



Encyclopedic Dictionary of Public Administration

The reference for understanding government action

CONFLICT OF INTEREST

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A conflict of interest is a situation that occurs when an individual has professional or personal interests that enter into competition or create a tension with the appropriate discharge of his or her public duty. These interests may influence or appear to influence the way in which the individual carries out the tasks that are part of his or her duties.

When the actors concerned belong to a public service, a 'conflict of interest' is said to involve "a conflict between the public mission and the private interests of a public official, in which the public official has private-capacity interests which could improperly influence the performance of their official duties and responsibilities" (OECD, 2004, p. 15).

There are three types of conflict of interest situation. A real conflict is a situation in which it is proven that a public official has given priority to his or her personal interest over another interest that he or she is mandated to protect as part of his or her duties. A potential conflict is a situation that is likely to occur, but has not yet occurred because the public official has not yet assumed the duties or responsibilities that may create tension between the various interests present. An apparent conflict is a situation that could reasonably be interpreted in public opinion as likely to become a real conflict. The conflict is only a possibility, because there is nothing to support suspicions that personal interest has been given priority (Transparence international France, 2010).

The conflict between personal interests and the higher interests of public service can take myriad forms. One example is activities or employment practiced outside of public service that may compromise the neutrality of the public service. Another is preferential treatment and assistance given to family members, friends and any individual or entity connected with the government when making a decision related to the processes and duties of which public officials are directly responsible or involved in as stakeholders. A final example is any gift, hospitality or other benefit "that may have a real or apparent influence on their objectivity or impartiality in carrying out their official duties or that may place them under obligation to the donor" (Treasury Board of Canada Secretariat, 2003, p. 8). Accordingly, personal interests are not limited to financial or pecuniary interests or interests that provide direct personal gain to the public official (Office of the Commissioner of Lobbying of Canada, 2009).

The connection between conflict of interest and corruption is not immediate. However, side activities could potentially have an improper influence on the conduct of public officials – for example, doing a favour for money is a situation in which a real conflict of interest has completely

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turned into a form of corruption. If not adequately identified and dealt with, conflict of interest situations can lead to corruption in the public system. (OECD, 2004). For that reason, preventing conflict-of-interest situations is an integral part of strategies used to fight corruption (Transparence internationale France, 2010).

When public officials find themselves in a conflict of interest, this does not necessarily mean that they are corrupt. In and of itself, such a situation does not prove that public officials would give priority to their personal interest over the public interest of which they are guarantors. However, situations of real, potential or apparent conflict of interest can seriously undermine the efforts of public authorities to conserve and enhance public confidence and trust in the integrity, objectivity and impartiality of the public service (Treasury Board of Canada Secretariat, (2003). For that reason, public authorities now seem to be increasingly concerned about these situations and are taking more initiatives to develop effective conflict of interest policies (OECD, 2004).

There are two major approaches to fighting situations of conflicting interests: the prevention approach, whereby legislation is created to prevent situations of conflicting interests from arising, and the control (or suppression) approach, in which each situation is resolved as it arises by *a posteriori* disciplinary or criminal sanctions. Public authorities currently seem to prefer the prevention approach (Treasury Board of Canada Secretariat, 1998; OECD, 2004). Therefore, that approach will be discussed here.

Since it is impossible to prevent all situations that may give rise to a conflict of interest, this approach is based on the application of two general principles. These principles are stated in the Values and Ethics Code for Public Service in Canada as follows: 1) the obligation of all public officials, in carrying out their official duties, to “arrange their private affairs in a manner that will prevent real, apparent or potential conflicts of interest from arising”; and 2) “if a conflict does arise between the private interests and the official duties of a public servant, the conflict should be resolved in favour of the public interest” (Treasury Board of Canada Secretariat, 2003, p. 6).

There are a number of traditional procedures that can help prevent conflict-of-interest situations, including confidential and public disclosure, formal (or solemn) declaration, withdrawal and delegation, and various forms of divestment. Disclosure is a declaration made by public officials concerning their assets and must be regularly updated. It contains the details of the family estate, as well as a list of all the other interests likely to create a situation of risk (Transparence internationale France, 2010). Disclosure is the cornerstone of the American regulatory system – in particular, the *Ethics in Government Act* – as concerns conflicts of interest in the duties of lawmakers. This system is based on the principle that the public, which exercises constant oversight, shall be informed and kept up to date on all legislative activities. However, the mere disclosure of interests does not necessarily mean that the conflict will disappear or that it will be resolved in favour of the public interest (Treasury Board of Canada Secretariat, 1998).

Disclosure must then be supplemented by other prevention systems. Declaration and withdrawal (also called recusal) are necessary when public officials become aware, on account of a personal interest, that participating in an official activity or making a specific decision would place them in a conflict of interest. The problem with the declaration and withdrawal system is that the personal interests of public officials may constantly require them to withdraw from their official duties (Treasury Board of Canada Secretariat, 1998). Since disclosure is insufficient, and declaration and withdrawal may be ineffective, it is necessary to resort to divestment. Divestment means selling an asset to a third party at arm's length or placing that asset in a blind trust. In the latter case, this only occurs if the value of the asset may be directly or indirectly influenced by the decisions and activities of the public official as part of his or her responsibilities and duties

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(Treasury Board of Canada Secretariat, 1998; Treasury Board of Canada Secretariat, 2003). The assets subject to divestment depend on the public official's duties and responsibilities and his or her access to information that would benefit him or her upon its release. A non-exhaustive list of these assets includes publicly traded securities; interests in private companies and family businesses that do business with the government; and commodities, futures and foreign currencies held or traded for speculative purposes (Treasury Board of Canada Secretariat, 2003). Once again, the decision to divest should be based on an assessment of the risk that public officials may end up in a real, potential or apparent conflict between carrying out their official duties and their assets.

As the ties between the public sector and the private sector grow closer, the risks of new forms and conflict-of-interest situations will also multiply (OECD, 2004). Examples include the real, potential or apparent conflicts of interest that may result from forms of collaboration, such as public-private partnerships, self-regulation, staff swaps, sponsorships and post-employment negotiations.

To keep up with the pace of change in the public system and the constant complexification of situations, further systemic supervision and conflict of interest management approaches have been developed of late. The concept of conflict of interest management in the public sector, which was first mentioned by the OECD in its 2004 report, consists in a series of basic principles, policy frameworks and institutional strategies that are intended to manage these issues. The guidelines proposed by this organization are intended to assist in formulating and implementing consistent and systematic national conflict of interest management policies in the public sector (OECD, 2004).

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