

BC Public Service - Conflict of Interest Guidelines: Questions and Answers

General Questions

Q: What are the conflict of interest guidelines?

A: All employees in the BC Public Service are required under the Public Service Oath Regulation and Standards of Conduct to avoid conflicts of interest, and to disclose possible conflicts they find themselves in to the employer. The guidelines were developed to establish a policy framework for disclosing, assessing and addressing conflicts of interest. There are two guidelines: one for employees seeking to disclose a conflict, and another for managers, ethics advisors and deputy ministers seeking to assess and address a conflict disclosed by an employee.

Q: What is the purpose of the guidelines?

A: The purpose of the guidelines is to strengthen the framework for ethics management in the BC Public Service and support the effective administration of the Standards of Conduct. The guidelines aim to ensure that employee disclosures related to a conflict are addressed according to fair, transparent and consistent procedures that assess the employee's interests against the need to serve the public interest. 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.

Q: Why are the guidelines necessary? Don't the Standards of Conduct already include provisions related to conflicts of interest?

A: The guidelines respond to a 2017 recommendation made by the Ombudsperson to strengthen the framework for ethics management in the BC Public Service by establishing a policy framework for assessing and addressing conflicts of interest. The guidelines are not a replacement or substitute for the Standards of Conduct, but rather support and clarify the Standards by providing additional guidance to employees, managers, ethics advisors and deputy ministers related to managing conflict of interest matters.

Q: What is a conflict of interest?

A: The definition of what comprises a conflict of interest under the Standards of Conduct has not changed. 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 official job duties, or in which an employee uses their office for personal gain. A conflict may arise wherever a set of circumstances exists that creates the risk of a real, perceived or potential conflict of interest.

Q: What is the difference between real, perceived and potential conflicts of interest?

A: A **real** conflict of interest has the same definition as 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*. 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. Please see the guidelines for examples of these different types of conflicts.

Q: I notice that ethics advisors play a role in the conflict of interest process. Who are ethics advisors and what do they do?

A: An ethics advisor is a deputy minister, associate deputy minister, assistant deputy minister, or executive lead who acts as an ambassador for ethics in their organization and serves as another point of contact for managers (and employees) on matters arising under the Standards of Conduct, including in relation to conflicts of interest. The ministry ethics advisor may provide direction to a manager (or employee) on how to address a conflict, or decide additional consultation is required with the BC Public Service Agency or other central agencies on matters that are complex or cannot be easily resolved.

Q: What is the role of the BC Public Service Agency? As the organization responsible for human resources in the BC Public Service, shouldn't they be the ones to decide how a conflict of interest must be addressed?

A: The BC Public Service Agency establishes the policy framework and other tools that support the conflict of interest process. The Agency is also responsible for assisting and advising employees, managers, ethics advisors and deputy ministers regarding various facets of this process. However, it is the deputy minister of the employee in question (or for simple or straightforward matters, the employee's manager or ethics advisor) that is ultimately responsible for deciding what steps (if any) must be taken to address a conflict. These decisions are frequently made in consultation with the BC Public Agency or other central agencies, but the Agency is not the final decision-maker.

Questions from Employees

Q: I am an employee seeking to disclose a possible conflict of interest. What should I do?

A: 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. This has not changed. What has changed is that there is a new form and guidelines to help you make the disclosure. Disclosure is required both at the outset of employment and an ongoing basis as circumstances may demand. For more information, and to obtain the disclosure form for reporting possible conflicts of interest, employees should review: Disclosing a Conflict of Interest: Employee Guideline & Disclosure Form.

Q: I am an employee seeking to disclose a possible conflict of interest. The Standards of Conduct and the conflict of interest guidelines require that I must disclose the matter to my manager (or ethics advisor). Before taking this step, may I reach out to the BC Public Service Agency for assistance in determining if I am in a conflict of interest that I must disclose to the employer?

