



NWU®

NORTH-WEST UNIVERSITY
NOORDWES-UNIVERSITEIT
YUNIBESITI YA BOKONE-BOPHIRIMA

POLICY AND RULES ON CONFLICT OF INTEREST AND ON DECLARATIONS OF INTEREST AND OF GIFTS

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POLICY AND RULES ON CONFLICT OF INTEREST AND ON DECLARATIONS OF INTEREST AND OF GIFTS

Preamble

Against the background of the dream to be an internationally recognised university in Africa, distinguished for engaged scholarship, social responsiveness and an ethic of care, the council of the North-West University (NWU) has adopted this policy and set of rules on conflict of interest and declarations of interest and of gifts on 17 November 2022.

1 INTERPRETATION AND APPLICATION

1.1 This policy must be interpreted and applied in a manner consistent with the –

- 1.1.1 Constitution of the Republic of South Africa, 1996;
- 1.1.2 Higher Education Act, 101 of 1997 ("the Act");
- 1.1.3 Prevention and Combating of Corrupt Activities Act, 12 of 2004;
- 1.1.4 Public Audit Act, 25 of 2004;
- 1.1.5 Companies Act, 71 of 2008;
- 1.1.6 King IV Report on Corporate Governance in South Africa (including subsequent/supplementary or revised versions or new King Reports published from time to time);
- 1.1.7 Statute of the North-West University published from time to time.

1.2 The following documents must be interpreted and applied in a manner consistent with this policy:

- 1.2.1 the Code of Conduct for Council Members;
- 1.2.2 the NWU Code of Ethics;
- 1.2.3 the NWU Financial Policy;
- 1.2.4 the NWU Performance Management Policy;
- 1.2.5 The Constitution of the Students' Representative Council of the North-West University (SRC Constitution);
- 1.2.6 the NWU Institutional Rules on Student Governance;
- 1.2.7 Procedure for private work as approved by UMC; and
- 1.2.8 Other policies and or codes of conduct relevant to the matter as these might be developed from time to time.

2 DEFINITIONS

In this policy –

"commercialisation" is the carefully managed process of optimising the income of the university and of its employees, including the finding of partners, licensees or buyers and negotiating with them the fee that needs to be paid in whatever form, as well as the term for any right to exploit such results;

"conflict of commitment" involves a perceptible reduction of an employee's or a student leader's time and energy devoted to the activities of the university to which the employee or student leader

is committed to participate in terms of agreed-upon obligations, including those set out in a task-performance agreement with the university;

“conflict of interest” means the existence of a private or personal interest likely to influence the objective exercise of a person’s official duties whereby the person is placed in a position to make or influence an official decision which may serve private or personal interests above those of the NWU;

"gift" means a token bestowed upon a person without expectation of tangible compensation, and in regard of which no direct or indirect contractual obligation exists, including gifts related to cultural and hospitality practices, and those related to sporting events;

"gratification" means money, whether in cash or otherwise, any donation, gift, loan, fee, reward, valuable security, property or interest in property of any description, whether movable or immovable, or any similar advantage, any office, status, honour, employment, contract of employment or services, any agreement to give employment or render services in any capacity and residential or holiday accommodation or any right or privilege;

interest” means any material business interest of a financial, monetary or economic nature, excluding an interest held by a person in unit trusts, pension funds or other retirement products, residential property not being held as leasing business interests, and listed securities on a stock exchange, unless the person has direct control over such securities;

“related entity” means an entity with which a direct or indirect business connection between a member of the NWU, a spouse of such member or a relative of such member exists, including any kind of business relation or control ;

“student leader” refers to a student who is a member of the Student Representative Council (SRC), member of the Student Campus Council (SCC), member of a House Committee or a member of the management structure of an Academic Student Association (ASA), or of a recognised or patroned student leadership structure, and who executes an assigned function or manages a portfolio within such structure

"university member" and “member of the NWU” means a member of the council, a member of a council committee who is not a member of council, an employee and a student or a student leader of the NWU.

