



**Ontario
Professional
Planners
Institute**

**Institut des
planificateurs
professionnels
de l'Ontario**

Ontario Planners: Vision • Leadership • Great Communities

Professional Code of Practice

1. PREAMBLE

Members of the Institute must practice in an ethical and responsible manner. The Professional Code of Practice forms the basis of planning practice by Members; it is enforceable through the disciplinary provisions of the OPPI By-law 1-86, as amended. In Ontario, all complaints regarding the conduct of the Members will be addressed by the OPPI Discipline Committee which shall have sole authority over the matter.

Further, the Institute refers Members to the CIP Statement of Values, which follows as a source of inspiration and guidance for professional planners in Canada, and, as well, to the Standards of Practice contained in *Schedule B, Practice Standards*, of the OPPI By-law. These should be read in conjunction with this Professional Code of Practice. In the event of conflict, the Professional Code of Practice shall prevail.

CIP Statement of Values:

To respect and integrate the needs of future generations.

CIP Members recognize that their work has cumulative and long-term implications. When addressing short-term needs, CIP Members acknowledge the future needs of people, other species and their environments, and are to avoid committing resources that are irretrievable or irreplaceable.

To overcome or compensate for jurisdictional limitations.

CIP Members understand that their work has a potential impact on many jurisdictions and interests. They must therefore practice in a holistic manner, recognizing the need to overcome the limitations of administrative boundaries.

To value the natural and cultural environment.

CIP Members believe that both natural and cultural environments must be valued. They assume roles as stewards of these environments, balancing preservation with sustainable development.

To recognize and react positively to uncertainty.

CIP Members believe that the long-term future is unpredictable and that adaptable and flexible responses to deal positively with this uncertainty must be developed.

To respect diversity.

CIP Members respect and protect diversity in values, cultures, economics, ecosystems, built environments and distinct places.

To balance the needs of communities and individuals.

CIP Members seek to balance the interests of communities with the interests of individuals, and recognize that communities include both geographic communities and communities of interest.

To foster public participation.

CIP Members believe in meaningful public participation by all individuals and groups and seek to articulate the needs of those whose interests have not been represented.

To articulate and communicate values.

CIP Members believe in applying these values explicitly to their work and communicating their importance to clients, employers, colleagues and the public.

2. PROFESSIONAL CODE OF PRACTICE

1.0 The Planner's Responsibility to the Public Interest

Members have a primary responsibility to define and serve the interests of the public. This requires the use of theories and techniques

of planning that inform and structure debate, facilitate communication, and foster understanding. Accordingly, a Member shall:

- 1.1 practice in a manner that respects the diversity, needs, values and aspirations of the public and encourages discussion on these matters;
- 1.2 provide full, clear and accurate information on planning matters to decision makers and members of the public, while recognizing both the client's right to confidentiality and the importance of timely recommendations;
- 1.3 acknowledge the inter-related nature of planning decisions and their consequences for individuals, the natural and built environment, and the broader public interest; and
- 1.4 identify and promote opportunities for meaningful participation in the planning process to all interested parties.

2.0 The Planner's Responsibility to Clients and Employers

Members must provide diligent, creative, independent, and competent performance of work in pursuit of the client's or employer's interest. Accordingly, a Member shall:

- 2.1 impart independent professional opinion to clients, employers, the public, and tribunals;
- 2.2 work with integrity and professionalism;
- 2.3 not perform work outside of his/her professional competence;
- 2.4 not neglect planning services which he/she has agreed to perform, nor render services without adequate preparation;
- 2.5 acknowledge the values held by the client or employer in work performed, unless such values conflict with other aspects of this Code;

- 2.6 respect the client or employer right to confidentiality of information gathered through a professional relationship;
- 2.7 inform the client or employer in the event of a conflict between the values or actions of the client or employer and those of this Code, in a timely manner;
- 2.8 ensure full disclosure to a client or employer of a possible conflict of interest arising from the Member's private or professional activities, in a timely manner;
- 2.9 inform all relevant parties and provide the Member's professional recommendation in situations that may adversely affect the public interest;
- 2.10 reject and not offer any financial or other inducements, including prospective employment, that could influence or affect professional opportunities or planning advice;
- 2.11 not, as an employee of a public planning agency, give professional planning advice for compensation to a private client or employer within the jurisdiction of the public agency without written consent and disclosure to the agency;
- 2.12 not, as a consultant to a public planning agency during the period of contract with the agency, give professional planning advice for compensation to others within the jurisdiction of the agency without written consent and disclosure to the agency in situations where there is the possibility of a conflict of interest arising;
- 2.13 not, as a salaried employee or consultant to any public planning agency, directly or indirectly advise the agency on the granting or refusal of an application which the Member has submitted or has an interest in to the agency; however, the Member may present the application;
- 2.14 not accept anything of value, or the promise of anything of value, including prospective employment, from any person when it could appear that the offer is made for the purpose of influencing the Member's actions as an advisor to a public planning agency; and
- 2.15 not, in order to obtain professional work, present himself/herself as, or permit himself/herself to be presented as, prepared to provide planning services where the quality of work is less than reasonable and appropriate in the circumstances.

