentiality of information acquired as a result of my association with the Corporation, even after such association terminates, except as disclosure may be permitted pursuant to the terms of the Code of Conduct.

I also understand that I am prohibited and that any person related to me (as defined in the Code of Conduct) is prohibited from benefiting personally from any contract or transaction with or decision of the Corporation unless I have declared my interest in such contract or transaction and have refrained from voting on the matter in accordance with the provisions of By-law No. 2 of the Corporation.

If, subsequent to the signing of this statement, a conflict of interest arises, I must disclose the conflict to the appropriate representative of the Corporation as required by Section 4 of the Code of Conduct. Failure to disclose a conflict of interest or to comply with this Code of Conduct will be subject to such measures, as the Corporation may deem appropriate.

I acknowledge that I have read the Corporation’s Program Plan, as published on the Corporation’s Website and as approved by the Minister and that I agree with and support the objectives of such Plan and that any statements or actions which are directed at opposing or preventing the Plan from operating or

being implemented in accordance with its terms will be considered to be a manifestation of a conflict of interest as described in this Code of Conduct; provided that this does not extend to the bringing of a motion before the Board of the Corporation or participation in any discussion of such motion in a meeting of the Board or any Committees.

Name: \_\_\_\_\_

Date: \_\_\_\_\_

Signed: \_\_\_\_\_

**MAJOR SUPPLIERS**  
**(in excess of \$25,000 in the last completed fiscal year]**

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