

**POLICY STATEMENT FOR USE WHEN CONSIDERING A LATERAL HIRE
TO BE ADMINISTERED BY A FIRM'S CONFLICTS COMMITTEE**

PURPOSE

When interviewing for a lateral hire, we must identify and deal with potential conflicts that may arise with respect to clients at the transferring lawyer's previous firm, and in particular, with respect to clients for whom the transferring lawyer worked.

STEPS TO BE TAKEN

- I. Obtain sufficient information to complete an internal conflicts check, while at the same time making sure that no confidential client information is disclosed by either the transferring lawyer, or the Firm. In this regard The Canadian Bar Association, in its report on *Conflicts of Interest*, recommends the following steps be taken to identify potential conflicts of interest when dealing with a lateral hire:
 - Ask for a current curriculum vitae so that we can review the background of the transferring lawyer. Look back at least 5 years, or to the time of articling if this was less than 5 years ago.
 - Check with the lawyers in our firm, to identify any matters on which the transferring lawyer's previous firm was on the other side.
 - Ask the transferring lawyer for a list of major clients and the matters he or she worked on (but not any confidential information, including the identity of clients if that is confidential) and have our firm's conflicts person run these names through our firm's conflicts database.
 - In an interview ask the transferring lawyer if he or she is aware of any potential conflicts due to work done while at his or her previous firm.
 - Ask the transferring lawyer if he or she sat on any boards, and if so, have our firm's conflicts person run this information through our firm's conflicts database (including the name of the entity, the directors and officers.)
- II. If the transferring lawyer is in possession of confidential information that is relevant to a matter in which the Firm is acting, we must immediately, on the acceptance of our Offer of Employment, cease our representation of our client in that matter, unless:
 - (a) The former client for whom the transferring lawyer possesses confidential information, provides written consent to our firm's representation of our client, or;
 - (b) We establish that it is in the interests of justice that our representation of our client in the matter continue, having regard to all relevant circumstances, including:
 - (i) Whether we have taken reasonable measures to ensure that no disclosure of confidential information to any member of our firm will occur.

- (ii) Whether there is prejudice to any party.
 - (iii) Whether alternative suitable counsel is available.
 - (iv) Whether the matter involves issues affecting the national or public interest.
 - III. In order to meet the requirements of clause II (b)(i), that we establish that we have taken reasonable measures to ensure that no disclosure of confidential information to any member of our firm will occur, a confidentiality screen must be set up immediately on learning of the potential for disclosure, and must in all circumstances be in place before the transferring lawyer commences employment with the firm.
 - IV. In order to set up an appropriate confidentiality screen, potential conflicts must be identified before an offer of employment is accepted. In this regard, the Firm will distribute a memo to each of its lawyers, before an offer of employment is made, asking them to identify potential conflicts. Each lawyer must respond to this memo before an offer of employment is made. The transferring lawyer will be advised that we intend to make an offer of employment and the list of potential conflicts will be shown to the transferring lawyer. Any additional potential conflicts of interest earlier identified by the transferring lawyer will be added to the list. The offer of employment will then be advanced subject to there being no matters, where the transferring lawyer is in possession of confidential information that is relevant to a matter in which we are acting, other than those on the list that has been prepared.
- See: memo: Schedule 1
- V. If there is a potential conflict that we are unable to disclose without providing confidential information, the conflicts committee will determine an appropriate course of action before an offer of employment is made.
 - VI. If we wish to obtain written consent to our firm's continuing representation of our client, a letter, in the form attached, shall be provided to the former client (the client of the transferring lawyer, or of his or her firm), care of the transferring lawyer, or such other lawyer as may be acting for the former client.

See: letter: Schedule 2

- VII. If we do not obtain the consent of the former client, after having asked for it, we must not give any advice or representation to or on behalf of our client, until we apply to the Law Society, or to the Court, for a determination of whether we can continue to act.
- VIII. If the transferring lawyer is in possession of information respecting a former client which is not confidential information which if disclosed could prejudice the former client, but is relevant to a matter in which we are acting, a confidentiality screen, in the firm's standard form shall be set up as soon as the potential for disclosure is identified, and in any event must be in place before the commencement of employment. In this event the Firm will:

- (i) Notify its clients and the former client, or the lawyer acting for the former client of the relevant circumstances and its intended action, and
- (ii) Deliver to the persons referred to in (i) a copy of any Affidavit or solemn declaration executed in relation to the confidentiality screen that has been set up.
- (iii) Notify its client and former client that if they have any objection to the new law firm's continued representation of its client that they may apply to the Law Society or a court of competent jurisdiction within thirty (30) days of receipt of the material provided, and if no objection is taken within thirty days, they lose the right to apply to the Law Society.

IX. A transferring member described in clause VIII shall not, unless the former client consents:

- (a) Participate in any manner in the new law firm's representation of its client in that matter, or

Disclose any confidential information respecting the former client.

X. A copy of this policy shall be given to the transferring lawyer at the same time as an offer of employment is made.