

ASSESSING & ADDRESSING CONFLICTS OF INTEREST

Guideline for Managers, Ethics Advisors and
Deputy Ministers

Introduction and Purpose

Employees in the BC Public Service are required under the Public Service Oath Regulation and Standards of Conduct to avoid conflicts of interest. Employees must arrange their private affairs in a manner that will prevent real, perceived or potential conflicts of interest from arising. Employees also have an obligation to proactively disclose information to their manager (or ethics advisor) regarding circumstances that may give rise to a real, perceived or potential conflict of interest so that any such conflict may be assessed and appropriately addressed. Effectively managing conflicts of interest is one of the primary ways that public confidence in the integrity of the public service is fostered and maintained.

The purpose of this guideline is to establish a procedural framework and toolkit for managers, ministry ethics advisors and deputy ministers seeking to assess an employee disclosure to determine whether a conflict of interest exists, and seeking direction regarding how a conflict may be addressed. The guideline supports the effective administration of the Standards of Conduct and ensures employee disclosures related to a conflict are addressed according to fair, transparent procedures that assess the employee's interests against the need to serve the public interest. A process diagram summarizing the conflict of interest process is found at Appendix A.

Employees seeking information on disclosing a possible conflict of interest should refer to the companion document to this guideline, Disclosing a Conflict of Interest: Employee Guideline and Disclosure Form.

Scope

This guideline has the same scope as the Standards of Conduct, applying to any person appointed under the *Public Service Act*, excluding political staff. Political staff with concerns about real, perceived or potential conflicts of interest should confer with their supervisor or Chief of Staff.

Defining a Conflict of Interest

The Standards of Conduct define a conflict of interest as a situation where an employee's private affairs or financial interests are in conflict, or could result in the perception of conflict, with the employee's duties or responsibilities in such a way that:

- the employee's ability to act in the public interest could be impaired; or
- the employee's actions or conduct could undermine or compromise:
 - the public's confidence in the employee's ability to discharge work responsibilities;
 - or
 - the trust that the public places in the BC Public Service.

A conflict of interest therefore involves a conflict between the public duty and private interests of an employee, in which the private interests could influence the performance of their job duties, or in which an employee uses their office for personal gain.

Conflicts of interest do not relate exclusively to matters concerning financial transactions or the transfer of economic benefit. A conflict may arise regardless of the employee's intentions and does not necessarily imply an employee is improperly motivated. A conflict may arise wherever a set of circumstances exists that creates the risk of a real, perceived or potential conflict of interest.

Real, Perceived and Potential Conflicts

The Standards of Conduct require that an employee must disclose any real, perceived or potential conflict of interest. A **real** conflict of interest has the same definition as described above.

A **perceived** conflict of interest can be said to exist where an employee's private interests would appear to a reasonable person to conflict with their job duties *even though there may not be an actual conflict*. For example, an employee has a close relative who has applied for a job in their ministry. The employee will participate on the interview panel to take notes, but will play no role whatsoever in making the hiring decision. This may be viewed as a perceived conflict (the employee is participating on the interview panel involving her relative) even though there is no real conflict (the employee is only taking notes - not participating in any decision-making). Note a perceived conflict can be just as serious as a real or actual conflict.

A **potential** conflict of interest arises where an employee has private interests such that, while no conflict has yet arisen, a conflict would arise were the employee to become involved in discharging workplace responsibilities in the future that could be influenced by the private interest. For example, an employee is a senior manager in the Environmental Assessment Office. The employee has recently advised their executive team that they intend to accept a volunteer role with an environmental advocacy group that operates across Canada, including in British Columbia. In this case, the employee is in a potential conflict related to the possibility that the environmental advocacy group with whom they wish to affiliate may in the future lobby the provincial government to make a change to its current environmental policy.

Please refer to the Standards of Conduct for additional examples of conflicts of interest.

Key Responsibilities: Managers, Ethics Advisors, Deputy Ministers & the BC Public Service Agency

Following the disclosure of a possible conflict of interest issue by an employee as required by the Standards of Conduct (or in rare cases, identification of a possible conflict by someone other than the employee concerned), an assessment by the employer must be made to determine if a real, potential or perceived conflict exists, and decisions made regarding what steps (if any) should be taken to address the conflict. Managers, ministry ethics advisors, deputy ministers and the BC Public Service Agency may all play a role in this process.

Managers:

- Provide comprehensive orientation to new employees related to the Standards of Conduct at the beginning of employment as well as on a regular basis; this includes providing information to employees about learning opportunities and where to access advice when questions arise.
- Receive disclosures from their employees regarding possible conflict of interest issues (or in rare cases, receive a report of a possible conflict involving their employee from someone other than the employee concerned);
- Make preliminary assessments of whether a conflict of interest concern exists;
- Advise employees on Standards of Conduct issues, including advice on resolving straightforward conflict of interest issues;
- Engage their ministry ethics advisor and/or seek out guidance and advice from the BC Public Service Agency on conflict issues that are complex and/or cannot be easily resolved; and
- Document any advice provided and/or decisions made.