3.0 The Planner's Responsibility to the Profession and Other Members

The vitality and credibility of the planning profession and of the Institute are reflective of the quality of the Membership. To further the profession, Members will be expected to attain and maintain a high standard of professional competence and conduct, which extends to their relationship with other Members. Accordingly, Members shall:

- 3.1 take all reasonable steps to maintain their professional competence throughout their working lives and shall respect OPPI's continuing professional learning requirements as amended from time to time;
- 3.2 encourage healthy and constructive criticism about theory and practice of planning among colleagues and share the results of experience and research that contributes to the evolving body of planning knowledge;
- 3.3 maintain an appropriate awareness of contemporary planning philosophy, theory, and practice by seeking and receiving professional education throughout a planning career;
- 3.4 contribute to the professional education, mentoring, and development of planning students, Members, and other colleagues;
- 3.5 not in professional practice, extra-professional activities or private life, engage in dishonourable or questionable conduct that may cast doubt on the Member's professional competence or integrity or that may reflect adversely on the integrity of the profession;
- 3.6 ensure that advertising or promotional activities fairly and accurately communicate the expertise and skills offered;
- 3.7 advertise professional planning services in a manner that enhances the credibility of the profession;
- 3.8 accurately represent his or her professional qualifications and affiliations, education and experience, and those of colleagues;
- 3.9 act toward other Members and other colleagues in a spirit of fairness and consideration and not falsely or maliciously injure the professional reputation, prospects or practice of another Member and other colleagues;
- 3.10 respect the Member's colleagues in their professional capacity, and when evaluating the work of another Member, show objectivity and fairness

- and avoid ill-considered or uninformed criticism of the competence, conduct or advice of the Member;
- 3.11 not attempt to supplant another Member once the Planner has knowledge that definite steps have been taken toward the other's employment;
- 3.12 not sign or seal a final drawing, specification, plan, report or other document not actually prepared or checked by the Member;
- 3.13 not directly or indirectly discriminate against any person because of said person's race, national or ethnic origin, colour, religion, sex, age or mental or physical disability in any aspect of job recruitment, hiring, conditions of employment, training, advancement or termination of employment;
- 3.14 report to the Institute the behaviour of any Member believed to be in breach of this Code;
- 3.15 not make public statements on behalf of the Institute's Members unless authorized to do so;
- 3.16 comply with any reasonable request of the Institute for information or for the co-operation of the Member in pursuit of any Institute objective; and
- 3.17 implement and give full effect to the disposition of any discipline proceeding affecting the Member.

Overview

On the recommendation of the Discipline Process Review Committee, OPPI's Professional Practice and Development Committee has initiated a program to improve ethics and practice, in part through the development of Standards of Practice. These Standards of Practice are intended to promote higher professional standards and a better understanding of OPPI's Professional Code of Practice.

The following Standards of Practice have been approved by Council:

- Independent Professional Judgment – September 2002/Revised 06/09
- Disclosure and the Public Interest – September 2003/Revised 06/09
- Trespass – September 2003
- Conflict of Interest – April 2005/Revised 06/09

Adopted Standards of Practice should be read collectively and should be considered a guide only. They are not intended to provide legal advice. Matters referred to the Discipline Committee will remain specific to OPPI's Professional Code of Practice.

Independent Professional Judgment Standard of Practice

1. Discussion

Under our Professional Code of Practice, Members must provide diligent, creative, independent, and competent performance of work in pursuit of the client's or employer's interest and are required to: "impart independent professional opinion to clients, employers, the public, and tribunals." (Section 2.1). Professional Planners are subject to subtle pressures in the workplace. An employer or client may suggest that "in the past we have been working well together but lately we seem to be at odds and we cannot promote or continue to retain your services if we are not working together". The comment may be expressed innocently as an expectation that the planner should advocate the position of the client or employer.

Independent professional judgment or opinion must be derived free of pressure, however subtle, or one cannot maintain the independence necessary to serve both the client and the public. Professional Planners need to distinguish an opinion from an administrative responsibility to implement directions by clients or designated authorities such as Councils.

One of the main misunderstandings of the public concerns a professional planner processing an approval earlier recommended against. Another misunderstanding is how a planner may have an opinion that is different to that of the public or council opinion. We have to constantly remind the public and employers that an independent professional opinion is an objective evaluation based on all the relevant information available and the planner's professional judgment.

