

A Practical Introduction to

Managing

Conflict of Interest Situations

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Background

BY DEVELOPING AND ADHERING TO THE *CODE OF ETHICS*, CCIC MEMBERS HAVE COMMITTED TO continuously improving their ethical practice. As organizations seek to deepen their understanding of ethical practice, one area that often raises questions is that of conflict of interest. The objective of this document is to provide a practical introduction to the subject.

Conflict of interest is a very important issue for all organizations. For those in the voluntary sector, it can be especially important and challenging. Public trust is a core asset for any organization that relies on funding or support from the public in order to do its work. Part of that trust is based on the expectation that people involved in voluntary sector organizations will carry out their responsibilities with integrity and objective judgment. Factors that may interfere with that objective judgment, such as personal interests, could undermine the level of trust. Even the perception of conflict of interest may damage public trust.

The special nature of the voluntary sector is that individuals are often chosen to participate, or they volunteer to participate, precisely because of their expertise in certain areas. This often means that they work in a field or occupation related to the organization's activities and interests, and situations of possible conflict of interest can easily arise. In addition, the voluntary sector relies heavily on support in the form of gifts and donations from individuals and companies. The interests connected to the request for, and acceptance of, such gifts may give rise to possible conflict of interest situations.

There is considerable misunderstanding and fear surrounding the issue of conflict of interest, fed in part by media coverage of high-profile examples of serious conflict. Organizations sometimes think that any situation of possible conflict of interest must be addressed with drastic measures, such as termination or resignation of volunteers or staff. This misconception and the fear it generates can cause Board members and managers to "bury their heads in the sand", choosing not to see possible situations of conflict of interest. This is obviously *not* the kind of behaviour that the *Code of Ethics* seeks to encourage.

Instead, organizations should seek to prevent conflict of interest situations where possible, and identify and manage those that do occur in a consistent, ethically responsible way. Appropriate policies and processes can help organizations and individuals undertake the necessary ethical reflection and effectively manage conflict of interest situations. Dealing with such situations is a normal part of properly managing any organization.

Code of Ethics Standards

THE *CODE OF ETHICS* REQUIRES CCIC MEMBERS to adopt a conflict of interest policy. By putting in place and consistently implementing such a policy, an organization recognizes the gravity of conflicts of interest as well as the reality that conflict of interest situations will arise and must be managed effectively.¹

This Practical Introduction assumes that organizations have a conflict of interest policy in place (see page 5 for further information on what should be in a policy). It was written to respond to questions from CCIC members seeking to better understand how to manage conflict of interest situations when they arise.

Let's begin by looking in more detail at what is meant by conflict of interest.

What is Conflict of Interest?

ONE DEFINITION SAYS THAT A CONFLICT OF INTEREST MAY BE PRESENT WHEN SOMEONE HAS TWO DIFFERING interests that may compete, and it is not clear which interest will direct her behaviour.

Conflict of interest has also been defined as “a situation in which a person such as a public official, an employee or a professional has a private and personal *interest sufficient to appear to influence* the objective exercise of his or her official duties.”²

Note, in this definition, the two areas of “interest” that come into conflict:

- “Private or personal interest” – This could mean an individual's self-interest (e.g. to achieve financial profit or avoid loss, or to gain another special advantage or avoid a disadvantage), the interests of the individual's immediate family or business partners, or the interests of an organization in which the individual holds a position.
- “Objective exercise of duties” – This refers to an individual's ability to carry out his responsibilities in the best interest of the organization.

In a **real** or **actual** conflict of interest, the private or personal interest is in place during the exercise of the official duties (whether or not these duties have been carried out improperly). The conflict may be current, or it may be found later to have existed at some point in the past.

A **potential** or **foreseeable** conflict of interest involves a situation that may develop into an actual conflict of interest if the individual were to have particular official responsibilities in the future.

The reference in the definition to “appear to influence” is also important. Even the appearance of a conflict of interest can damage an organization's reputation – and damage to its reputation could interfere with its ability to fulfill its mission, particularly in the case of civil society organizations that rely on public funds and trust. The test for an **apparent** or **perceived** conflict of interest is not whether the individual *would* act on the temptation, but whether a reasonable person would think that the individual's judgment is *likely* to be compromised.