Ethics Advisors:

- Provide advice and guidance to managers and employees regarding conflict of interest issues specific to their ministry or organization;
- Seek out guidance and advice from the BC Public Service Agency on conflict issues that are complex and/or cannot be easily resolved;
- Determine whether a conflict issue requires consideration and/or decision by the deputy minister and provide briefings to the deputy minister as necessary;
- Where an employee is unable to disclose to their manager, receive disclosures from employees directly regarding possible conflict of interest issues (or in rare cases, receive a report of a possible conflict involving an employee from someone other than the employee concerned); and
- Document any advice provided and/or decisions made.

Deputy Ministers:

- Make decisions on matters referred to them regarding how to resolve conflict of interest issues, taking the appropriate action based upon the facts and circumstances;
- Seek out guidance and advice from the Deputy Minister of the BC Public Service Agency on conflict issues that are complex and/or cannot be easily resolved;
- Designate an ethics advisor for their organization; and
- Advise employees of their obligations under the Standards of Conduct, including in relation to possible conflicts of interest, and the consequences of non-compliance.

The BC Public Service Agency:

- Establish corporate human resource policies, guidelines and tools related to conflict of interest and other ethics issues;
- Provide timely advice to managers, ethics advisors and deputy ministers regarding conflict of interest issues that are complex and/or cannot be easily resolved; and
- Coordinate the development, awareness, training and communication of programs in support of the Standards of Conduct, including in relation to conflicts of interest.

Principles for Managing Conflicts of Interest¹

To maintain public trust and confidence in the integrity of BC Public Service, and to create an organizational culture that supports employees who bring forward potential conflict of interest issues, the following principles should be observed by managers, ethics advisors, deputy ministers and staff of the BC Public Service Agency when managing conflict of interest matters. These principles are grounded in certain core values of the BC Public Service, including service, accountability and integrity.

Serving the Public Interest with Integrity

Decisions and advice regarding conflicts of interest should be made by public service organizations following an assessment of the merits of each individual case, should align with requirements and protocols established in the Standards of Conduct, this guideline and other applicable authorities, and should not be prejudiced by the personal views, preferences or interests of the decision-maker.

Supporting Consistency, Transparency and Accountability

Public service organizations should ensure conflicts of interest are dealt with consistently and in accordance with the Standards of Conduct and procedures outlined in this guideline. To the extent reasonable and necessary, organizations should be transparent within the organization regarding how a conflict of interest situation has been resolved, and should promote scrutiny of their management of conflict situations. This serves to ensure employees understand why

¹ Adapted from principles developed by the Organization for Economic Co-operation and Development (OECD), *Managing Conflict of Interest in the Public Sector*.

decisions to resolve a conflict were taken, enhances accountability, and supports continuous improvement in the process for addressing conflicts of interest.

Promoting Individual Responsibility

Public service organizations should ensure employees understand their obligations under the Standards of Conduct to arrange their private affairs in a manner that will prevent real, perceived or potential conflicts of interest from arising, and for resolving any such conflicts in favour of the public interest when they do arise. Organizations should demonstrate their commitment to supporting these employee obligations by acting with integrity and professionalism when dealing with conflict of interest situations, and by complying with the Standards of Conduct and procedures outlined in this guideline.

Engendering an Organizational Culture Intolerant of Conflicts of Interest

Public service organizations should create and promote a culture of open communication and dialogue regarding the importance of public service integrity, and regularly remind employees that fulfilling their obligations respecting conflicts of interest is a key part of maintaining public trust in the integrity of the public service. This kind of culture building may rely on training initiatives, executive communications and other activities aimed at ensuring all members of the organization develop an intolerance of conflicts of interest, and have confidence in the policies and procedures followed by their organization to address conflicts that do arise.

Procedures for Assessing and Addressing Conflicts of Interest

Many conflict of interest issues can be resolved easily and informally by an employee and their manager. For example, a manager might confirm that the employee's private business selling eggs from their hobby farm at a local Sunday market does not constitute a conflict of interest. Conversely, a manager might advise an employee that they cannot be a decision-maker for a job competition where one of the applicants is the employee's sister as this would constitute a conflict.

Where the issue cannot be easily and informally resolved, the following procedures are intended to provide a framework for assessing possible conflicts, and for addressing conflicts that do arise. It is expected these procedures will be followed by managers, ministry ethics advisors and deputy ministers seeking to assess and address a possible conflict of interest concern in their organization. These procedures are not exhaustive and are intended to assist the assessment process. Managers, ethics advisors and deputy ministers should consult with the BC Public Service Agency for additional assistance.

Procedures for assessing and addressing conflicts of interest are organized as a series of six sequential steps. A process diagram summarizing the conflict of interest process is found at **Appendix A**.