3 PURPOSE

The purpose of this policy is –

- 3.1 to protect the credibility and integrity of the NWU, its council members, employees, student leaders and students in order that all university members can perform at the highest levels of competence, integrity and security so that public trust and confidence remain ensured;
- 3.2 to maintain a reasonable balance between the possible competing interests of university members in their commitment and dedication to the NWU on the one hand, and on the other their personal affairs and interests;
- 3.3 to ensure that the NWU implements sufficient measures that would enable all university members to adhere to all relevant aspects of best business-practice and legislation, and to manage these throughout the University with balance, fairness and transparency, and
- 3.4 to avoid as a general rule possible conflicts of interests, while providing for the management of instances where a conflict of interest would be to the benefit of members of the NWU as well as the university.

4 POLICY STATEMENT

It is the policy of the NWU that –

- 4.1 a consistent and constructive set of rules must exist to ensure compliance with sections 27 and 34 of the Act as well as the common law and ethical principles to prevent conflicts of interest in order to promote good governance;
- 4.2 the business practices and policies of the NWU must be aimed at countering possible conflicts of interest in accordance with relevant legislation and the value system of the university and at providing a clear set of rules to prevent a conflictual relationship between the university and an employee;
- 4.3 no university member may be allowed to influence the decisions of the NWU or its associated or subsidiary companies in any way that may adversely affect the university or its affiliates;
- 4.4 university members may not compete directly or indirectly with the business of the university regarding financial, economic, fiduciary and other interests in any opportunity from which the university may benefit or which may be to the detriment of the university, including the use of the property or time of the NWU and its information;
- 4.5 all interests must be disclosed openly, including interests of university members or their relatives holding interests in related entities and any resulting conflict be managed appropriately in accordance with the prescripts of the Act and in the best interest of the university; and
- 4.6 clear guidelines on the acceptance and declarations of gifts by university members, including honorary and non-standard appointments, must exist.

5 RULES FOR THE MANAGEMENT OF DECLARATIONS OF ALL INTEREST AND THE MANAGEMENT OF CONFLICTING INTEREST BETWEEN THE NWU AND MEMBERS OF THE UNIVERSITY

5.1 Rules and legislation applicable to council members and members of council committees

For purposes of reference, the provisions of section 27 of the Act are reflected in Annexure 1 to this policy.

- 5.1.1 The registrar must provide the Council Executive Committee, in its capacity as council membership committee, with a quarterly report compiled by the Internal Audit Department on transactions between the NWU and companies in which the members of the council and council committee have an interest.
- 5.1.2 For purposes of compliance with the provisions of sections 27(7) to (7E) of the Act, the registrar must keep a central register, and have such register available at every meeting of the council.
- 5.1.3 Every member of the council, or a person who is not a member of the council but serves as a member of a council committee, and a person to whom the council has delegated a function must be made aware by the registrar of the statutory requirements regarding the declaration of interests and the revelation of possible and potential conflicts of interest and of the consequences thereof.

5.2 Rules and legislation applicable to employees and management structures

For purposes of reference, the provisions of sections 1, and 34(4) to 34(7) of the Act are reflected in Annexure 1 to this policy.

5.2.1 Rules for declarations of all interests:

- 5.2.1.1 Upon appointment by the university and before assuming office, an employee must make a full declaration of interest in writing in the manner prescribed by the registrar, of all interests, including those of a relative, a spouse and a related entity, that may cause conflict with the interests of the university. An employee must notify the university of any possible conflict of interest before the university procures goods or services from the employee or an entity within which the employee holds an interest.
- 5.2.1.2 In accordance with para 5.2.1.1, every employee must disclose all interests to the relevant line manager as well as the relevant next level of management as part of the annual and ongoing performance management process.
- 5.2.1.3 Every employee must disclose, in accordance with para 5.2.1.1, all relevant private and personal interests to the line manager as well as the next level of management concerned as part of the annual and ongoing performance management process, and must also make such a disclosure whenever new private or personal interests relevant to the employee's relationship with the university

are acquired. The full declaration is required to afford the NWU as employer the opportunity to determine whether one or some or all of the interests that an employee holds may be in conflict with the interest of the university or to its expectations regarding the employee's commitment.