A: Yes. If you are concerned you may be in a possible conflict, you may first reach out to the BC Public Service Agency for general advice regarding how best to proceed. You may also ask for guidance from your ministry ethics advisor. Where it is clear no conflict exists, this initial consultation may conclude matters. However, if there is **any** reason to believe a conflict may exist, the Agency and/or ministry ethics advisor will direct you to disclose the matter to your manager so that they may follow-up and ensure the ministry takes appropriate steps to assess and address the conflict, consistent with the Standards of Conduct and the conflict of interest guidelines.

Q: I am an employee but I'm not sure if I'm in a conflict of interest. What should I do? Are there any tools available to help me assess whether I'm in a possible conflict?

A: To assist your self-assessment, three standardized tests are provided in Appendix A of the employee guideline. These three tests help employees make a preliminary determination as to whether their private interests and their workplace/public duties relate to one another in such a way it can be concluded a real, perceived or potential conflict exists. Note the same three tests are included in the manager's guideline to provide a common basis for this assessment.

If you believe there is **any** reason to believe you are in a real, perceived or potential conflict of interest, you **must** disclose your concern to your manager (or ethics advisor). Your manager or ethics advisor will help you determine if you are, in fact, in a conflict of interest and advise you regarding steps to be taken (if any) to resolve or mitigate the conflict.

Q: I am an employee. I've reviewed the employee guideline closely and my conclusion is that I'm not in a real conflict, but might be in a potential or perceived conflict. Can I decide on this basis not to disclose the matter to the employer?

A: No. Potential or perceived conflicts of interest can be just as serious as real conflicts. Your responsibility is to ensure you disclose **any** situation you find yourself in that may constitute a real, perceived or potential conflict. It is the responsibility of your manager, ethics advisor and/or deputy minister to assess your disclosure and decide whether the circumstances pose unacceptable risks to the employer that must be addressed. Remember, ensuring conflicts of interest are resolved in favour of the public interest is a crucial part of maintaining public trust in the integrity of the BC Public Service.

Q: I am an employee. I've disclosed a possible conflict to my manager using the disclosure form in the employee guideline, and she agrees it is a conflict that will require further review and consideration by the employer. What happens next?

A: Following an employee disclosure, your manager, ethics advisor and/or deputy minister will assess your disclosure and 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 will:

- 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.

Once this process is completed, the employee will be notified in writing of the decision and be advised of what steps (if any) they must take to resolve or mitigate the conflict. For more information on the employer's process for reviewing possible conflicts of interest, please see: Assessing and Addressing Conflicts of Interest: Guideline for Managers, Ethics Advisors and Deputy Ministers.

Q: I am an employee who has disclosed a possible conflict. Following review, my ministry has determined that I am in a conflict, and directed me to taken steps to resolve the conflict, but I don't agree. Do I have to follow the ministry's direction to address the matter even if I feel confident no conflict exists?

Yes. When you became a public servant, you agreed to act with integrity, putting the interests of the public and the public service above your own personal interests, and avoiding all conflicts of interest. Accordingly, and as noted above, the responsibility of the employee is disclose **any** situation you find yourself in that may constitute a conflict, and to follow the employer's direction in resolving the conflict to ensure the public interest is upheld.

Q: I am an employee. I know I am in a conflict of interest, but am confident I can manage things in a way that won't be a problem for the employer. Is there any harm to just keeping things to myself?

A: Yes. As noted, your responsibility is to ensure you disclose **any** situation you find yourself in that may constitute a real, perceived or potential conflict. It is the responsibility of your manager, ethics advisor and/or deputy minister to assess your disclosure and decide whether the circumstances pose unacceptable risks to the employer that must be addressed. Where the employer concludes that a conflict of interest was known to the employee but **not** disclosed, consideration will be given to treating the situation as an instance of employee misconduct.

Q: I am an employee. I notice in the employee guideline that I am expected to advise my manager (or ethics advisor) of any possible conflict I may find myself in within 30 days of my becoming aware of the conflict. What happens if I don't disclose the possible conflict within 30 days?

