



Conflict of Interest Practice Guidance for Members

April 20th, 2018

What is Conflict of Interest?

Conflict of interest is commonly defined as “a situation in which a person has a private or personal interest sufficient to appear to influence the objective exercise of his or her official duties”.

We have all heard “If you think you have a conflict, you probably do”. If this is the case, does it stand to reason that “If you think you don’t have a conflict, you probably don’t”? It is not that simple.

The awarding of self-governing status to a profession is a privilege and can be removed if the regulator or the professionals lose the trust of the public. To help ensure members conduct themselves in an ethical manner and to maintain the public's trust, the College has established conduct Rules for members, most notably, the Code of Ethics. The College has also developed various types of practice guidance documents for members, to help them understand and meet their obligations as professionals (principles of stewardship, practice guidance for members - support for interpreting the Code of Ethics, and guidance for members in decision-making roles). This document provides additional guidance to members around conflict of interest.

While concerns around conflict of interest have been around for a long time, it did not make its appearance in the courts until the mid 1900’s. Since then, legislation and the development of codified rules around conflict of interest have been developed by all levels of government, professional organizations, and businesses. Whether real, perceived, or potential, a conflict of interest can compromise a professional’s reputation, the public’s confidence in the members of an organization, and potentially by extension, the profession itself. Consequently, conflict of interest concerns should be dealt with quickly in an open and transparent manner.

How is Conflict of Interest interpreted by the College?

Principle 4 of the College Code of Ethics states that members must “Provide a professional standard of service to clients and employers by conducting business practices fairly, avoiding conflict of interest and respecting client/employer confidentiality”. It provides further direction that the member must avoid situations and circumstances where there is a conflict of interest, real or perceived. These circumstances or situations not only include decision-making situations but also discussions prior to finalizing the decision.

Members should:

- Have a good understanding of conflict of interest. It's not just about financial gain and can include any factors that a reasonable person might think is likely to bias a member's decisions, judgements, or recommendations.
- Understand that conflict of interest is a situation, where trust and confidence in the member's ability to act in an objective way may be questioned, not an accusation of wrongdoing. It is how you deal with the situation that is important.
- A member must be prepared to act if such a situation arises by disclosing a potential conflict and, if required, remove themselves from discussions and the decision-making process.
- 'Perception' of Conflict of Interest threshold is met when a reasonably well-informed third part, in possession of all the facts, would consider a conflict exists.

What are some examples of Conflict of Interest?

Conflict of interest can appear in a wide range of circumstances that, at first, may not seem to be areas of conflict.

Would you recognize whether you were in a situation that could be perceived as a conflict of interest?

Perception of self-dealing or self-interest:

You might find yourself being asked by a family member to do a Riparian Area Regulation (RAR) assessment on land they want to develop. There is perception of benefiting since there is a close family connection. It is not enough to cite personal assurance of your objectivity in conducting the assessment. The recommendation in such circumstances is to remove yourself from such a situation whether you directly benefit or not since your objectivity may be impaired.

Situations of self-interest may not always be so clear. Consider the situation where you are appointed to a committee tasked with determining a financial and/or merit award for a company employee. Your niece is one of those nominated. While it is clear that you must remove yourself from decision-making, you must also remove yourself from any group or individual group member discussions so as not to influence the outcome.

In situations where, upon completion of a project, you recommend further investigation or the use of a specific technique in which you are the expert, it may appear that your independence is fettered by the desire for future work. It is recommended that clear, detailed rationales be provided to support the recommendations to ensure that clients understand that your recommendations are science-based and intellectually honest.

Accepting benefits:

Accepting gifts can be viewed as influencing the outcome of one's professional recommendations. The Conflict Code developed by the federal government has placed an upper limit on such benefits. Accepting a fishing trip from a client in addition to the agreed financial remuneration in the contract may create distrust from third parties who may be impacted by the recommendations

you make on behalf of your client. It is recommended that all transactions be clearly documented in a contract or legal agreement between the professional and client.

Using confidential information:

Confidential information is intellectual property that is acquired while liaising with an organization or individual in which you are permitted access to privileged information that is not in the public domain.

A member should exercise care to not disclose confidential information acquired in connection with a client, as a result of a volunteer activity, or in carrying out paid work. This situation can occur when you have a client that is doing work on a project in which you had previous relationship.

Consider the situation where an environmental organization has developed an action plan for an issue and is looking for someone to organize and initiate it. One of their volunteers, who works for a consulting company, bids on the work using the knowledge gained through their volunteer work with the organization.

The transfer of proprietary information across projects is a breach of the Rules and care must be taken to ensure that this type of information does not inform your work for the new client.

Outside employment:

If you are considering conducting business outside of your regular employment you need to ensure there is no conflict with your primary employment.

Consider that you work for a large government department which issues development permits. Because of your expertise you are offered an opportunity to work in your off-hours for a proponent who wants to develop a ski hill or you are asked to volunteer for an organization that is trying to stop the development. Although you would not be directly involved in issuing this specific permit the perception may be that that you are acting simultaneously for two clients who have competing or conflicting interests. Unless your employer has approved of this outside employment, it is recommended that you not accept the contract.

Post-employment:

In today's job market it is uncommon for someone to remain with the same employer throughout their career. Often, individuals will move from one organization to another for various reasons. It is important that the member, when moving to a new employer or volunteer position, not take improper advantage of their knowledge regarding confidential information which might benefit a new employer. All information received during an employment, including data gathered in the course of one's work, is owned by that employer unless it is in the public domain. Expertise gained by an individual through work with an employer, however, may be used freely in subsequent employments. Often, there are agreements in place which set limits related to dealings with future clients. Members are encouraged to obtain legal advice prior to working with clients with whom they have an existing relationship with a former employer.

Advocacy activities:

As individuals with specialized knowledge, professionals may wish to volunteer with organizations or causes which promote their personal beliefs but also overlap with their professional practice. To avoid a conflict of interest situation (or a perceived conflict), the member must make a full disclosure regarding their relationship to the client or employer and the member's professional status or remove themselves from one of the roles. Members should take care to ensure information provided is science-based with an intent to inform as opposed to taking adversarial positions.

What happens if I receive a complaint from the College for being in a Conflict of Interest?

If a conflict of interest allegation is brought forward in a complaint against a member for investigation by the Discipline Committee, all circumstances are considered and failure to take steps to remedy any real or perceived conflict will be given particular weight.

Development of precise rules regarding conflict of interest to cover all possible situations is not possible. Members should be guided by their conscience and common sense. The standard advice in any potential conflict of interest situation is to recognize it, disclose it, and remove oneself from the situation.