- 5.2.1.4 The decision whether a conflict of interest exists may be determined by the university after consultation with the employee.
- 5.2.1.5 In the event that the employee and the university agree that the interest declared does not constitute a conflict of interest or conflicting commitment, the relationship is managed in accordance with para 5.2.5.
- 5.2.1.6 In the event that the council decides that a conflict of interest or a conflict of commitment exists but that such conflict may be dealt with in accordance with section 34 of the Act, the employee and the line manager concerned may proceed with negotiations and agreement on whether the conflict will be allowed or not and, if allowed, the parties must agree annually how to manage the conflict in accordance with paragraphs 5.2.3, 5.2.4 or 5.2.6.
- 5.2.1.7 The management of the university may -
 - 5.2.1.7.1 require an employee to alter or limit participation in outside activities for the purposes of eliminating possible conflict of commitment or conflict of interest;
 - 5.2.1.7.2 verify ownership against the national database of the Companies and Intellectual Property Commission; and
 - 5.2.1.7.3 implement penalising measures in the instance that non-compliance with the Act and this policy and rules is evident.
- 5.2.1.8 An employee who becomes aware of any instance of conflict of interest or conflict of commitment, must inform the relevant management structures thereof without delay.

5.2.2 Rules for the management and administration of the reporting process relevant to declarations of interest

- 5.2.2.1 Line managers are responsible –
 - 5.2.2.1.1 to ensure, during the annual performance management process to determine potential conflicts of interest and of commitment, and must report such conflicts to the relevant next level of management;
 - 5.2.2.1.2 to encourage employees under their management to acquaint themselves with the content of this policy and set of institutional rules and to ensure that employees participate in training and awareness programmes on conflict management;
 - 5.2.2.1.3 to ensure diligence in the annual completion of the declarations of interest by employees and to manage the performance management process in terms of this policy, and
 - 5.2.2.1.4 to report matters of conflict management to the relevant next line of management during the mid-year performance review and the end-year performance review.
- 5.2.2.2 The Risk and Compliance Department must draft quarterly reports on the status of the obligatory annual declaration of interests for submission by the registrar to the University Management Committee (UMC) in March, June, September and November.
- 5.2.2.3 The Internal Audit Department must draft quarterly reports on transactions between the NWU and companies in which UMC members have an interest for reporting by the registrar to the council executive committee and the council.
- 5.2.2.4 The executive director: people and culture must ensure that sufficient facilitating mechanisms are implemented in the performance management process in order to ensure adherence to this policy.
- 5.2.2.5 The UMC must issue business-process rules and standard operating procedures to ensure an environment conducive to the optimal management of matters related to paras 5.2.1.1 to 5.2.1.9.

5.2.3 Rules for the management of a contractual relationship between an employee and the university in accordance with section 34(5) of the Act

- 5.2.3.1 In order to obtain council approval and to ensure ongoing oversight in regard to business concerning research and innovation between an employee and the university –
 - 5.2.3.1.1 The UMC must appoint a committee composed of at least one of its members and two or more persons having appropriate knowledge and experience, mandated to make recommendations regarding the identification, drafting and submission of applications by employees to provide goods,

products or services to the university in accordance with the criteria prescribed by section 34(5) of the Act;

- 5.2.3.1.2 Based on the recommendations of the committee contemplated in para 5.2.3.1.1, the deputy vice-chancellor research and innovation and the registrar must make a submission to the UMC containing comprehensive information in regard to the nature of the application and the proposed grounds for council approval;
- 5.2.3.1.3 Upon scrutiny of the DVCs and the registrar's submission, the UMC may recommend approval of the application to the Audit, Risk and Compliance Committee of the Council (ARCC), which must make a recommendation to council.
- 5.2.3.2 In order to obtain council approval and to ensure ongoing oversight in regard to any other business between an employee and the university –
 - 5.2.3.2.1 a functionary of the university who is not involved directly or indirectly in an employee's interests who proposes to conduct business with the university may make a submission to the registrar containing comprehensive information in regard to the nature of the business proposal and the proposed grounds for council approval;
 - 5.2.3.2.2 the committee contemplated in para 5.2.3.1.1 must consider the application for recommendation to UMC; and
 - 5.2.3.2.3 upon scrutiny of the submission, the UMC may make an appropriate recommendation to the ARCC, which must make a recommendation to Council.
- 5.2.3.3 Upon receipt of a recommendation by the UMC made in accordance with para 5.2.3.1.3 or para 5.2.3.2.3, the ARCC may request the Internal Audit Department to scrutinise the application or proposal recommended by the UMC before it is submitted to the council for approval.
- 5.2.3.4 The UMC must annually submit a report to the last meeting of the ARCC of the particular year containing comprehensive information on the past year's management of the business relationship between an employee and the university, thereby ensuring full disclosure of said business relationship to the Council.