1. **Employee Disclosure:** Employees are required under the Standards of Conduct to disclose information to their manager/supervisor regarding circumstances that may give rise to a real, perceived or potential conflict of interest.
2. **Identify Work Duties and Relevant Interests:** Identify the job duties, other public duties and private interests of the employee that are relevant to the circumstances.
3. **Analyze and Assess:** Analyze whether the employee's private interests conflict, or could be perceived to conflict, with their ability to discharge their work duties or serve the public interest, and assess the severity of the harm that could result from the conflict.
4. **Decide and Resolve/Mitigate:** Decide whether the circumstances give rise to a real, perceived or potential conflict that must be addressed in some way by the employer; consider what steps could be taken to resolve or mitigate the conflict so it does not pose unacceptable risks to the employer or the public interest.
5. **Document:** Document on the employee's personnel file, and elsewhere as may be required, the reasons for the conclusion reached and steps taken (if any).
6. **Communicate:** To the extent reasonable and necessary, communicate transparently within the organization regarding the conflict and how it was addressed.

Step 1: Employee Disclosure

New and current employees who find themselves in a real, perceived or potential conflict of interest are required under the Standards of Conduct to disclose the matter to their manager or ethics advisor, and to follow the employer's direction in resolving the conflict. Disclosure is required **both at the outset of employment and an ongoing basis as circumstances may demand**. This includes employees who have less than full-time employment, or job functions that necessarily contemplate external remunerative work or external affiliation, as such external affiliations may be a common source of a possible conflict.

Employee disclosures regarding conflicts of interest may be submitted using the form contained in the guideline, Disclosing a Conflict of Interest: Employee Guideline and Disclosure Form. At the discretion of the employee's manager or ethics advisor, alternate methods of reporting may also be accepted (e.g., email, letter, etc.), typically where the magnitude of the possible conflict is deemed to be relatively minor and therefore more informal means of resolution or mitigation may be adopted.

While the Standards of Conduct establish a positive duty on employees to disclose possible conflicts of interest related to their own conduct, the employer may on occasion become aware of allegations of conflict that the employee in question has not disclosed, but which may represent a conflict of interest. Managers or ethics advisors who become aware of possible conflicts of interest in this way should substantiate the legitimacy of the allegation and, where appropriate, discuss the matter with the employee deemed to be in a possible conflict. If

circumstances exist that may constitute a real, perceived or potential conflict, this guideline should be consulted to assess and address the matter.

Where a conflict of interest was known to the employee but not disclosed, consideration should be given to treating the situation as an instance of misconduct.

Step 2: Identify Work Duties and Relevant Interests

Recall that the Standards of Conduct define a conflict of interest as a situation where an employee's private affairs or financial interests are in conflict, or could result in the perception of conflict, with the employee's duties or responsibilities in such a way that:

- the employee's ability to act in the public interest could be impaired; or
- the employee's actions or conduct could undermine or compromise:
 - the public's confidence in the employee's ability to discharge work responsibilities; or
 - the trust that the public places in the BC Public Service.

A conflict of interest therefore involves a conflict between the public duty and private interests of an employee, in which the private interests could influence the performance of their job duties, or in which an employee uses their office for personal gain.

In reviewing an employee disclosure, managers and ethics advisors should therefore ensure the employee has disclosed:

- The specific **job or public duties** of the employee relevant to the possible conflict;
- The specific **private interests** of the employee relevant to the possible conflict; and
- Any specific interests of the employer related to upholding public trust and confidence.

For example, an employee works in the Ministry of Municipal Affairs & Housing as a senior policy advisor who specializes in provincial grants provided to local governments in BC. The employee has a private consulting business that provides advice to local governments on how to best navigate the application process so that they may improve their chances of obtaining a local government grant. In this case:

- The employee's relevant job duties might include advising local governments regarding the requirements of the grant process; establishing criteria for evaluating grant applications; and analyzing applications to make recommendations regarding who should be awarded a grant.
- The employee also has other relevant public duties, for example ensuring they do not use information acquired through their employment for personal benefit.
- The employee's private interests are securing additional income and utilizing their expertise in local government grants for purposes other than their government job;
- The employer's interests are a fair grant process where all applications are treated equally and applications are evaluated and approved according to objective criteria.

Step 3: Analyze and Assess

Having received the employee's disclosure (Step 1) and identified private and workplace/public interests relevant to the possible conflict (Step 2), the next step is to analyze and assess those interests to determine if they conflict, or could be perceived to conflict, in a way that:

- Impairs the employee's ability to act in the public interest;
- Undermines the public's confidence in the employee's ability to discharge work responsibilities; and/or
- Undermines the public's trust in the public service.

Making this determination relies on two separate assessments:

1) Do the relevant private interests of the employee and their workplace/public duties relate to one another in such a way that it can be concluded a real, perceived or potential conflict of interest exists?

Three standardized tests are provided to assist in determining if a real, perceived or potential conflict of interest exists. These three tests can be found at **Appendix B**.

Note these same three tests are included in the Employee Guideline to assist employees when trying to self-assess whether they are in a possible conflict and should therefore disclose the matter to their manager (or ethics advisor). Managers may wish to discuss these tests with their employee as part of the process of better understanding whether a conflict does or does not exist.