A professional planner cannot provide an independent professional opinion in any direct or indirect circumstance where there is a personal or financial interest including receiving consideration based on an outcome. The professional planner should consider the following before rendering an independent professional opinion:

- Do I have sufficient information and resources?
- Do I have sufficient training and experience?
- Am I professionally objective?

The goal of the profession is to promote a standard of excellence that distinguishes Registered Professional Planners in Ontario and warrants the respect of the public. The most important distinguishing character of all Registered Professional Planners in Ontario must be our commitment to the Professional Code of Practice in the pursuit of planning

excellence. The Ontario Professional Planners Institute has the responsibility, through education and discipline, to maintain the highest standards of practice and ethics. We should promote and distinguish the value of an independent professional planning opinion certified by the use of the professional stamp. The stamp and signature represents the collective reputation of all Members of the Ontario Professional Planners Institute.

2. Standard of Practice for Independent Professional Judgment

The Professional Planner in applying independent professional judgment cannot be an advocate of any position other than his or her professional opinion. The role of an advocate is to "plead the cause of another". The role of the planner is to provide independent professional judgment or opinion. It is therefore important to distinguish an opinion independently from the position of the employer or client even though they may be the same.

An opinion must be balanced and fair. Most issues have benefits and disadvantages or consequences. By stating both the benefits and impacts, a planner should present an opinion in a manner which allows the reviewer to understand the basis and reasoning for the opinion. Conditions are often identified to qualify the opinion where more work is necessary to support any assumptions or to manage identified impacts.

Independent professional judgment should be the end product of an evaluation process, openly and freely entered into with the application of research techniques and professional evaluation. The professional planner must measure the gravity and necessity of the circumstances, the resources available upon which to draw and be thoughtful of the rights and privileges of others within the overall public interest.

While not exhaustive, the following principles are intended to provide a greater understanding of the meaning of the term — *independent professional judgment*:

Independent

- A planner shall not perform work if there is an actual, apparent or foreseeable conflict of interest, direct or indirect, or an appearance of impropriety, without full written disclosure including related work for current or past clients and subsequent written consent by the current client or employer.

- Zealously guard against conflict of interest or its appearance.
- While the primary responsibility is to provide a service to a client or employer, there is also a responsibility to the larger society (public interest) that may at times supersede a planner's responsibility to a client or employer.
- Remain free of associations and activities that may compromise integrity and damage credibility.
- Disclose unavoidable conflicts.
- Deny favoured treatment to special interest groups (private and public).
- Resist collateral or irrelevant pressure to influence your planning opinion.
- Reject bribery in all forms. Do not accept commissions or allowances, directly or indirectly, from clients or other clients or employers in connection with planning work for which you are responsible.

Professional

- A planner must strive to provide full, clear and accurate information on planning issues to clients, citizens and governmental decision makers.
- A planner must systematically and critically analyse ethical issues in the practice of planning.
- A planner must act in accordance with the highest standards of professional integrity.
- Maintain a high quality of service and a reputation for honesty and fairness.
- Carry out tasks with honesty, provide accurate captions and never intentionally distort the truth.
- Express an opinion only when it is based on practical experience, education, judgment and honest conviction.
- Perform services only in areas of competence obtained through experience and/or formal education.
- Critically examine and keep current with emerging knowledge and fully use evaluation and research evidence in professional practice.
- Conduct yourself honourably, responsibly, ethically, and lawfully so as to enhance the honour, reputation and usefulness of the planning profession.
- Advise clients or employers when you believe a project does not meet basic planning principles or guidelines.
- All professional planners must promote professional excellence within the profession.

In summary, all professional planners must be aware of their professional responsibilities. The Professional Code of Practice is intended

to require a standard of excellence and practice to maintain the privilege of Members being exclusively referred to as a Registered Professional Planner in Ontario.

3. Caveats

The professional planner is reminded that in the event of conflicts or impediments to the pursuit of excellence in service and the

promotion of the primacy of the public interest, the Professional Code of Practice of the Ontario Professional Planners Institute is to govern individual decision making.

In the event that the professional planner belongs to two or more professional organizations, compliance with the dictates and performance obligations of each where engaged, is expected. In acting in the capacity

of a professional planner, whether in a direct or incidental capacity, the Member is obligated to respect all standards applicable in the circumstances, including any higher standard or obligation, in the case of overlaps or conflict. In all such cases, it is the duty of the professional planner to meet or exceed the requirements of the Ontario Professional Planners Institute Code of Professional Practice.

Disclosure and the Public Interest Standard of Practice

1. Discussion

The Preamble to OPPI's Professional Code of Practice, referring back to the Canadian Institute of Planners Statement of Values states:

"CIP Members seek to balance the interests of communities with the interests of individuals, and recognize that communities include both geographic communities and communities of interest."

