



Conflict of Interest for Trustees

Guidelines for matters related to collective bargaining
or the administration of a collective agreement

October 8, 2024

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Overview

Conflict of interest prohibits an elected official from taking part in a decision in which they have an interest that could give rise to the perception of bias. The purpose of this document is to provide guidance to school districts and Trustees regarding conflict of interest for matters related to collective bargaining or the administration of a collective agreement.

Legal tests

For Trustees of a Board of Education (Board) in British Columbia, there are two sources of rules relating to conflict of interest: the *School Act* and common law.

- Pursuant to the *School Act*, a Trustee is prohibited from participating in or influencing decisions of the Board in respect of which the Trustee has a “pecuniary interest”. The *School Act* defines pecuniary interest as a direct or indirect interest that could monetarily affect the Trustee or their spouse, parent, or child, but excludes interests that are so remote or insignificant that they could not reasonably be regarded as likely to influence the Trustee.
- At common law, the test for a conflict of interest is whether or not a reasonably well-informed person – viewing the matter realistically and practically and having thought the matter through – would conclude that a Trustee’s decision-making could be influenced by the Trustee’s personal interest in a matter.

A conflict of interest exists if the threshold for either test is met.

Note that the law makes no distinction between *actual* and *perceived* conflicts of interest. Neither test requires that a Trustee’s decision-making be *actually* affected by a personal interest; rather, a conflict of interest exists if circumstances exist whereby the Trustee *could* be influenced by a personal interest (as prescribed by the *School Act* or as determined by a judge based on the reasonable person test at common law).

Application

Questions on Trustee conflict of interest may arise at the local Board level or at the provincial BCPSEA level through the application of BCPSEA’s constitution and bylaws.

Board level

At the Board level, a Trustee in a conflict of interest must not take part in the discussion of, vote on, or otherwise attempt to influence voting on the matter in-question.

Responsibility for determining whether a Trustee is in conflict for the purposes of a matter before a Board falls jointly upon the Trustee and the Board; BCPSEA’s role is advisory only.

BCPSEA level

At the BCPSEA level, pursuant to BCPSEA's constitution and bylaws, a Trustee in a conflict of interest may not be elected to the BCPSEA Board of Directors, be designated as their Board's BCPSEA Trustee Representative, or represent a Board at a BCPSEA general meeting or any other BCPSEA function.

Responsibility for determining whether a Trustee is in conflict for the purposes of applying BCPSEA's constitution and bylaws rests with BCPSEA.

Guidelines

Interests of concern

The legal framework of labour relations in British Columbia contemplates that the interests of employers and unions are likely to be adverse to one another. When it comes to matters related to collective bargaining or the administration of a collective agreement, a conflict of interest is likely to arise where a Trustee may have a personal interest (unrelated to their role as Trustee) in collective bargaining outcomes or in the interpretation and application of a collective agreement.

1. Involvement with a union within the K-12 public education sector

Involvement (as an employee, elected official, or other form of active affiliation) of a Trustee with a union that represents teachers or support staff in the K-12 public education sector is a clear conflict of interest for matters related to collective bargaining or to the administration of a collective agreement.

In such cases, the conflict of interest arises from the individual's competing duties of loyalty to the union and to the Board. This conclusion is true regardless of whether or not the Trustee's involvement is accompanied by a monetary benefit.

2. Unionized employment within the K-12 public education sector

A Trustee employed by a union within the K-12 public education sector is another clear conflict of interest for matters related to collective bargaining or to the administration of a collective agreement.

In such cases, the conflict of interest arises from the potential impact to the Trustee's terms and conditions of employment. Courts have found that, due to the interconnected nature of collective bargaining in the K-12 public education sector, collective bargaining outcomes in one school district are likely to impact collective bargaining outcomes in other school districts: *Wynja v. Halsey-Brandt*, 1993 CanLII 593 (BC CA).