2) If a real, perceived or potential conflict of interest does exist, what is the severity of the conflict (i.e., what would the magnitude of the overall impact be for the employer were the conflict left unaddressed)?

Determining the extent to which a real, perceived or potential conflict of interest must be addressed or mitigated by the employer and employee relies on determining the severity of the conflict. Conflicts can be more or less severe in their impacts, and therefore the employer's analysis of and response to a possible conflict must include an assessment of how severe the consequences of the conflict would be were the conflict allowed to persist.

Assessing the severity of a conflict depends on ascertaining: (i) the likelihood that public interests or workplace decisions made in the relevant circumstances would be unduly influenced by a private interest, and (ii) the seriousness of the harm that could result from such influence. Further information and criteria for assessing the severity of a conflict of interest is found at **Appendix C**.

Consultation with the BC Public Service Agency

It may be appropriate at this stage in the process to seek out the advice of the BC Public Service Agency. The Agency is responsible for providing timely advice to managers, ethics advisors and deputy ministers related to any issue arising under the Standards of Conduct, including conflict of interest issues that are complex and/or cannot be easily resolved.

Managers, ethics advisors or deputy ministers who wish to consult with the Agency regarding a conflict of interest concern may do so by contacting the [Corporate Advisory Ethics Service](#) by email at ethics@gov.bc.ca or by phone at 250.217.9732.

Step 4: Decide and Resolve / Mitigate

Following the completion of Step 3, the disclosure made by an employee can now be characterized as:

- A real, perceived or potential conflict of interest (or not a conflict at all);
- More likely to influence, or less likely to influence, the employee in making workplace decisions or meeting other public duties; and
- More serious, or less serious, regarding the harm that could result from such influence.

The next step is to decide whether the conflict, its likelihood of influencing the employee and potential for harm require the conflict to be resolved or mitigated. Each determination of this kind must be based on a case-by-case review of the specific circumstances at issue, and therefore relies on the professional judgement of the manager, ethics advisor or deputy minister to gauge the overall magnitude of the conflict and decide how it should be addressed. Such determinations should:

- Assess the private interests of the employee against their workplace duties and the employer's obligation to ensure the public interest is upheld;
- Be consistent with the Standards of Conduct, applicable guidelines and other authorities (e.g., collective agreements, legislative requirements, etc.);
- Be made in consultation with the BC Public Service Agency where the matter is complex or cannot be easily resolved; and
- Be conducted in a timely manner and document any decisions made.

Options for Resolution or Mitigation

Specific options for resolving or mitigating a conflict of interest can include one or more of several strategies as appropriate in the circumstances:

- Divestment or liquidation of a financial interest by the employee;
- Assignment of a conflicting financial interest into a “blind trust” arrangement;
- Return or repayment of a gift or other benefit arising from a conflict;
- Recusal of the employee from involvement in affected decision-making processes;
- Restriction of access by the employee to particular information;
- Rearrangement or reassignment of the employee’s duties and responsibilities;
- Transfer of the employee to another non-conflicting position;
- Resignation of the employee from the conflicting private interest (e.g., resigning from a part-time position with another employer that is in conflict with their public service job); or
- Resignation/termination of the employee from the public service.

The list above is not intended to be exhaustive. See **Appendix D** for more information on these options.

Identifying the Appropriate Decision-Maker

Decisions by the employer regarding how to address an employee disclosure may be made by an employee’s manager, ethics advisor or deputy minister, as circumstances warrant.

For issues that are simple or straightforward, the decision-maker may be the employee’s manager or ethics advisor. For example, an employee receives an expensive gift from a private stakeholder at a recent meeting. The manager (in consultation with the ethics advisor and/or BC Public Service Agency) makes the decision to resolve the conflict by directing their employee to return the gift.

For any issue that is not simple or straightforward, it is expected that the employee’s deputy minister will be the final decision-maker. Under the Standards of Conduct, deputy ministers are responsible for “dealing with breaches of [the Standards], taking the appropriate action based upon the facts and circumstances.” This responsibility extends to conflict of interest matters as well. Given this responsibility, managers and ethics advisors should err on the side of caution when reviewing employee disclosures and advise their deputy minister of any issue they believe may require the deputy’s involvement or decision.

For example, a newly hired director discloses that they have financial interests in several private companies and is concerned these companies may have direct or indirect business relationships with the ministry. The decisions regarding whether a conflict exists in this case, and how to proceed if a conflict does exist, are likely complex. Further, the conflict could be serious in its implications for the ministry were it allowed to persist. In any such situation, it is expected the deputy minister will be involved and make the final decision regarding how to proceed, often in consultation with the BC Public Service Agency.

STEP 5: Document

Employee disclosures regarding possible conflicts of interest and the decisions made to resolve or mitigate such conflicts must be clearly recorded in formal documents. This should include documentation on the employee's personnel file (and elsewhere as required) reflecting the reasons for the conclusion reached by the employer and the directions (if any) to be followed. A copy of the written reasons should also be provided to the employee.