Professional Code of Practice Sections 2.7 and 2.9 collectively require that the Member ensure full disclosure to a client or employer of a conflict between the values or actions of a client or employer and those of the Code and that the Member must provide their professional recommendation in situations that may adversely affect the public interest.

In addition, the first Standard of Practice regarding Independent Professional Judgment established that:

"While the primary responsibility is to provide a service to a client or employer, there is also a responsibility to the larger society (public interest) that may at times supersede a planner's responsibility to a client or employer."

Section 1.0 of OPPI's Professional Code of Practice states that:

"Members have a primary responsibility to define and serve the interests of the public."

Section 1.3 further provides that:

"[Members shall] acknowledge the interrelated nature of planning decisions and their consequences for individuals, the nature and built environment, and the broader public interest."

Professional Code of Practice Section 2.6 requires that the Member respect the client or employer's right to confidentiality of information gathered through a professional relationship.

There is no universally accepted definition of what constitutes the public interest. The ethical principles that define it come from two sources

— the general values of society and the planner's responsibility to serve the public interest. An individual Member's morals, ethics and values reflect those of their community and professional training. The Member must also be cognizant of and respect the competing interests of individuals, corporations, municipalities and provincial ministries and agencies. Conflicts arise among competing obligations, which "prima facie" may all appear to be valid. At issue here is the dilemma between the Code's direction of disclosing and balancing public interest issues with the contractual duty to observe confidential client information.

The purpose of this Standard of Practice is to further OPPI's commitment to ensuring that the highest standards of conduct and ethics are maintained, by increasing the awareness of Members' obligation under the Code to maintain professional integrity and promote and enhance the public interest. This Standard of Practice is intended to assist Members by providing an outline of the steps that should be taken in the evaluation of cases when disclosure of confidential information may be necessary in order to protect the public interest.

Guidance as to what matters are of a dimension to affect the public interest is embedded in statutes such as the *Planning Act*. For example, Section 2 of the *Planning Act* establishes that a lengthy list of public authorities, in carrying out their responsibilities under the Act, shall have regard to identified matters of provincial interest, including:

" . . . (h) the orderly development of safe and healthy communities; and . . . (o) the protection of public health and safety; . . ."

The "public interest" concept is continued throughout the *Planning Act*. It permeates all of the component sections (Official Plans, zoning by-laws, minor variance, site plans and subdivision/severance). It is the duty of a Member to identify any adverse impacts on the public interest and evaluate mitigative efforts that are appropriate. In some circumstances, this investigation may reveal information that

is confidential or privileged. Before revealing or disclosing such information, the Member is advised to comply with the following directions.

2. Standard of Practice regarding Disclosure and the Public Interest

As set out in the Standard of Practice regarding Independent Professional Judgment, the professional planner should consider the following matters before rendering an independent professional opinion:

- Whether the Member has sufficient information and resources;
- Whether the Member has sufficient training and experience; and
- Whether the Member is professionally objective.

Assuming that the three conditions noted above have been met, the following section outlines the steps that a Member should pursue respecting the disclosure of information received that would normally or specifically be considered proprietary or confidential.

In providing independent professional judgement, the Member must be free to disclose confidential information that is contrary to the public interest in order to evaluate the issues and provide a professional recommendation. If a contractual commitment would be broken by such disclosure, generally such disclosure must be required by law or provided with the consent of the client. However, a Member is not entitled to hide behind a contract or refuse or neglect to reveal information that is relevant to the protection of the public interest. Disclosure guidelines are particularly relevant in the areas of the public interest related to public health or safety and respect for the rule of law. In those circumstances, the failure to disclose could negate the Member's duty to promote the primacy of the public interest and thereby constitute the basis of an offence under the Professional Code of Practice.

Public disclosure must take place so as

to preserve the standard of excellence that distinguishes Registered Professional Planners in Ontario and warrants the respect of the public. OPPI supports and recognizes that a professional planner has a responsibility to disclose matters that may have an adverse effect on the public interest, or where there is or is likely to be a violation of the law, without fear of professional disciplinary sanction. Further, if a Member is vested with, receives, or comes across information, whether received in confidence or not, the Member may have a legal or ethical responsibility to disclose this information if it could have an adverse effect on the public interest.

Major considerations to be carefully weighed must include – but are not necessarily limited to – the following:

- What is the level of risk to the public — is there an existing or imminent threat to **public health or safety**?
- Has there been, or is there likely to be **a violation of the law**?

If the answer to either one of the above is affirmative and the public interest is therefore potentially compromised in an adverse manner, then the Member must consider the following three questions:

- a) Is there a positive duty in law requiring timely disclosure, e.g. an environmental spill of contaminant?
- b) What are the disclosure terms of the employment contract? Do they include a mechanism for public disclosure, as part of an assessment, mitigation, conditions or a general due diligence requirement?
- c) Are timely internal appeal procedures in place that allow for a speedy resolution of the matter?