3. Unionized employment outside of the K-12 public education sector

A Trustee employed by a union outside of the K-12 public education sector may also be a conflict of interest for matters related to collective bargaining or to the administration of a collective agreement where: i) the Trustee's employer is subject to oversight by the Public Sector Employers' Council (PSEC) Secretariat, or ii) the Trustee's union is connected with a support staff union in the K-12 public education sector: CUPE, Teamsters, IUOE, BCGEU, WVMEA, CMAW, USWA, Trades Bargaining Council, NTSA.

In such cases, the conflict of interest arises from the potential impact to the Trustee's terms and conditions of employment due to the interconnected nature of collective bargaining in British Columbia.

Family or other personal relationships

The above-noted interests of concern can also give rise to a conflict of interest where they involve family members or other personal relationships of a Trustee.

1. Spouse, parent or child

Section 57 of the *School Act* deems the pecuniary interests of a Trustee's spouse, parent, or child as one and the same as those of the Trustee for the purpose of determining conflict of interest. These terms are defined broadly to extend beyond biological or formalized legal relationships and include relationships established through marriage (stepchildren and parents-in-law) and close relationships akin to those categories (including common-law spouses).

2. Extended family and close personal relationships

Pecuniary or other benefits to extended family or other close personal relationships can also trigger conflict of interest concerns for a Trustee at common law. Whether or not a particular set of circumstances crosses the common law threshold for conflict of interest is likely to depend upon the nature of the benefit and the nature of the relationship. The more significant and direct the potential benefit to the individual and the more proximate the relationship between the Trustee and the individual, the more likely it is that a court would conclude that a reasonable person would believe that the Trustee's decision-making could be influenced by their personal interest in a matter. In terms of assessing the proximity of the relationship, consideration would be given to length of time, geographic proximity, frequency of communication, and financial dependence.

Common scenarios

BCPSEA has prepared the table below outlining a number of common scenarios that could give rise to a conflict of interest. The purpose of this table is to guide Boards in assessing potential conflicts of interest at the Board level and to provide transparency about BCPSEA criteria for assessing eligibility to participate in BCPSEA matters pursuant to BCPSEA's constitution and bylaws.

Scenario	Participation in Board matters	Participation in BCPSEA matters
1. Trustee or their spouse (including common law) or their parent or child (including in-laws) is employed by a school district in a unionized position within the K-12 public education sector.	Clear conflict of interest	Not permitted
2. Trustee or their spouse (including common law) or their parent or child (including in-laws) is an elected official of, employed by, or otherwise actively involved in a union that represents teachers or support staff in the K-12 public education sector.		
3. Trustee is employed in a unionized position outside the K-12 public education sector, but within the broader BC public sector subject to the PSEC Secretariat mandate.	Likely conflict of interest	Not permitted
4. Trustee is employed in a unionized position outside the K-12 public education sector, but which union also represents support staff in the K-12 public education sector: CUPE, Teamsters, IUOE, BCGEU, WVMEA, CMAW, USWA, Trades Bargaining Council, NTSA.		
5. Trustee is an elected official of, employed by, or otherwise actively involved in a union outside the K-12 public education sector, but within the broader BC public sector subject to the PSEC Secretariat mandate.		
6. Trustee's spouse, parent, or child (including in-laws and common-law relationship) is employed in a unionized position outside the K-12 public education sector, but within the broader BC public sector subject to the PSEC Secretariat mandate.	Should be disclosed by Trustee to Board To be considered by Board and Trustee on a case-by-case basis	Must be disclosed by Trustee to BCPSEA To be considered by BCPSEA on a case-by-case basis
7. Trustee's spouse (including common law) or their parent or child (including in-laws) is employed in a unionized position outside the K-12 public education sector and that union also represents support staff in the K-12 public education sector: CUPE, Teamsters, IUOE, BCGEU, WVMEA, CMAW, USWA, Trades Council, NTSA.		
8. Trustee's spouse (including common law) or their parent or child (including in-laws) is an elected official of, employed by, or otherwise actively involved with a union outside the K-12 public education sector, but within the broader BC public sector subject to the PSEC Secretariat mandate.		
9. A close personal relationship of the Trustee is an elected official of, employed by, or otherwise actively involved in a union that represents teachers or support staff in the K-12 public education sector or is employed in a unionized position in the K-12 public education sector. Close personal relationships may include siblings, grandparents, grandchildren, cousins, aunts, uncles, and other extended family relationships, as well as close friendships and romantic relationships.		