Identifying Types of Conflict of Interest

Real or Actual	Apparent or Perceived	Potential or Foreseeable
An individual <i>is in a situation where her official duties can be influenced</i> by her “private or personal” interests.	An individual <i>is in a situation where his official duties appear to be influenced</i> by his “private or personal” interests.	An individual <i>is in a situation where her official duties may be influenced in the future</i> by her “private or personal” interests.

Examples of Conflict of Interest

Conflict of interest may occur in various forms.

Examples include:³

- **Self-dealing**, for example when a person uses his staff or Board position to make, or influence, a decision to provide funding to an organization in which he has an interest. Or, the person goes outside normal, objective hiring processes to give a job to a friend or family member.
- **Influence peddling**, which means that a person solicits or accepts some form of benefit in return for influencing activities or promoting someone else's interests. For example, an employee obtains a sponsorship from a travel agency for the soccer team she coaches, in return for the travel agency receiving business from the organization that employs her.
- **Misuse of information or property**, when an individual uses information or property to which he has access because of his job or volunteer work, and to which others would not have had access, for some personal benefit. For example, an individual may learn that a branch of his organization plans to issue an important request for tenders, and tell a friend so the friend's consulting company has more time than its competitors to prepare to submit a bid. Misuse of property could involve, for example, using one of your organization's vehicles for personal purposes, or using the organization's photocopier to copy documents for your own small business, without first obtaining permission to do so.
- Taking some form of **employment or other activity** that one's employer could possibly see as conflicting with the employer's interests. An example might be if an employee owns a business that sells pesticides when her employer, a health organization, has a public position against pesticide use.
- **Accepting undue benefits**, such as significant gifts (e.g. the person responsible for purchasing equipment in your organization accepts tickets to a hockey game from a supplier).

How do you know...?

The examples listed above may seem clear enough, but identifying a situation where a conflict of interest exists, might exist, or could appear to exist is not always easy. Individual situations can be complex. Conflict of interest situations are very common: almost everyone finds himself in a situation of *possible* conflict of interest at some time.

How do you know if you are in a conflict of interest situation, whether actual, potential or apparent? Based on the definition above, determine whether your situation is likely to interfere, or appear to interfere, with the objective judgment you must show in performing your official duties. Michael McDonald⁴ proposes the "trust test": would other people important to the organization and the general public trust your judgment if they knew the situation you were in?

It is quite common for people to simply not recognize that they have a conflict of interest. While we may be quick to see others' conflicts of interest, we often think that we can act impartially even if personal interests are involved.⁵ It is important to acknowledge when real, perceived or potential conflicts of interest exist, and to deal with them in a fair and transparent manner.

Preventing and Managing Conflict of Interest Situations

IDEALLY, ORGANIZATIONS SHOULD DEVELOP A CULTURE OF DEALING WITH CONFLICT OF INTEREST SITUATIONS openly and honestly. The focus should be on preventing conflicts of interest as much as possible, and then managing situations where a conflict of interest could occur.

Although your organization's policy should specify who is responsible for its implementation and monitoring, and who is responsible for acting in cases of possible conflict, managing conflicts of interest is not something that concerns only senior managers and Board members. All the employees and volunteers of an organization are, and should be conscious of being, responsible to behave in an ethical fashion. Any employee or volunteer who thinks that he may have a conflict, or who believes that another person in the organization may be in a situation of possible conflict of interest, has an ethical responsibility to bring the matter forward. An organizational culture that makes it clear that conflict of interest situations are part of life and should be dealt with, can help empower all employees and volunteers to take responsibility for ethical behaviour and decision-making within the organization. Creating a culture in which people are comfortable taking responsibility to "self-declare" conflicts of interest will help avoid the development of a culture of accusations and finger-pointing.

Prevention

A comprehensive, consistently implemented conflict of interest policy is an important tool to help prevent conflict of interest situations from arising. Organizations can also take various practical preventative measures, such as providing meeting agendas in advance to enable participants to foresee possible conflicts, ensuring that people are clearly told when information must be protected from improper use or disclosure, and providing education about what to do when gifts and hospitality are offered.

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What should a Conflict of Interest Policy include?

THE EXACT COMPOSITION OF YOUR POLICY WILL DEPEND ON THE SIZE, NATURE AND COMPLEXITY OF your organization. Many organizations have separate policies for Board members and for staff and other volunteers. In general, conflict of interest policies should include the following elements.

STATEMENT OF GOAL: This states the overall goal the policy is trying to achieve, e.g. fair, well-informed decision-making that is not influenced by conflicting interests.