In the case of the first, a Member is expected at all times to observe the law. In the other circumstances, where disclosure is not obligatory at law and there is no release by the employer, the Member is advised to pursue the following:

Step 1

If, following consultation with the employer, public disclosure is prohibited, the professional should consult with a trusted senior colleague of their choice who holds current, full OPPI membership in strict confidence. The independent Member consulted should have, or be provided with, significant knowledge of the subject matter at hand to render an independent perspective, but not be linked to any of the parties involved.

Step 2

Should the independent OPPI Member concur with the involved planning professional's assessment of the gravity and urgency of the

situation, the next step would be to contact OPPI's Executive Director to obtain further counsel and assistance on proceeding with disclosure.

The communication with OPPI, whether oral or in writing, must be generic in nature and follow the standardized format below, outlining the situation without divulging any privileged information. Contents should include:

1. A concise explanation of how and why the professional has concluded that there is an imminent threat to public health or safety or a violation of the law, including the name and contact information of the Member who concurred with this professional opinion;
2. An affirmation that the employer in question has not provided a disclosure release and has neither a mechanism for public disclosure nor a timely internal appeal procedures in place to deal with the situation so as to avoid imminent danger to the public;
3. Confirmation that the Member has notified the employer/client first and provided a reasonable period for a local resolution, satisfactory to the Member; and,
4. Any other information that could assist with avoiding or minimizing a potentially adverse public reaction against the Member or the planning profession in the event of public disclosure.

Step 3

Receive and act upon the counsel and assistance provided by OPPI in conjunction with other civil or criminal independent legal advice, if any, that the Member in his/her sole discretion considers appropriate in the circumstances.

The procedure outlined above **should be followed in all cases** so as to ensure a consistent approach in handling situations respecting disclosure of matters affecting the public interest going to issues of public health or safety or a violation of the law. Following this process will maintain the integrity and competence of the planning profession, and is proffered as due diligence on the part of the Member.

3. Caveats

- a) In the case of a statutory obligation to disclose or protect information, the Member is expected to obey the law.
- b) Where disclosed information received is germane to public health or safety or in violation of the law, the Member should

notify the employer/client and then follow the above three step procedure if there is no action to effectively remedy the concern.

- c) A departure from the approach suggested above is not recommended, it could be considered unprofessional and could be grounds for disciplinary action.
- d) This Standard of Practice only covers the most serious cases of violations of the public interest — other means of redress should be sought for cases not involving imminent threats to public health or safety or a violation of the law.
- e) Disclosure in order to protect the public interest should be strictly on a need-to-know basis and public information may be limited to the essentials required to recommend mitigation measures to prevent threats to public health or safety.
- f) Independent legal advice should be considered before proceeding with disclosure in all circumstances where confidential information is shared which is or may be the subject of privilege.
- g) A Member's contract for services or retainer letter should address that in the event that the Member's professional obligations conflict with the requirements of the owner, the Member's professional responsibility shall govern.
- h) This Standard of Practice is not intended to substitute for a Member's obligation in law to do or refrain from doing any act or omission that he or she is required to perform by law. Where information is protected by laws of copyright, privilege, trespass, libel, slander, privity of contract or access to freedom of information, the Member must examine the confidentiality of information received in light of this Standard of Practice.
- i) In the event that the professional planner belongs to two or more professional organizations, compliance with the dictates and performance obligations of each where engaged, is expected. In acting in the capacity of a professional planner, whether in a direct or incidental capacity, the Member is obligated to respect all standards applicable in the circumstances, including any higher standard or obligation, in the case of overlaps or conflict. In all such cases, it is the duty of the professional planner to meet or exceed the requirements of the Ontario Professional Planners Institute Code of Professional Practice.

Trespass Standard of Practice

1. Discussion

OPPI's Professional Code of Practice states:

"Members have a primary responsibility to define and serve the interests of the public."

The purpose of this Standard of Practice is to provide advice to planners regarding the existence of restrictions on access to property. While it might appear to some Members that entering onto lands for investigatory purposes is in the public interest, it is not the case in most instances. For example, before entering into a woodlot to conduct a survey of native plant species that might be affected by an adjacent development that the Member is involved with, it is mandatory that planners respect the legal restrictions on access to property. While municipalities may pass by-laws allowing construction access from neighbouring lands and certain other professions such as surveyors have limited access rights to property, planners have no statutory rights to enter upon premises, including lands and buildings, in the conduct of undertaking their work. Members must therefore obtain the consent of the owner and or occupant before entering upon or into such premises.