For more information, please refer to the Frequently Asked Questions section at the end of this document.

Processes for Boards

Duty of confidentiality

All Trustees, whether in-conflict or not, have a duty not to use or disclose confidential information, including confidential information related to collective bargaining or the administration of a collective agreement.

Responsibility of Trustees in-conflict

Pursuant to section 58 of the *School Act*, if a Trustee has a pecuniary interest in any matter and is present at a meeting at which the matter is being considered, the Trustee must:

- a. disclose their pecuniary interest and the general nature of the pecuniary interest;
- b. not take part in the discussion of or vote on any question in respect of the matter; and
- c. not attempt in any way, whether before, during or after the meeting, to influence the voting on any question in respect of the matter.

In addition, if a meeting is not a public meeting, the Trustee who has a pecuniary conflict of interest must leave the portion of the meeting during which the matter is under consideration.

The same responsibilities apply for common law conflicts of interests.

Risk and liability

Pursuant to section 62 of the *School Act*, Members of the public can make a court application if they believe that a Trustee has taken part in the discussion or vote of a matter while in a conflict of interest or otherwise contravened the requirements of section 58 of the *School Act*.

- If a court finds a Trustee has knowingly breached the *School Act* provisions, the court must vacate the Trustee's seat and may order the Trustee to pay financial restitution. Further, the Board may declare that the decision in question be declared void.
- If a court finds a Trustee has participated in a decision contrary to the common law rules relating to conflicts of interest, the court may set aside the Board's decision in that matter.

The process and potential outcomes would be of the same kind for common law conflicts of interest.

Assessing potential conflicts of interest

Where a Board is concerned that a Trustee may have a disqualifying conflict of interest, the Board should obtain information about the apparent conflict, refer to the guidance in this document, review their Trustee Code of Conduct, and, where necessary, seek legal advice.

Based on the information, the Board may decide to:

- prevent the Trustee from participating in the decision-making process; or
- continue with the knowledge that there is a potential conflict of interest.

Boards may consider ways to mitigate potential conflicts of interest, however, please note that mitigation is not a legal defence to a conflict of interest complaint.

Removing a Trustee in-conflict

A Board can, by resolution, prohibit a Trustee from participating in a debate or voting on a matter in respect of which the Board is of the view that the Trustee has a conflict.

Alternatively, section 70 of the *School Act* provides that a majority of the Trustees present at a meeting of the Board may expel a Trustee from the meeting for improper conduct, which can include participating in discussions or otherwise influencing the vote on a matter in which the Trustee has a conflict of interest or disqualifying bias.

Any decision to prohibit or expel a Trustee must be made through a fair process.

Quorum

If the number of Trustees able to participate in a meeting is insufficient to constitute a quorum due to conflict of interest concerns, the Board may apply to the Court to allow it to proceed.

Note that, through such an application, the Court does not rule on the existence or absence of a conflict interest – it simply empowers the Board to consider, discuss, and vote on the specific matter by either relieving the legal requirement for quorum or by temporarily relieving the application of the *School Act* and/or the common law with respect to conflict of interest.

Questions

Trustees should direct questions regarding conflict of interest to their school district's Secretary Treasurer or Superintendent, or to the BC School Trustees Association.

Secretary Treasurers and Superintendents with questions regarding conflict of interest for Trustees may contact Chris Beneteau, Executive Director, Labour Relations (LR Liaison and Legal Services) at chrisb@bcpsea.bc.ca.

