

APSC 450 Professional Engineering Practice

Notes on Conflicts of Interest

These notes refer to particular slides in the presentation entitled "*Conflicts of Interest*"

Slide 2

A more precise definition of a conflict of interest:

A conflict of interest is a situation in which some person P (an individual or corporate body) stands in a certain relation to one or more decisions. P has a conflict of interest if, and only if,

1. P is in a relationship with another requiring P to exercise judgment in the other's behalf, and
2. P has a (special) interest tending to interfere with the proper exercise of judgment in that relationship.

The kind of exercise of judgment required for a conflict of interest must involve P's having considerable latitude and discretion in acting on behalf of the other party. The kind of "interest" that satisfies condition 2 is any influence, loyalty, concern, emotion, or other feature of a situation tending to make P's judgment less reliable than it would normally be.

Source: Davis M and Stark A, 2001. *Conflict of Interest in the Professions*. Oxford University Press

Slide 4

Canadian courts have developed a basic test for determining whether fiduciary obligations arise from a relationship: first, the fiduciary has the ability to exercise some discretion or power; second, the fiduciary can unilaterally exercise that power to affect the interests of the beneficiary; third, the beneficiary is in a position of vulnerability at the hands of the fiduciary.

Usually the obligations of an engineer are not fiduciary.

Slides 11 and 12

In slide 11 both A and B form joint ventures with C to bid on a project. Can costs and methods really be the same for both A and B? Suppose A wants to build the project in a different way. Then what? C must be impartial in such a situation and provide objective advice to both parties? This is difficult.

Slide 12 is a case where one company (EE) designs two different projects for two competing firms, X and Y. No proprietary information should leak from X to Y and vice versa.

The situation could become an actual Col if EE accepts favorable treatment from either X or Y. For example, suppose the contract between X and EE provides financial incentives to EE to accelerate the design work in order that X can get to market faster. This could bias EE's judgment.

These two cases illustrate how difficult it can be to determine what kind of Col you are dealing with. As stated before, the kind of Col really doesn't matter because it's the perception that counts. In reality, no reasonable company in the position of A, B, C, X, Y, or EE would deliberately get involved in such situations.

Slide 15

It is interesting to compare how different professions deal with conflicts of interest. Generally, the professions are very concerned about the damaging effects of conflicts of interest and provide significant guidance on how to deal with them.

- See discussion of Principle 4 in EGBC Guidelines to code of ethics:
<https://www.egbc.ca/getmedia/9356c6ab-1545-4949-9c22-52f2b5cbbffe/APEGBC-Code-of-Ethics-Guidelines.pdf.aspx>
- Guidelines for physicians and surgeons with examples of how Cols arise in practice:
<https://www.cpsbc.ca/files/pdf/PSG-Conflict-of-Interest.pdf>
- The code of ethics for social workers does not explicitly mention "conflict of interest", but see items 5 and 7 at this link:
<https://www.bcasw.org/about-bcasw/casw-code-of-ethics/>
See also the discussion of Value 4 at this link:
https://www.casw-acts.ca/sites/default/files/attachements/casw_code_of_ethics.pdf
- The Law Society has lots to say about conflicts of interest:
<https://www.lawsociety.bc.ca/support-and-resources-for-lawyers/act-rules-and-code/code-of-professional-conduct-for-british-columbia/>

Public sector versus private sector

The standards concerning conflicts of interest for people working in the public sector (e.g., government) are generally stricter than the standards in the private sector. In the private sector, an actual conflict of interest might be grounds for disciplinary action or dismissal. However, in the public service even an apparent conflict of interest can be grounds for disciplinary action. In Canada, at least one case in the Federal Court of Appeal supports this distinction. See explanation at this link.

<https://www.canada.ca/en/treasury-board-secretariat/services/values-ethics/conflict-interest-post-employment/apparent-conflict-interest.html#a3>

Note that Principle 4 of the EGBC Code of Ethics (and any similar principle in other jurisdictions) applies to any kind of conflict of interest regardless of the sector in which a registered engineer works.

Slides 17-22

The interactions between automatic and controlled processes has received much attention in psychology. These interactions are the reasons why conflicts of interest are so prevalent despite all efforts to prevent them.

The brain is divided into a limbic system that is responsible for emotions and a cognitive system responsible for thinking (or, more formally, cognition). The limbic system is where automatic processes occur and is responsible for fast reactions that aid survival. It's an ancient system sometimes called the "lizard brain". Brain scans done while subjects are confronted with problems and dilemmas have shown that these systems work together and therefore there is no such thing as emotion-free thinking. Thus, personal interests that provoke an emotional response will always interfere with thought processes needed to perform professional duties. The result: conflicts of interest are inevitable.

Paul Thagard of the University of Waterloo provided a very readable account of the psychology of conflicts of interest. It's an easy read - you don't have to be a psychologist or philosopher to understand it. The paper is available on the website.

Thagard P, 2007. The Moral Psychology of Conflicts of Interest: Insights from Affective Neuroscience. *Journal of Applied Philosophy*, 24(4).

See also

<https://www.psychologytoday.com/ca/blog/hot-thought/201701/what-s-wrong-conflicts-interest>

Slide 27

Experiments and evidence suggest that professionals who disclose a Col

- will know their advice may be discounted and may therefore exaggerate or "speak louder"
- become less wary of self-interest affecting advice since they may feel disclosure gives them a "moral licence" to say what they want and the client will understand

and that clients of conflicted professionals

- do not know what to do with disclosure or may not understand the severity of the conflict
- do not discount advice as much as they should

The client may not have the ability to make a critical assessment of advice given by the conflicted professional. In fact, the client hired the professional for his/her expertise.

Source: Cain et al, 2005. The dirt on coming clean: perverse effects of disclosing conflicts of interest. *Journal of Legal Studies*, 34, 1-25