OPPI's Professional Code of Practice is silent on the specific issue of trespass. However, in consideration of the requirement for Members to recognize that resources are the property of individuals or private or public entities, planners must educate themselves as to the applicable restrictions on access to property. It is important that planners familiarize themselves with the provisions of the provincial *Trespass to Property Act*, R.S.O., 1990, Chapter T.21, as amended (the "Act") and the liability/risk assumption consequences under the *Occupier's Liability Act*, R.S.O. 1990, c.0.2 (collectively, the "Acts"). Note that extracts from these two Acts cited below are from the Acts (September, 2006), which may be amended from time to time. Members should therefore consult the Acts directly when trespass issues arise. Both Acts are available on the Internet by name search.

The *Trespass to Property Act* provisions defining when an act of trespass has occurred are as follows:

"Trespass an offence

2. (1) *Every person who is not acting under a right or authority conferred by law and who,*
 - (a) *without the express permission of the occupier, the proof of which rests on the defendant,*
 - (i) *enters on premises when entry is prohibited under this Act, or*

- (ii) *engages in an activity on premises when the activity is prohibited under this Act; or*
 - (b) *does not leave the premises immediately after he/she is directed to do so by the occupier of the premises or a person authorized by the occupier,*

is guilty of an offence and on conviction is liable to a fine of not more than \$2,000. R.S.O. 1990, c. T.21, s. 2 (1)."

Prohibition of entry is defined in the Act as follows:

3. (1) *Entry on premises may be prohibited by notice to that effect and entry is prohibited without any notice on premises,*
 - (a) *that is a garden, field or other land that is under cultivation, including a lawn, orchard, vineyard and premises on which trees have been planted and have not attained an average height of more than two metres and woodlots on land used primarily for agricultural purposes; or*
 - (b) *that is enclosed in a manner that indicates the occupier's intention to keep persons off the premises or to keep animals on the premises. R.S.O. 1990, c. T.21, s. 3 (1)."*

Premises is broadly defined as follows in the Act:

- 1.(1) *'premises' means lands and structures, or either of them, and includes,*
 - (a) *water;*
 - (b) *ships and vessels;*
 - (c) *trailers and portable structures designed or used for residence, business or shelter;*
 - (d) *trains, railway cars, vehicles and aircraft, except while in operation. ("lieux") R.S.O. 1990, c. T.21, s. 1 (1)."*

Occupier is also defined in the Act as follows:

1. (1) *In this Act, 'occupier' includes,*
 - (a) *a person who is in physical possession of premises, or*
 - (b) *a person who has responsibility for and control over the condition of premises or the activities there carried on, or control over persons allowed to enter the premises, even if there is more than one occupier of the same premises ..."*

As a general rule, Members should always seek consent from the occupier before entering on premises, whether owned by the client, or other interest.

In addition to the offence of trespass, punishable by fine and damage awards under the Act, other consequences can follow.

Under the provisions of the *Occupiers' Liability Act*, R.S.O. 1990, c. O.2, in instances where the entry is prohibited under the *Trespass to Property Act* or the occupier has posted no consent notice with respect to entry and has not otherwise expressly permitted entry, a person who enters the premises is deemed to have willingly assumed all risks.

In the event that posted or written consent is not obtained, Members should in all cases consider alternatives to the act of committing trespass. For instance, raising the concern with interested parties such as the local planning department in order to facilitate agreement for access is one alternative.

This Standard of Practice should be read in conjunction with the Standard of Practice regarding Disclosure and the Public Interest to ensure that privileged information is not inadvertently disclosed.

In all cases, a written agreement for access to protected premises should be sought to protect the Member against possible prosecution for trespass and complaints of unprofessional conduct.

Public sector planners are encouraged to amend development application forms to provide that the property owner in submitting the application thereby provides consent to municipal and relevant external agency review staff to enter upon the premises during regular business hours over the time that the application is under consideration by the municipality. Specific legal advice should be obtained for the conditions of entry.

Private sector planners are encouraged to include in retainer letters an acknowledgement of the right to enter the client's premises during reasonable times over the term of the project.

All Members must seek the permission of owners and occupiers of premises not otherwise accessible to the public.

2. Standard of Practice for Trespass

In all cases, OPPI Members must not violate the prohibition against trespass nor assume the risks or potential liability for such action. In instances where a planner is uncertain about the legal restrictions, specific legal advice should be sought.

In addition to inviting the possibility of a complaint or legal action against themselves, Members must always be mindful that their conduct is a reflection on the profession as a whole and must ensure that their behaviour is perceived to be ethical, in accordance with Section 2.2 of OPPI's Professional Code of Practice which requires that:

"[A Member shall] work with integrity and professionalism."

Section 3.5 requires that:

"[A Member shall] not in professional practice, extra-professional activities or private life, engage in dishonourable or questionable conduct that may cast doubt on the Member's professional competence or integrity or that may reflect adversely on the integrity of the profession."