Frequently Asked Questions

BCPSEA level questions

1. **If I am in a conflict of interest position, can I be my Board's BCPSEA Trustee Representative?**

No, you cannot be the BCPSEA Trustee Representative for your Board of Education.

2. **If I am in a conflict of interest position, can I be elected to BCPSEA's Board of Directors?**

No, you cannot be elected to BCPSEA's Board of Directors.

3. **If I am in a conflict of interest position, what is my involvement in collective bargaining?**

You will be made aware of process and timeline updates, as well as bargaining outcomes. You cannot be involved in planning, discussion, execution, or ratification.

4. **If I am in a conflict of interest position, what is my involvement in labour relations?**

You cannot be involved in labour relations issues.

5. **If I am in a conflict of interest position, what communications will I receive from BCPSEA?**

You will receive communications that are public in nature. You will not receive communications related to labour relations issues, including implementation of collective agreements, dispute management, grievances and arbitrations, and collective bargaining planning and execution.

Clarifying questions

6. **What is a "child" for the purposes of conflict of interest under the *School Act*?**

"Child" includes a biological or adopted children and any person whom the trustee has demonstrated a settled intention to treat as a member of his or her family. In most circumstances, "child" would include a "step-child". It is important to note that case law makes no distinction between a dependent child and an adult independent child.

7. **What is a "spouse" for the purposes of conflict of interest under the *School Act*?**

"Spouse" means a person who is:

- married to a trustee, or
- who is living with the trustee in a marriage-like relationship and has lived as such for a continuous period of at least two years.

A person is not a "spouse" if they are separated and living apart from the trustee and they have entered into a separation agreement or there is a court order recognizing the separation.

8. Is it a conflict of interest if a Trustee is involved in a union?

Possibly. Whether or not a Trustee's involvement in a union (including membership, employment, or other forms of active participation) results in a conflict of interest for matters related to collective bargaining or the administration of a collective agreement will depend upon the connection that union has with the K-12 public education sector and/or the BC broader public sector. Please see the common scenarios table in the Guidelines (page 5) for guidance on specific scenarios.

9. Is it a conflict of interest if a Trustee has a family member who is involved in a union?

Possibly. A child, parent, or spouse of a Trustee involved in a Union would be assessed in the same manner as if the Trustee was involved. For extended family members or close personal relations, whether or not their involvement in a union results in a conflict of interest for matters related to collective bargaining or the administration of a collective agreement would depend upon nature of the relationship and the degree of connection of the union with the K-12 public education sector. Please see the common scenarios table above for guidance.

10. Is it a conflict of interest if a Trustee or their family member is a retired teacher or support staff employee?

Normally no. If the Trustee or their family member has retired long enough ago that a retroactive wage settlement would not result in the receipt of any payments, then the fact that they were previously employed in the K-12 public education sector is unlikely to give rise to a conflict of interest provided there are no immediate plans to return to employment in the public sector.

11. Is there any distinction in how conflict of interest applies when it comes to provincial bargaining vs. local bargaining?

No. If a Trustee is in a conflict of interest with respect to provincial bargaining, then they would also be in conflict with respect to local bargaining (and vice versa).

12. Is there any distinction in how conflict of interest applies when it comes to collective bargaining vs. application of a collective agreement?

No. If a Trustee is in a conflict of interest with respect to collective bargaining, then they would also be in conflict with respect to the application of a collective agreement (and vice versa).

13. Does conflict of interest apply to school district management staff?

Conflict of interest, as the concept exists for Trustees under the *School Act* and at common law, does not apply to school district employees. Rather, school district employees have a contractual and, in some cases, a fiduciary duty of loyalty to the school district and must at all times act in the best interests of the school district as their employer. Failure to do so can result in disciplinary action up to and including termination of employment. The Board may, at its discretion, establish specific policies setting out when an employee may be required to disclose a conflict-like interest and/or when an employee may be precluded from exercising their duties due to a conflict-like interest.