5.2.4 Procurement principles concerning the implementation of the prohibition of contracting provided for in subsections 34(6) and (7) of the Act

- 5.2.4.1 No employee may approve or conduct business within his or her reporting line with a relative or any entity or supplier wherein such employee or the relative holds a direct or indirect financial, personal, fiduciary or any other economic interest.
- 5.2.4.2 Conducting business contemplated in para 5.2.4.1 may not be ratified by another line manager in a higher reporting position within the same reporting line.
- 5.2.4.3 Where business with an entity of the nature referred to in para 5.2.3 is proposed by a functionary in another reporting line, the procedures provided for in the paragraph 5.2.3 must be followed.

5.2.5 Interests of employees in matters that would not constitute a conflict with the NWU

- 5.2.5.1 An employee may maintain interests in non-university matters for personal gain, provided that such interests do not give rise to conflict of commitment or conflict of interest.
- 5.2.5.2 All such interests must be declared and managed in accordance with para 5.2.1.

5.2.6 Rules in regard to economic interests by employees in commercialisation projects of the NWU

- 5.2.6.1 Employees may not influence the commercial decisions of the university or its associated or subsidiary companies in such a way that it may lead to reduced income for the university or its associated or subsidiary companies.
- 5.2.6.2 Employees who have interests in commercialisation projects of the university may not participate in commercialisation negotiations with those organisations in which they have such interests.
- 5.2.6.3 The employees mentioned in para 5.2.6.2 may not enter on behalf of the university, into any contractual arrangements between the said organisation in which such employees hold an interest and the university.

5.2.7 Rules in regard to directors and shareholder representatives appointed by the NWU in subsidiaries of the university

- 5.2.7.1 The UMC appoints directors and shareholder representatives of the university in NWU subsidiary companies.
- 5.2.7.2 Where an employee is appointed as a director on any board or as a shareholder representative of a subsidiary company of the NWU, the appointee must reveal such appointment in a declaration of the interest made in accordance with paras 5.2.1.1 to 5.2.1.4.
- 5.2.7.3 Employees appointed as contemplated in 5.2.7.2 must ensure that they understand the fiduciary duties and responsibilities involved in such a position, and if it is deemed necessary, the UMC must implement procedures to facilitate the necessary training of directors and shareholder representatives in NWU-subsidary companies.
- 5.2.7.4 In the instance that an employee referred to para 5.2.7.1 resigns or the employment relationship is terminated for any other reason, the employee must immediately resign from the position as director or shareholder representative unless an agreement rendering such resignation unnecessary is concluded in writing between the university and its former employee.
- 5.2.7.5 No employee appointed in this category may be involved in payments by the university to the subsidiary company of which the employee is a director or shareholder representative.
- 5.2.7.6 Where payment must be made as contemplated in 5.2.7.5, the next-level manager of the employee concerned must make arrangements for the payment.

5.3 Rules applicable to student leaders and students

5.3.1 Rules in regard to student leaders

- 5.3.1.1 In accordance with the Institutional Rules on Student Governance, student leaders are required to make a declaration of possible conflict of interest that might arise if elected prior to their election to the SRC, an SCC or a subordinate student leadership structure.
- 5.3.1.2 In addition to the preliminary declaration made prior to their election, student leaders must disclose all interests and possible conflicts of commitment following their successful election to a student leadership structure, in accordance with the procedural framework indicated in paragraph 5.3.2 below.
- 5.3.1.3 The disclosure referred to in 5.3.1.1 must be made regarding all relevant business and fiduciary positions and shareholding and memberships of the student leader, including directorships, trusteeships, partnerships, fiduciary positions and the holding of participating interests, even where such interests might be in a process of deregistration, winding down or business rescue.
- 5.3.1.4 The full declaration is required to afford the NWU the opportunity to determine whether one or some or all of the interests that a student leader holds may be in conflict with the interest of the university or to its expectations regarding the commitment and ability of the student leader to perform the assigned functions, roles and responsibilities.
- 5.3.1.5 The decision whether a conflict of interest exists may be determined by the university after consultation with the student leader.
- 5.3.1.6 The provisions of paragraphs 5.2.4 to 5.2.7 apply to student leaders with the necessary adaption.
- 5.3.1.7 In the event that the university regards the disclosed interest as a conflict of interest or commitment, the executive director student life or appointed delegate in liaison with the reporting manager or employee as indicated in paragraph 5.3.2 below must proceed with negotiations with a view of reaching an agreement with the student leader on whether the conflict of interest or conflict of commitment is allowed or not, and to this end the parties must agree how such conflict will be managed.
- 5.3.1.8 A student leader who develops a new or undeclared conflict of interest or commitment must, without delay, declare such to the manager or employee indicated in paragraph 5.3.2 below.
- 5.3.1.9 Anyone who becomes aware of any undeclared conflict of interest or commitment of a student leader must, without delay, inform manager or employee indicated in paragraph 5.3.2 below, who must take the requisite action to address the matter.