A: The 30-day deadline exists to ensure that any conflict is assessed and addressed in a timely manner to ensure the employer fulfills its commitment to uphold the public interest. Where the employer concludes that a conflict of interest was known to the employee but **not** disclosed, consideration will be given to treating the situation as an instance of employee misconduct.

Q: I am an employee. I notice in the manager's guideline that on occasion an employee will bring forward concerns to their manager (or ethics advisor) regarding a possible conflict involving another employee. Do I have a duty to report conflict of interest concerns about other employees to the employer?

A: The Standards of Conduct establish a positive duty on employees to disclose possible conflicts of interest related to their own conduct, and to report wrongdoing. On this basis, you are encouraged to seek advice from the BC Public Service Agency and share conflict of interest concerns regarding another employee with your manager (or ethics advisor.) They will decide if further action is warranted or required.

Questions from Managers, Ethics Advisors and Deputy Ministers

Q: I am a manager who has received a disclosure from one of my employees regarding a possible conflict of interest. What should I do?

A: The first step is to review the disclosure and make a preliminary determination regarding whether a conflict does or does not exist. In many situations, this will be straightforward and you will be able to provide direction to the employee that resolves the matter. 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 matter is complex or cannot be easily resolved, you should reach out to the BC Public Service Agency, other central agency (where applicable) or your ministry ethics advisor for advice. For more information on how the employer manages possible conflicts, see: *Assessing and Addressing Conflicts of Interest: Guideline for Managers, Ethics Advisors and Deputy Ministers*.

Q: I am a manager or ethics advisor. One of my staff has expressed concern that another employee on our team may be in a conflict of interest. How should I proceed? Isn't it the responsibility of the employee involved in the possible conflict to disclose the matter to the employer?

A: 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, the manager's 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.

Q: I am a manager or ethics advisor. I've received a disclosure related to a possible conflict of interest from one of my employees. Are there tools available to help me determine if the circumstances disclosed constitute a real, perceived or potential conflict?

A: Yes. Three standardized tests are provided in Appendix A of the manager's guideline to help managers and/or ethics advisors determine if the private interests of the employee and their workplace/public duties relate to one another in such a way it can be concluded a conflict exists. Note the same three tests are included in the employee guideline to provide a common basis for this initial assessment. Where the matter is complex or cannot be easily resolved, or if you have any questions, you should reach out to the BC Public Service Agency for consultation and advice regarding how best to proceed.

Q: I am a manager or ethics advisor. I've reviewed the three assessment tests found in the appendix to the manager's guideline and believe my employee is in a conflict of interest. What's the next step in the assessment process? Are there additional tools available to help me figure out whether the conflict is serious enough that action must be taken to resolve or mitigate the conflict?

A: 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 in Appendix B of the manager's guideline. If you have any questions or require assistance, you should reach out to the BC Public Service Agency for consultation and advice.

Q: I am a manager or ethics advisor. I've reviewed the assessment tests to determine if a conflict of interest exists, as well as the criteria for determining the severity of the conflict, and believe that a significant conflict exists. What's the next step?

A: 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. Depending on the severity of the conflict, it may be appropriate at this stage to consult with the BC Public Service Agency and/or inform your deputy minister of the conflict and seek their direction on how to address the matter.

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 advice of the BC Public Service Agency and 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.

For specific examples of actions that may be taken by the employer to resolve or mitigate a conflict disclosed by an employee, see Appendix C in the manager's guideline.

Q: I am a manager or ethics advisor. In consultation with the BC Public Service Agency, and on the direction of my deputy minister, we have made a decision regarding how a conflict disclosed by my employee will be addressed and have communicated this decision to the employee. Are there any other steps to be taken?

A: Employee disclosures regarding possible conflicts of interest and the decisions made to resolve or mitigate such conflicts must be clearly recorded in formal documents. The employee's disclosure and the employer's response to the disclosure should be included 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.