Documenting the conflict provides clarity to the employee and their organization regarding the conflict and its outcome, and enables the organization to demonstrate to an outside party, if necessary, that a specific conflict has been appropriately identified and managed.

Step 6: Communicate

To the extent reasonable and necessary, public service organizations should be transparent within the organization about how a conflict of interest was addressed to ensure misunderstandings about a conflict and decisions taken by the employer to respond to the conflict are minimized.

For example, a manager becomes aware that the management of a conflict of interest issue has created concern in the work unit about whether or not the employee in question proactively disclosed the conflict to the manager as required by the Standards of Conduct. To support transparency and alleviate the concerns of staff, the manager might communicate with his staff and confirm the employee followed the correct process regarding disclosure and has taken action to resolve the conflict.

Care must be taken in making any such disclosure to respect the privacy rights of the employee, to protect other confidential or sensitive information, and to ensure that the release of the information is done in a way that will reduce, not exacerbate, possible concerns held by other ministry staff in relation to the conflict. Managers, ethics advisors or deputy minister seeking assistance on communicating conflict of interest matters may contact the BC Public Service Agency.

Timelines for Assessing and Addressing Conflicts of Interest

The review and resolution of employee disclosures regarding conflicts of interest should be completed in a timely manner. Specifically:

- **Step 1:** As indicated in the Employee Guideline, an employee has 30 days to make a disclosure to the employer once they become aware of a possible conflict.
- **Steps 2 & 3:** Initial review, analysis and assessment of the disclosure by the employee's manager (and/or ethics advisor) should be completed within approximately two weeks after receiving the employee's disclosure.
- **Step 4:** No firm timeline is recommended in regards to making a final decision about the conflict and what steps (if any) may be required to resolve or mitigate the conflict. Such decisions can be complex and require consultation with the BC Public Service Agency or other stakeholders. It is therefore recommended this step be completed in a reasonable timeframe, consistent with the specific circumstances under review.
- **Step 5:** Documenting the conflict should be done throughout the review process; final documentation on the employee's personnel file (and elsewhere as required) should be completed within approximately two weeks following the completion of Step 4.
- **Step 6:** Communication to the broader organization about a possible conflict should only occur following a review of the extent to which such communication is reasonable and necessary. This will usually involve consultation with the BC Public Service Agency. It is therefore recommended this step be completed in a reasonable timeframe, consistent with the specific circumstances under review.

Reporting Allegations of Wrongdoing

In addition to disclosing conflicts of interest, an employee has a duty to report any situation relevant to the BC Public Service that they believe contravenes the law, misuses public funds or assets, represents a danger to public health and safety or represents a significant danger to the environment. Employees can expect such matters to be treated in confidence, unless disclosure of information is authorized or required by law (for example, the [Freedom of Information and Protection of Privacy Act](#)). Employees will not be subject to discipline or reprisal for bringing forward to a deputy minister, in good faith, allegations of wrongdoing. Please refer to the [Standards of Conduct](#) for more information.

Questions?

For assistance with questions or other issues related to assessing and addressing conflicts of interest, managers, ethics advisors or deputy ministers should reach out to the BC Public Service Agency for consultation and advice. This can be done as an inquiry through [AskMyHR](#) or by contacting the [Corporate Advisory Ethics Service](#) by email at ethics@gov.bc.ca or by phone at 250.217.9732.

References and Resources

- Human Resource Management Accountability Framework
- Standards of Conduct
- Oath of Employment
- Ethics page on MyHR
- Disclosing a Conflict of Interest: Employee Guideline and Disclosure Form

Conflict of Interest Toolkit

Appendix A: Conflict of Interest Process Diagram

Appendix B: Tests for Identifying Conflicts of Interest

Appendix C: Criteria for Assessing the Severity of Conflicts of Interest

Appendix D: Options for Resolving or Mitigating a Conflict of Interest

Appendix A: Conflict of Interest Process Diagram

Disclosure of Conflict of Interest by Employee to the Employer

Identification of possible conflict by employee: Employees who believe they are, or may be, in a real, perceived or potential conflict of interest must bring the matter forward to their manager or ethics advisor. This step should be completed by the employee within 30 days of the employee becoming aware of the possible conflict.



Confirmation of possible conflict by employee's manager: Where the issue is straightforward, the manager may direct the employee to take steps required to resolve or mitigate the conflict. Where the issue is complex and/or not easily resolved or mitigated, the manager may require the employee to complete the Conflict of Interest Employee Disclosure Form.



Completion of employee disclosure form by employee: The form ensures all applicable information related to the conflict is gathered and disclosed in writing, and establishes the basis for additional review by the employee's manager, ethics advisor or deputy minister.



Assessment and Resolution by the Employer

Review of employee disclosure by manager, ethics advisor or deputy minister



Identify work duties and relevant interests: Identify the work duties, other public duties and private interests of the employee that are relevant to the circumstances.