3. Caveat

- a) A departure from the approach suggested above is not recommended. It could be considered unprofessional and could be grounds for disciplinary action.

Conflict of Interest Standard of Practice

1. Discussion

Section 1.0 of OPPI's Professional Code of Practice states:

"Members have a primary responsibility to define and serve the interests of the public."

Planners need to be aware that in carrying out their duties, they may become involved in situations where their duty to serve the public interest is compromised or perceived to be compromised by competing priorities and interests. A planner must always be aware of his/ her responsibilities as set out in the Standard of Practice respecting Independent Professional Judgement:

"While the primary responsibility is to provide a service to a client or employer, there is also a responsibility to the larger society (public interest) that may at times supersede a planner's responsibility to a client or employer."

- A planner shall not perform work if there is an actual, apparent or foreseeable conflict of interest, direct or indirect, or an appearance of impropriety, without full written disclosure including related work

for current or past clients and subsequent written consent by the current client or employer.

- Zealously guard against conflict of interest or its appearance.

There is no universally accepted definition of what constitutes a conflict of interest. The ethical principle underlying it flows from the planner's responsibility to perform his/her responsibilities freely without influence and to the best of the individual's ability commensurate with the resources available to perform the task. When a planner becomes involved in a situation where there is a conflict of interest, which has not been disclosed, the planner effectively violates his/her obligation to the larger society and may violate a number of the provisions of the Professional Code of Practice.

The purpose of this Standard of Practice is to further OPPI's commitment to ensuring that the highest standards of practice and ethics are maintained, by increasing the awareness of Members' obligation under the Code to maintain professional integrity. This Standard of Practice is intended to assist Members by providing an outline of the considerations that Members must evaluate to confirm that in undertaking certain responsibilities, no conflict of interest of a personal nature would occur that would have the effect of adversely impacting on the Members' duties.

This Standard of Practice is to be applied in all situations in which a planner may find him or herself in an actual or perceived conflict of interest. It is not intended to supplant an employer's internal policies or procedures regarding an actual or perceived conflict of interest. Planners must familiarize themselves with and work within these additional policies within their place of employment.

The Standard of Practice regarding Independent Professional Judgement sets out a number of matters that the professional planner should consider before rendering an independent professional opinion, including consideration of whether the Member is professionally objective with respect to his/her opinion.

Specific instances where a personal conflict of interest would be involved include the following scenarios:

- when the Member, a spouse/partner or family Member is in a position to potentially benefit directly or indirectly from a certain outcome of a planning process; and
- when the Member is in a situation where personal relationships may place improper influence on the outcome of a planning process.

A conflict arises when the perception or potential for the ability of the planner to exercise the required independent professional

judgement is undermined. Simply recognizing a conflict does not eliminate it, and declaring it may not resolve the conflict.

Planners often assume different roles in the performance of their duties and as they function as professionals in society. In some instances, professional opinions are required to be given in oral or written form, while in instances of processing matters, they may not be required to be given. In exercising independent professional judgement, whether or not opinions are required, conflicts can arise. Planners must determine what role they are taking on in any given circumstance and assess potential conflicts accordingly. Regardless of the role, this Standard of Practice applies.

Specific Professional Code of Practice requirements, which would be violated in the above circumstances, are as follows:

Section 2.8

"[The Member shall] ensure full disclosure to a client or employer of a possible conflict of interest arising from the Member's private or professional activities, in a timely manner;"

Sections 2.10 – 2.14

"[The Member shall] reject and not offer any financial or other inducements, including prospective employment, that could influence or affect professional opportunities or planning advice;

[The Member shall] not, as an employee of a public planning agency, give professional planning advice for compensation to a private client or employer within the jurisdiction of the public agency without written consent and disclosure to the agency;

[The Member shall] not, as a consultant to a public planning agency during the period of the contract with the agency, give professional planning advice for compensation to others within the jurisdiction of the agency without written consent and disclosure to the agency in situations where there is the possibility of a conflict of interest arising;

[The Member shall] not, as a salaried employee of or consultant to any public planning agency, directly or indirectly advise the agency on the granting or refusal of an application which the Member has submitted or has an interest in to the agency; however, the Member may appear to present the application;

[The Member shall] not accept anything of value, or the promise of anything of value, including prospective employment, from any person when it could appear that the offer is made for the purpose of influencing the Member's actions as an advisor to a public planning agency."

2. General Practice

Planners have an obligation to disclose matters in which they directly or indirectly have a personal interest. Personal interest for the purpose of this Standard of Practice is defined as:

“Any personal advantage, real or perceived, that constitutes a personal or pecuniary benefit, gain or profit that is neither nominal nor in kind and which accrues to a Member or person directly or indirectly related to the Member as a result of involvement in a work, commission, planning process or decision, excluding reasonable and related contract for service amounts with the employer to whom the services are rendered.”