- 5.3.1.10 The management of the university may -
- 5.3.1.10.1 require a student leader to alter or limit participation in outside activities for the purposes of eliminating possible conflict of commitment or conflict of interest;
- 5.3.1.10.2 to verify the ownership that student leaders may have against the national database of the Companies and Intellectual Property Commission;
- 5.3.1.10.3 to implement penalising measures in the instance that non-compliance to the Act and this policy and relevant rules is evident;
- 5.3.1.10.4 to terminate the membership of a student leader of the SRC, an SCC or subordinate student leadership structure in the event that conflict of interest or commitment is found as provided for in the Institutional Rules on Student Governance.
- 5.3.1.11 In the event that it is found that a student leader is rendering a service to the NWU for personal gain, a process based on the example of paragraph 5.2.3 must be followed with the necessary adaptation and in accordance with an agreement negotiated with the executive director: student life as provided for in paragraph 5.3.1.7.

5.3.2 Procedural framework for the declaration of conflict of interest or of commitment made by student leaders

- 5.3.2.1 The executive director student life must annually oversee a process whereby student leaders complete a declaration of interest or of commitment.
- 5.3.2.2 These declarations must be made in writing using the process as provided by the executive director: student life, in consultation with the registrar.
- 5.3.2.3 A central register of such declarations must be consolidated and maintained by the executive director: student life, and submitted to the registrar, at least once during the duration of the student leadership term.
- 5.3.2.4 Declarations made by student leaders must be made and processed via the following reporting managers and employees assigned to the student leadership structures:

Student Leadership Structure	Reporting manager or employee	Next-level reporting staff member
Students' Representative Council	Executive Director: Student Life	Registrar
Students' Campus Council	Campus Director: Student Life	Executive Director: Student Life
House Committees	House Parent	Campus Director: Student Life
Students Academic Chapter	Relevant employees delegated by Campus Director: Student Life	Campus Director: Student Life
Portfolio Committees	Relevant employees delegated by Campus Director: Student Life	Campus Director: Student Life
Student Society Chapters and Committees	Relevant employees delegated by Campus Director: Student Life	Campus Director: Student Life

5.3.3 Repeated services rendered by a student

Where services or products are to be rendered more than once to the university by a student, consideration must be given to appoint the student as a temporary or non-standard employee of the university.

6 RULES FOR THE DECLARATION OF GIFTS

- 6.1 No university member may receive gifts, gratifications, personal benefits or hospitality in exchange for favours.
- 6.2 In the instance that a gift is offered to a university member, each offer of hospitality must be considered on its merits, taking into account the relevant circumstances and the relationship with the organisation making the offer.
- 6.3 University members employed in any supply chain management process at the university may not receive any gratification of any value without prior written approval by the executive director finance and facilities.

- 6.4 Where a gift or other personal benefit is received by a university member from a non-member –
 - 6.4.1 the recipient must declare receipt of the gift in writing to the member's line manager or the structure of the university to which the member belongs;
 - 6.4.2 Where the value of a gift or other benefit exceeds the amount of R500, receipt thereof must be declared and captured on a central register on the NWU's DIY portal, disclosing, amongst others, the business rationale of the gift. .T
 - 6.4.3 The reporting of gifts received by members of the NWU is derived the DIY portal and serves at the appropriate next management and/or governance meeting relevant to the member's affiliation to the university

Provisions of Sections 1, 27 and 34 of the Higher Education Act, 101 of 1997 pertaining to definitions relevant to conflict of interest

Section 1

1(r) “**relative**” in relation to any person, means–

- (a) the spouse or partner of that person;
- (b) anybody related to that person or his or her spouse within the third degree of consanguinity; or
- (c) any adoptive child within the first degree of consanguinity.