Analyze and assess: Analyze whether the employee's private interests conflict, or could be perceived to conflict, with their ability to discharge their work duties or serve the public interest, and assess the severity of the harm that could result from the conflict. This step may involve consultation with the BC Public Service Agency as deemed necessary in the circumstances.



Decide and resolve/mitigate: Decide whether the circumstances give rise to a real, perceived or potential conflict that must be addressed in some way by the employer; consider what steps could be taken to resolve or mitigate the conflict so it does not pose unacceptable risks to government or the public interest; communicate the final decision and direction to the employee in writing.



Document: Document on the employee's personnel file, and elsewhere as may be required, the reasons for the conclusion reached and steps taken (if any).



Communicate: To the extent reasonable and necessary, communicate transparently within the organization regarding the conflict and how it was addressed.

Appendix B: Tests for Identifying Conflicts of Interest

The following tests provide a simple questionnaire-style framework designed to assist managers, ethics advisors and deputy ministers seeking to determine whether a disclosure made by a public service employee constitutes a real, perceived or potential conflict of interest:²

- **Test 1: Real (or Actual) Conflict of Interest**
- **Test 2: Perceived (or Apparent) Conflict of Interest**
- **Test 3: Potential Conflict of Interest**

² Tests in this section have been adapted from generic conflict of interest tests developed for public bodies by the Organization for Economic Co-operation and Development (OECD), *Managing Conflict of Interest in the Public Sector*. The explanatory comments for each test are similarly adapted from the OECD generic tests.

Test 1: Real (or Actual) Conflict of Interest

- **Question 1: What duties or functions (i.e., public service duties) is Employee X responsible for?**

[Refer to the employee’s job description, information describing the functions of the employee’s organization, duties flowing from regulation or legislation, the Standards of Conduct, or other descriptions of duties]

Answer 1: Employee X is responsible for functions 1, 2 and 3 in ministry B.

- **Question 2: Does Employee X have private interests of a relevant kind?**

[Refer to Comments below on “relevant private interests”]

Answer 2: Yes, the applicable facts are clear and Employee X has job-relevant private interests.

- **Conclusion:** Employee X has a conflict of interest.

EXPLANATORY COMMENTS:

“Private interests of a relevant kind” refers to private/personal interests that could be affected by the performance of Employee X’s job duties or responsibilities. In this context, the private interests:

- Qualitatively, are of such a kind that it would be reasonable to believe the private interests could influence Employee X’s performance of their job duties (for example, close affiliations with people or organizations, or personal assets or investments, etc.); **or**
- Quantitatively, are of such financial value that it would be reasonable to believe that the private interest could influence Employee X’s performance of their job duties (for example, a significant family business interest, opportunity to make a large financial profit or avoid a large loss, etc.).

For example, an employee works in the Ministry of Municipal Affairs & Housing as a senior policy advisor who specializes in provincial grants provided to local governments in BC. The employee has a private consulting business that provides advice to local governments on how to best navigate the application process so that they may improve their chances of obtaining a local government grant. In this case:

- The employee’s relevant job duties might include advising local governments regarding the requirements of the grant process; establishing criteria for evaluating grant applications; and analyzing applications to make recommendations regarding who should be awarded a grant.

- The employee also has other relevant public duties, for example ensuring they do not use information acquired through their employment for personal benefit.
- The employee's private interests are securing additional income and utilizing their expertise in local government grants for purposes other than their government job;
- The employer's interests are a fair grant process where all applications are treated equally and applications are evaluated and approved according to objective criteria.

On this basis, it would be concluded the employee has job-relevant private interests and is therefore in a real conflict of interest. Steps must be taken by the employee at the direction of his ministry to ensure this conflict is addressed or resolved.

Test 2: Perceived (or Apparent) Conflict of Interest

- **Question 1: What duties or functions (i.e., public service duties) is Employee X responsible for?**

[Refer to the employee’s job description, information describing the functions of the employee’s organization, duties flowing from regulation or legislation, the Standards of Conduct, or other descriptions of duties]

Answer 1: Employee X is responsible for functions 1, 2 and 3 in ministry B.

- **Question 2: Does Employee X have private interests of a relevant kind?**

[Refer to Comments below]

Answer 2: The relevant facts are not certain, but it appears to be the case that Employee X may have job-relevant private interests.

- **Conclusion:** Employee X has a perceived (or apparent) conflict of interest.

EXPLANATORY COMMENTS:

“Private interests of a relevant kind” means the same thing as in Test 1. Recall that a perceived conflict of interest can be said to exist where an employee’s private interests would appear to a reasonable person to conflict with their job duties *even though there may not be an actual conflict*.

A perceived (or apparent) conflict of interest situation can be as seriously damaging to the public’s confidence in a public service employee, or the employee’s ministry/organization, as a real (or actual) conflict. A perceived conflict of interest should therefore be treated as seriously as a real (or actual) conflict, until such time as a final determination regarding the conflict is made.