SCOPE: The policy should indicate to whom it applies (e.g. employees, volunteers, contractors, Board members).

DEFINITION OF CONFLICT OF INTEREST: An effective policy will cover real, perceived and potential conflicts of interest.

POLICY APPLICATION (PROCEDURES): The policy should clearly establish procedures:

- to obtain written agreement from staff and volunteers to abide by the policy;
- to prevent possible conflict of interest situations (e.g. advising employees and volunteers on how to avoid being placed in a situation of perceived obligation or indebtedness – this should include procedures for dealing with gifts and hospitality);
- for disclosure by employees and volunteers of conflicts of interest (actual, potential or perceived), and recording of such disclosure;
- for dealing with conflict of interest situations that have been disclosed or raised, to ensure that the capacity to influence related decisions is eliminated. This should include procedures for deciding the extent to which the individual needs to remove himself from decision-making on issues related to the possible conflict of interest situation, and procedures to officially record the means whereby a conflict of interest was dealt with;
- to identify a mechanism or person to deal with real conflicts of interest that are discovered “after the fact”;
- for maintaining the confidentiality of those involved in a decision-making process when the outcome is likely to affect someone they know or to have repercussions for those who vote in a particular way (so that fear of repercussions does not influence decision-makers);
- for resolving disputes, in the event that an individual does not agree with the perception that she is in a conflict of interest situation.

ACCOUNTABILITY: The policy should indicate who is responsible for implementation of the policy for staff, volunteers and Board members. It should include a process for reporting on, reviewing and updating the policy. It should also specify how the organization will deal with those who intentionally fail to comply with the policy (e.g. restitution, resignation, etc.).

Steps for Managing a Conflict of Interest Situation

WHEN FACED WITH A CONFLICT OF INTEREST SITUATION, THE FOLLOWING STEPS SHOULD BE FOLLOWED TO manage it effectively. These steps involve the individuals in a conflict of interest situation and others in the organization taking action in various ways, supporting one another's ethical responsibilities.

- 1 **DECLARE IT.** Ensure transparency by self-declaration, and by making sure that a record of the declaration is made (e.g. in Board minutes in the case of a Board member, in a trip report in the case of a gift received by an employee visiting a program partner overseas).
- 2 **DISCUSS IT.** This can range from a quick decision by the Chair through to a full dialogue by the group. Record the discussion in writing.
- 3 **DEAL WITH IT.** Measures to mitigate or eliminate a conflict of interest will depend on what is appropriate to the severity of the situation. Options include:⁶
 - **RESTRICT** the involvement of the individual: This is possible if the conflict is not going to arise frequently, and the person can be effectively separated from parts of the activity or process. An example is non-involvement in criteria-setting or decision-making for the process that is affected by the conflict (e.g. a Board member recusing herself). This option would not be appropriate if the conflict of interest arises frequently and the individual is constantly being restricted from performing a number of duties.
 - **RECRUIT** a third party to assist: When the possible effects of a conflict of interest are more significant, an option is to have a disinterested party oversee part or all of the process that relates to the conflict (e.g. asking an independent third party to make a decision). Note: this third party must be qualified to properly handle the situation, and there may be situations where no appropriate third party is available.
 - **REMOVE** the individual from affected duties: When restriction and recruitment are not suitable options, the individual with the conflict of interest may be removed from duties related to the conflict for as long as the conflict exists. For example, an individual could choose to transfer to other duties (as long as her new duties did not include supervising the person now dealing with the affected duties).
 - **RELINQUISH** the private interest: The individual with the conflict of interest may choose to relinquish the private interest (e.g. by resigning from the Board of another organization when his participation in that Board is causing a conflict of interest).
 - **RESIGN:** In cases of serious conflict of interest where other solutions are not possible, the most extreme option may be for the individual to resign from the position whose duties are conflicting with her personal interests. For example, if the spouse of the Chair of the Board of an organization becomes the Executive Director of that organization, the Chair would have to resign from the Board.⁷ Otherwise, she would have an ongoing conflict of interest situation that would interfere with fair and impartial decision-making related to crucial matters such as the Executive Director's performance evaluation and compensation.
- 4 **DOCUMENT WHAT HAS BEEN DONE,** e.g. in Board minutes, in correspondence to interested parties or stakeholders.