Appropriate and timely disclosure must take place so as to preserve the standard of excellence that distinguishes Registered Professional Planners in Ontario and warrants the respect of the public. The nature of disclosure will be different in each circumstance. Verbal declarations are required in a public forum such as a Committee, Council, or tribunal charged with making a recommendation or decision on a matter related to the Member's opinion; the declaration could be in the form of written correspondence to affected parties and/or participants in a planning process if sufficient opportunity exists to communicate effective knowledge of the personal interest. The nature of the conflict will guide the type and extent of disclosure required. It should be clear that disclosure of the specific nature of the conflict is not required if it would result in the disclosure of confidential information to which the Member is privy.

Reference should be made to the Caveats respecting disclosure set out in this Standard of Practice.

Instances where a Member becomes aware that a fellow Member may have an undisclosed conflict of interest of a personal nature means it is incumbent for the Member to bring the matter to the attention of OPPI's Discipline Committee.

Immediately upon disclosure to the offending Member that there may be a real or perceived conflict of interest, the Member shall not hold himself or herself out as providing an independent professional opinion in respect of the particular matter.

The failure to disclose to all affected parties a personal interest is the basis for a complaint under the Professional Code of Practice.

OPPI is aware that despite best efforts, Members may inadvertently acquire personal interests that may interfere with their exercise of independent professional judgement. Examples of such conflicts might include property inheritance or personal relationships of or with a person in a position of decision-making authority.

Special measures may be required and available to ensure no conflict arises through

devices to limit access to information, securing of documents or other isolation measures in larger organizations.

Should an inadvertent conflict arise, the Member should immediately and carefully consider the following questions:

- what is the level of risk that the affected decision-making process has or could be influenced by non-disclosure of the Members' conflict of interest — could the process be so unduly influenced that there could be an adverse effect on the public?
- Has there been, or is there likely to be a violation of Code of Professional Practice, contract or applicable law?

Additionally, a Member must also consider the potential impact of non-disclosure on the profession as a whole, given the profession's unique position of trust held by the public at large and in respect of the intended fairness of the planning process.

Step 1

Forthwith upon learning of a personal interest in the course of the Member's work, services or employment, the Member should consult with a trusted senior colleague of their choice who holds current, full OPPI membership in strict confidence. The independent Member consulted should have, or be provided with, significant knowledge of the subject matter at hand to render an independent perspective, but not be linked to any of the parties involved. This procedure is appropriate when the Member has any doubt as to whether or not he or she is in a conflict of interest circumstance.

Step 2

Should the independent OPPI Member conclude the existence of a potential conflict of interest, the next step would be to contact OPPI's Executive Director to obtain further counsel and assistance on proceeding with disclosure. The communication with OPPI, whether oral or in writing, must be generic in nature and follow the standardized format below, outlining the situation without divulging any privileged information.

Contents should include:

1. A concise explanation of how and why the professional has concluded that there is a potential conflict of interest, including the name and contact information of the Member who concurred with this professional opinion;
2. An explanation as to why disclosure to affected parties has not occurred.

Step 3

Receive and act upon the counsel and assistance provided by OPPI, which may involve consultation with an Ethics counsellor,

in conjunction with other civil or criminal independent legal advice, if any, that the Member in his/her sole discretion considers appropriate in the circumstances.

The procedure outlined above should be followed in all cases so as to ensure a consistent approach in handling situations respecting disclosure of personal interests that have or may affect or be influenced by a Member's actions, presence or work.

Following this process will maintain the integrity and competence of the planning profession, and is proffered as due diligence on the part of the Member.

3. Caveats

- a) A departure from the approach suggested above is not recommended, it could be considered unprofessional and could be grounds for disciplinary action.
- b) Nothing herein shall diminish the requirement of compliance with the Professional Code of Practice of the Institute.
- c) Disclosure in order to protect the public interest should be strictly on a need-to-know basis and public information may be limited to the essentials required to recommend mitigation measures and ensure awareness in persons who may wish to take remedial action.
- d) A Member's contract for services or retainer letter should address that in the event that the Member's professional obligations conflict with the requirements of the client, the Member's professional responsibility shall govern.
- e) In the event that the professional planner belongs to two or more professional organizations, compliance with the dictates and performance obligations of each where engaged, is expected. In acting in the capacity of a professional planner, whether in a direct or incidental capacity, the Member is obligated to respect all standards applicable in the circumstances, including any higher standard or obligation, in the case of overlaps or conflict. In all such cases, it is the duty of the professional planner to meet or exceed the requirements of the Ontario Professional Planners Institute Code of Professional Practice.