1(s) “**spouse**” means a person’s partner in marriage–

- (a) recognised as such in terms of the laws of the Republic or a foreign country; or
- (b) concluded in terms of religious rites.

Section 27

27 Council of public higher education institution

(7) A member of a council or a member of a committee of a council or a person with delegated functions in terms of section 68 (2)—

(c) must before he or she assumes office, and annually for as long as he or she continues to hold such office, declare any business, commercial or financial activities undertaken for financial gain that may raise a conflict or a possible conflict of interest with the public higher education institution concerned;

(d) may not place himself or herself under any financial or other obligation to any individual or organisation that might seek to influence the performance of any function of the council; and

- (e) (i) may not have a conflict of interest with the public higher education institution concerned;
- (ii) may not have a direct or indirect financial, personal, or other interest in any matter to be discussed at a meeting, or in regard to which he or she is to make a decision in terms of a delegated function, and which entails or may entail a conflict or possible conflict of interest with the public higher education institution concerned;
- (iii) must, before the meeting of the council or the committee concerned and in writing, inform the chairperson of that meeting of the existence of a conflict or possible conflict of interest.

(7A) Any person may, in writing, inform the chairperson of a meeting of the council or a committee of the council concerned, before that meeting, of a conflict or possible conflict of interest of a member of the council or of a committee of the council with the public higher education institution concerned of which such person may be aware.

(7B) A member referred to in subsections (7) (e) and (7A) is obliged to recuse himself or herself from the meeting during the discussion of the matter and the voting thereon.

(7C) In the event that any member of a committee of the council or any employee, with delegated functions in terms of section 68 (2), has a conflict or possible conflict of interest as contemplated in this section in respect of a matter to be considered, the committee or the employee concerned may not take part in any consideration or a decision on the matter but must refer the matter for decision by council, having noted the member’s or the employee’s interest in the matter.

(7D) A member of the council or a member of a committee of the council who contravenes subsection (7) (c), or (e), (7A) or (7B), after Council has followed a due process, may be—

- (a) suspended from attending a meeting; or
- (b) disqualified as a member of the council or a member of a committee of the council.

(7E) The council must—

- (a) having regard to the provisions of subsections (7A) to (7D), (9) and section 34 and after consultation with the institutional forum, adopt a code of conduct to which all the members of the council, all the members of committees of the council and all other persons who exercise functions of the council in terms of delegated authority must subscribe in writing;
- (b) determine rules and procedures in terms of section 32 for an annual declaration—
 - (i) by each member of the council, each member of a council committee and each person who exercises functions of the council in terms of delegated authority;
 - (ii) of his or her financial interests and fiduciary roles, the latter to include but not be limited to offices, directorships of companies, memberships of close corporations and trusteeships held; and
 - (iii) of the financial interests and fiduciary roles of the members of his or her immediate family.

Section 34

34 Appointment and conditions of service of employees of public higher education institutions

(4) An employee must in writing –

- (a) (i) before he or she assumes office; and
- (ii) whenever a new interest arises,

declare any business, commercial or financial activities undertaken for financial or other gain that may raise a conflict or a possible conflict of interest with the public higher education institution concerned; and

- (b) notify the public higher education institution concerned of any conflict or possible conflict of interest before such public higher education institution procures any goods or services from the employee or an organisation within which the employee holds an interest.

(5) An employee may not conduct business directly or indirectly with the public higher education institution at which he or she is employed that entails or may entail a conflict of interest with the public higher education institution unless the council of such public higher education institution is of the opinion, and takes a decision, that –

- (a) the goods, product or service in question are unique;
- (b) the supplier is a sole provider; and
- (c) it is in the best interest of the institution.

(6) An employee may not on behalf of the public higher education institution concerned contract with himself or herself or his or her relative or any entity in which the employee or any relative has a direct or indirect financial, personal, fiduciary or other interest.

(7) Contracting referred to in subsection (6) relates to conduct that is aimed at receiving any direct or indirect financial, personal, fiduciary or other gain that does not form part of the employment relationship contemplated in subsection (1).