For example, an employee has a close relative who has applied for a job in their ministry and the employee will participate on the interview panel to take notes, but will play no role whatsoever in making the hiring decision. This may be viewed as a perceived conflict (the employee is participating on the interview panel involving her relative) even though there is no real conflict (the employee is only taking notes not participating in any decision-making).

In most instances, the employer must address a perceived conflict in the same way as a real or actual conflict. So in the example above, the ministry would decide to remove the employee from the interview panel to eliminate the perceived conflict and thereby ensure the public interest is upheld.

In rare situations, the ministry may decide that the perceived conflict can be managed or mitigated in a way that makes the conflict permissible. For example, they might inform persons likely to be affected by the interview panel's decision that there is a perceived conflict in relation to the employee being involved with the interview process, but explain that there is no real conflict and therefore the ministry has decided to let the employee participate on the panel to take notes. It is recommended that decisions of this kind should only be made in consultation with the BC Public Service Agency or the employee's deputy minister.

Test 3: Potential Conflict of Interest

- **Question 1: What duties or functions (i.e., public service duties) is Employee X responsible for?**

[Refer to the employee’s job description, information describing the functions of the employee’s organization, duties flowing from regulation or legislation, the Standards of Conduct, or other descriptions of duties]

Answer 1: Employee X is responsible for functions 1, 2 and 3 in ministry B.

- **Question 2: Does Employee X have private interests of a relevant kind?**

[Refer to Comments below]

Answer 2: No, at the present moment Employee X has private interests which are not job-relevant, but it is reasonably foreseeable that, in the future, Employee X’s private interests could become relevant interests.

- **Conclusion:** Employee X has a potential conflict of interest.

EXPLANATORY COMMENTS:

“Private interests of a relevant kind” means the same thing as in Test 1.

The significant factor in this test is that Employee X has private interests which are currently not private interests of a relevant kind because Employee X’s job duties are currently unrelated to their private interests. However, if it is likely or possible that Employee X’s duties could change in such a way that their private interests could affect their performance of their job duties, then those interests would become relevant interests.

For example, a close relative works in the same ministry as Employee X, but has no contact with Employee X in any official role; however, it is reasonably foreseeable in the circumstances that because Employee X is a senior auditor with wide-reaching responsibilities, Employee X could be asked to audit the work of their close relative.

As a result, Employee X can be considered as having a potential conflict of interest. This situation could continue indefinitely and must therefore be distinguished carefully from real or perceived conflicts of interest (see Tests 1 and 2).

Appendix C: Criteria for Assessing the Severity of Conflicts of Interest

Assessing the severity of a conflict of interest depends on determining: (i) the likelihood that public interests or workplace decisions made in the relevant circumstances would be unduly influenced by a private interest, and (ii) the seriousness of the harm or wrong that could result from such influence.

The two tables below list the questions to be asked when determining (i) and (ii) above. These questions express criteria that identify the most important factors to be considered when making decisions about conflicts of interest.³

Table 1: Likelihood of Undue Influence

What is the likelihood that public interests or workplace decisions made in the relevant circumstances would be unduly influenced by a private/personal interest?

Questions / Criteria	Explanatory Comments
What is the value/impact of the private/personal interest?	<ul style="list-style-type: none"> • It is reasonable to assume that the greater the monetary value of the private interest, the more probable is its influence on the employee. • Monetary value is not the only appropriate measure of the potential impact of a private interest. For example, gifts from external entities may be of small value individually, but if provided regularly to an employee may create and sustain a relationship that threatens to influence the workplace decision-making of the employee.
What is the scope of the relationship to the private/personal interest?	<ul style="list-style-type: none"> • Scope of the relationship refers to its duration and depth. • Longer and closer associations increase the scope of the relationship and therefore the risk of an employee being unduly influenced by a private/personal interest. • Examples of such associations include: a multi-year consulting agreement, a position on a company board of directors, or holding an elected office.
What is the extent of discretion? How much latitude does the employee have in making important workplace decisions?	<ul style="list-style-type: none"> • Discretion most often varies according to organizational role. • For example, Executives and senior managers will typically have more discretion to make workplace decisions than administrative staff, and therefore are at greater risk of being unduly influenced by a private/personal interest.

³ Criteria for assessing the severity of a conflict of interest have been adapted from criteria developed by the National Center for Biotechnology Information, *Conflict of Interest in Medical Research, Education and Practice*.

Table 2: Seriousness Of Possible Harm

What is the seriousness of the harm that could result from the undue influence of a private/personal interest impacting the workplace decisions of an employee or other public interests?