Examples

Some specific examples of conflict of interest situations faced by CCIC members, and ethical questions they provoke, are discussed below. These examples are drawn from members' questions to the Council's Ethics Program and Ethics Review Committee. They provide some indication of the kind of ethical reflection that organizations should undertake when confronted with difficult situations of possible conflict of interest.

CCIC member organizations that face situations of possible or actual conflict and are not able to come to a solution through their own reflections are encouraged to consult with the Council's Ethics Program and the Ethics Review Committee.

Gifts

Many CCIC members are faced with situations where people in partner organizations and communities present them with gifts. In many cultures, the giving of gifts is an important social convention, and it is considered impolite or even insulting to refuse a gift.

The receiving of a gift is not actually the ethical dilemma. The dilemma is the potential for indebtedness, either real or perceived. It is important to distinguish gifts and favours that represent goodwill and friendship from those that are designed to create an indebtedness on the part of the recipient. For example, could the giving of a gift affect a decision about funding of a project or program? Even if it doesn't, could there be an impression that it might? If there is a perception of influence, there is an **apparent** conflict of interest situation.

Similarly, conflict of interest may arise when gifts are larger than what would usually be offered as a token in a given situation. Out-of-proportion gifts mean that something else is happening, generally some form of indebtedness of the receiver, who could be called on later to repay this debt. This puts the individual receiving the gift in a **potential** conflict of interest situation (i.e. her official duties in the future may come in conflict with her personal interest of having received the substantial gift).

Be transparent about the policy.

Explain, for example, that it will not let you accept the

gift for yourself but that you would be pleased

to accept the gift for your organization.

It should be made clear that accepting the gift

in this way does not create

any indebtedness for the organization.

If there is an appearance of indebtedness,

then it is necessary to respectfully

decline the gift, even if this

may cause some awkwardness.

The key ethical principles that an organization will need to uphold are *integrity* (consistency between one's values and one's actions), *transparency* (honesty in discussing the issue) and *respect* (for the gift giver and his feelings). What should you do if you are offered a gift that, according to your organization's conflict of interest policy, makes you worry that your personal integrity may be in question should you accept it, but refusing will make you feel that you are not respectful of the giver? Be transparent about the policy. Explain, for example, that it will not let you accept the gift for yourself but that you would be pleased to accept the gift for your organization. It should be made clear that accepting the gift in this way does not create any indebtedness for the organization. If there is an appearance of indebtedness, then it is necessary to respectfully decline the gift, even if this may cause some awkwardness.

Coalition members involved in funding and decisions

CCIC members often work in coalitions. Things can get tricky when organizations that are members of the coalition provide some of its funding and are active in decisions about programs (e.g. as Board members).

Coalition Board members are often chosen to bring a diversity of opinions to the table, and varied experience that can contribute to well-rounded decision-making. They may assume the interests of the coalition are identical to those of the organizations they represent, but that isn't always the case. Coalition Board members must be aware of the potential for conflict of interest. Unless the coalition has explicitly indicated otherwise, their first duty in Board decisions is to the coalition.⁸

If a Board member thinks a conflict may exist, she must **declare** it. The Board will need to **discuss** it. Then, depending on the extent of the possible conflict, the Board must decide to what extent the individual may be involved in discussions and decisions about particular programs. It may be all right to be involved in discussions about programs, since not all discussions would require decisions, and a variety of views could contribute to better understanding of an issue. But once it is time to make a decision, the interests of the coalition must take precedence, and the person with the perceived conflict would have to **restrict** her involvement by refraining from being involved in the decision.

What does it mean to refrain from involvement in the decision? Generally, the person should not be in the room when the decision is made, as body language can communicate opinions and influence others even if the person isn't voting. The person's absence during the decision-making should be recorded in the minutes.

Of course an individual may still influence a decision by being involved in the discussion, even if she leaves when the decision is made. The extent to which a person should be involved in discussions or decision-making depends on the circumstance.

Members of awards committees

Similar issues may arise in situations where a decision-making committee of an awarding mechanism (for funding or awards) receives submissions from organizations that have representatives sitting on the committee. The potential for real or perceived conflict of interest may be more serious in this case, since all discussions and decisions will be about funding or awards.