To the extent reasonable and necessary, public service organizations should also consider communicating within the organization regarding the decision made to address a particular conflict to ensure misunderstandings about the conflict, and the decisions taken by the employer to respond, are minimized. 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. Managers, ethics advisors or deputy ministers seeking advice on communicating conflict of interest matters may contact the BC Public Service Agency.

Q: I am an ethics advisor managing a conflict of interest issue. I notice that my responsibilities include providing advice to managers and employees, seeking out guidance from the BC Public Service Agency where necessary, and also determining when a matter requires consideration and/or decision by the deputy minister. How do I know when I can provide advice myself, when I need to consult the BCPSA and when I need to talk to my deputy minister?

A: As an ethics advisor, the expectation is that you will be an ambassador for ethics in your organization, and another point of contact for managers (and employees) related to conflicts of interest. In most cases, you will want to ensure that an employee discloses a conflict of interest concern to their manager and completes the disclosure form found in the employee guideline. Where an issue is straightforward and easy to resolve, you may provide advice directly to the manager (or employee) you are advising and you must document that advice. However, where an issue is not straightforward or easily resolved, or if you have questions, you are expected to reach out to the BC Public Service Agency for consultation and advice re how best to proceed.

The role of your deputy minister is to act as the final decision-maker regarding how your organization will resolve or mitigate conflicts. In practice, it is expected the deputy minister will only become involved when the conflict is deemed significant in its potential impacts on your ministry, or cannot be easily resolved. As such, you will need to make a judgement regarding what matters should be elevated to the deputy minister for direction and decision. Given the overarching responsibility held by deputy ministers in relation to administering the Standards of Conduct in their ministry, you are encouraged to err on the side of caution and advise your deputy minister of any issue you believe may require their involvement.

Q: I am a manager or ethics advisor. My ministry has resolved a conflict of interest concern brought forward by an employee and would like to document the matter on the employee's personnel file as required by Step 5 in the manager's guideline. What is the process for this?

A: Employee personnel files are held by the BC Public Service Agency. When you have resolved a conflict of interest matter and are ready to include documentation on your employee's file, that documentation should be submitted by the employee's supervisor or manager using the AskMyHR service. AskMyHR ensures a streamlined and quick response since your request is sent directly to the correct service area. When submitting a request to MyHR regarding updates to an employee personnel file, please use "Supervising and Leading People" as your subject line to ensure the request is routed to the appropriate department within the Agency.

Q: I am a deputy minister. What are my responsibilities in relation to assessing and addressing conflicts of interest in my ministry?

A: The Standards of Conduct establish that employees who believe they may be in a possible conflict must disclose the matter to their manager (or ethics advisor). Where the issue is simple and straightforward, the manager and/or ethics advisor will be able to address matters without your direct involvement, often with the support and advice of the BC Public Service Agency.

Your primary role is to act as the final decision-maker regarding how your organization will resolve or mitigate a conflict disclosed by an employee. In practice, it is expected that a deputy minister will only become involved when the conflict is deemed significant in its potential impacts on your ministry, or cannot be easily resolved. As such, managers and ethics advisors must make a judgement respecting what matters should be elevated to you as the deputy minister for direction and decision. Managers and ethics advisors are encouraged to err on the side of

caution in this regard, and advise their deputy minister of any issue they believe may require the deputy's involvement.

Q: I am a deputy minister. I acknowledge that I act as the final decision-maker regarding conflict of interest matters in my organization, especially as it relates to those matters that cannot be easily addressed by the relevant manager or the ethics advisor. What if after reviewing the facts of the matter I'm still unsure of how best to proceed?

A: Where a conflict of interest matter has been brought to your attention by a manager or ethics advisor, and you are unsure of how to proceed, you are expected to reach out to the Deputy Minister of the BC Public Service Agency for consultation and advice. The DM of the BCPSA is responsible for providing timely advice to you regarding the application of the Standards of Conduct, including in relation to managing conflicts of interest.

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