Questions / Criteria	Explanatory Comments
<p>What is the value/impact of the public interest, or job duties or functions of the employee?</p>	<ul style="list-style-type: none"> • Assessing the seriousness of a conflict requires an examination of the specific public interest, job duties and/or functions at risk of harm in a particular situation. • For example, a public interest related to employees of Treasury Board Staff would be that they provide objective, unbiased advice to Treasury Board. Given the role of Treasury Board, it would be a <u>relatively serious harm</u> if a TBS employee did not fulfill this public interest and instead advised Treasury Board in order to serve a private interest. • In contrast, a public interest related to junior administrative staff might be that they serve the public with professionalism and courtesy. While an important public interest, it would be a <u>relatively less serious harm</u> that would result were the employee to fail to serve this public interest because of the influence of a private interest.
<p>What is the scope of the consequences?</p>	<ul style="list-style-type: none"> • The greater the scope of the consequences, the greater the potential for serious harm. • Conflicts that affect more employees, members of the public, etc., have a larger scope of consequences and therefore a larger scope for potential serious harm. • In rare circumstances, the scope of consequences may also include the employee's colleagues or organization. For example, a senior manager in the Environmental Assessment Office who also provides consulting services to a major oil and gas company may not only be compromising themselves, but also the trust placed in the EAO and its employees as environmental stewards, or even the integrity of the BC Public Service as a public institution.
<p>What is the extent of accountability?</p>	<ul style="list-style-type: none"> • Generally, a conflict of interest is more serious when the level of accountability is less extensive. • For example, if an employee is managing a project but regularly reports to an oversight committee, and also has their project decisions reviewed by a regulatory agency, then accountability for decision-making is bolstered and the risk of serious harm to a public interest resulting from the undue influence of private/personal interest is diminished. • By contrast, if an employee managing a project has little or no oversight, then accountability for decision-making is diminished and the risk of serious harm to a public interest is increased.

Appendix D: Options for Resolving or Mitigating a Conflict of Interest

Specific options for resolving or mitigating a conflict of interest can include one or more of several strategies as appropriate in the circumstances. The following list provides examples of such options but is not intended to be exhaustive.⁴

Divestment or liquidation of a financial interest held by the employee

- Eliminates the risk of a real, perceived or potential conflict of interest arising from an asset or liability held by an employee.
- Requires the employee to divest their assets or liabilities through sale or transfer to another person at arm's length, or relinquishment of the asset or repayment of the liability.

Assignment of a conflicting financial interest into a “blind trust” arrangement

- A blind trust places assets of an employee in a trust. The trustee is empowered to exercise all the rights and privileges associated with those assets, including the power to sell with no direction from or control by the employee placing the assets in trust. No information is provided to the employee except as required by law or the trust agreement.
- Selection of a trustee by the employee must be made with care. The trustee must have an arm's length relationship to the employee (e.g., cannot be a family member). The trustee can be an investment company, a trust, a public trustee or an individual, such as a lawyer.
- It is the employee's responsibility to demonstrate that they have established a blind trust that satisfies the concerns of the employer.

Recusal of the employee from involvement in affected decision-making processes

- Where a particular conflict is unlikely to regularly occur, it may be appropriate for the employee to continue in their current position but not participate in decision-making on any matters potentially related to the conflict.
- For example, this might be achieved by having an affected decision made by an independent third party or by abstaining from voting on decisions.
- When recusal is adopted, care must be taken to ensure that all affected parties to the decision understand why recusal is necessary to protect public service integrity, and understand their role in supporting the recusal.

Restriction of access by the employee to particular information

- Similar to recusal of the employee from involvement in making certain decisions, it may be appropriate for infrequently occurring conflicts to withdraw the employee from discussion

⁴ Options in this section have been adapted from options presented by the Organization for Economic Co-operation and Development (OECD), *Managing Conflict of Interest in the Public Sector*.

of certain proposals or plans, or to prevent the employee from receiving relevant documents and other information related to their private/personal interest.

- When restriction of access is adopted, care must be taken to ensure that all affected parties to the decision understand why the restriction is necessary to protect public service integrity, and understand their role in supporting the restriction.

Rearrangement or reassignment of the employee's duties and responsibilities or transfer or the employee to a non-conflicting position

- Where a particular conflict is likely to be ongoing or occur frequently, *ad hoc* recusal from decision-making or restriction to particular information is likely inappropriate and insufficient.
- In such cases, the option of rearranging or reassigning certain duties, functions or responsibilities of the employee may be considered where possible.
- Where duties, functions and responsibilities cannot be rearranged or reassigned in a way that resolves or sufficiently mitigates the conflict, transfer of the employee into another non-conflicting position may also be considered.

Resignation of the employee from the conflicting private interest

- Where the conflict cannot be resolved by other means (for example, by one or more of the measures listed above), an employee may be required to remove or eliminate the conflicting private interest.
- For example, if the employee is doing consulting work as a side-business that is in direct conflict with their public duties, the only resolution may be for the employee to cease the consulting work.

Resignation/termination of the employee from the public service

- Where a serious conflict cannot be resolved by other means, or where the employee is unwilling to take steps to remove or eliminate the private interest in conflict, the employee may be required to resign (or be terminated) from the public service.
- This option should only be considered following a thorough review and receipt of professional human resource advice and when other options available to resolve or mitigate the conflict are not apparent.