In such situations, individuals from submitting organizations would have to **declare** a conflict of interest and take steps to **remove** themselves as far as possible from the process of awarding as it relates to their organization's submission. This would mean removing themselves from the voting on, and any discussions related to, their organization's submission, and possibly other submissions. Also, they would have to take steps to remove themselves as far as possible from the application process in their home organization. They may have to **recruit** someone else to sign letters and documents related to the funding, both for their own organization and for the awards committee. (This would not include financial summaries that mention the funding).

Given the potential for perceived conflict of interest, "as far as possible" would include avoiding even informal contacts and discussions about the application.

Board member from organization that receives funding

Another possible situation of conflict arises when the Executive Director of one organization is asked to sit on the Board of another organization which sometimes receives funding from her organization.

In such a case, the Executive Director would have to take steps to be as far away as possible from her organization's decisions about funding for the second organization. Also, as a Board member of the second organization, she would have to stay as far away as possible from the process of applying for funding from the first organization. In this situation, given the potential for perception of conflict, "as far away as possible" means she would have to avoid even informal discussion on this issue.

If these measures are not possible, or if they would result in the Executive Director's inability to carry out her official duties, then she would have to **relinquish** the opportunity to sit on the Board of the second organization. Or, her organization would have to relinquish the opportunity to apply for funds from the first organization.

Board member as potential consultant

Another example put forward by a CCIC member concerned a Board member whose "day job" was as a consultant. The member organization planned to bid on a contract and if it won, the individual would probably be hired as a consultant for the project.

In reflecting on the ethics of the situation, the organization would have to consider questions such as the following. During the process of bidding on the contract, can the Board member avoid all contact with fellow Board members on the subject, including discussion as well as voting? Can the situation be made transparent in Board minutes? Will he avoid discussing the contract or the bidding process with anyone else (including colleagues at his consulting organization)? Will the selection of contractors be fair and impartial? If all these tests could be met, then the individual could remain on the Board during the process of bidding because the conflict had been **declared** and the individual with the conflict of interest had been **removed** from the official duties related to the situation.

However, if the organization won the contract and the individual wished to work as a consultant on the contract, he would have to **resign** from the Board first. As a general rule, members of the Board of a voluntary sector organization should not earn money from work for the organization (other than reasonable expenses).

Summary

THE CENTRAL MESSAGE OF THIS INTRODUCTION to the subject is that there is no need to be afraid of conflict of interest. It is pretty well guaranteed that situations of conflict of interest will arise, from time to time, in organizations. The important thing is what to do about a particular conflict of interest situation when it is identified.

Remember the 4Ds: **declare, discuss, deal with** and **document**. Make sure that your organization's policies and standard operating procedures are sufficient to cover the conflict of interest issues you are likely to encounter. Work to help your organization nurture an ethical culture, where all staff and volunteers appreciate the importance of effectively managing conflict of interest situations.

Conflict of interest must not be seen as a hurdle preventing an organization from meeting its goals. Managing the inevitable conflict of interest situations that arise is simply a normal part of organizational life.

Endnotes

1. Older policies may refer to “prohibiting” conflicts of interest, but, as explained in this document, not all conflict of interest situations can be avoided. More recent policies focus more accurately on *managing* conflict of interest situations in order to ensure that decision-making is not influenced by conflicting interests.
2. McDonald, Michael. *Ethics and Conflict of Interest*. Centre for Applied Ethics, University of British Columbia. 1999. www.ethics.ubc.ca/people/mcdonald/conflict.htm
3. Adapted from Kernaghan, Ken, and Langford, John. *The Responsible Public Servant*. 1990.
4. McDonald, Michael. *Ethics and Conflict of Interest*. 1999.
5. Gilbert, Daniel. “I’m O.K., You’re Biased”. *The New York Times*. April 16, 2006. <http://www.nytimes.com/2006/04/16/opinion/16gilbert.html?ex=1302840000&en=673c97f158031fd3&ei=5088&partner=rssnyt&emc=rss>
6. Adapted from *Managing Conflicts of Interest in the Public Service Toolkit*, Independent Commission Against Corruption and Crime and Misconduct Commission, Australia. <http://www.psagency-agencefp.gc.ca/veo-bve/documents/ManagingConflictOfInterestToolkit.pdf>
7. In this case, it is assumed the Chair would not have been involved in any aspect of the assessment and hiring process, for her spouse or any other candidate for the job (she would already have **removed** herself from that process).
8. Ideally, the terms of reference for a coalition should state clearly that the first duty of the coalition’s Board members is to the coalition.