CLARIFYING CONFLICTS OF INTEREST

A draft discussion paper for National Health and Medical Research Council
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Introduction
If an investigator participates in the assessment of his own grant funding application or if a company director votes on the letting of a contract to himself, we say readily that each of them has a conflict of interest. By that we mean that their involvement in the decision is improper and therefore the decision itself is unsound.

These are simple examples. How are they best defined? The expression 'conflict of interest' refers to conflicting obligations or influences to which an individual is subject in the course of a relationship or activity. Conflicts of interest often involve financial interests, but what other matters should count as an "interest"? Some have tried to define the nature of an 'interest' and the conditions for a 'conflict' more precisely, while others have sought to distinguish conflicts of interest from conflicts of loyalties or obligations. 1

This paper seeks to provide a definition of a conflict of interest, of what an interest can be, in ethical and other contexts and suggest some ways that such conflicts might be managed.

Defining conflicts of interest
Conflicts of interest may be the result of malign motivations of particular individuals but more often arise out of the structural features of relationships or practices. An interview committee member who is determined to block a specific applicant out of revenge has a conflict of the first, motivational, kind, while an investigator in a narrow field of expertise who is asked to review a competitor’s application has a conflict of the structural kind. In many situations of the latter kind, it is impossible to eliminate conflicts of interest. Rather, any possibility that they may arise and any situation where they have arisen should be identified and steps taken to disclose conflicts of interest openly and control their impact. The need for identification of potential rather than only actual conflicts of interest arises because individuals are often not

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in the best position to judge either whether there is a conflict, or, if there is, whether in the face of it they can still judge and act fairly and dispassionately. Declaring a possible conflict functions to open the decisions on those questions to all those involved.

**Undermining judgment?**

One explanation of the undesirable consequences of conflicts of interest is that they *undermine* judgment. David Resnik\(^2\) cites Michael Davis’s definition:

“A person has a conflict of interest if (a) he is in a relationship with another requiring him to exercise judgment in that other’s service and (b) he has an interest tending to interfere with the proper exercise of judgment in that relationship."

Resnik identifies two ways in which a conflict can undermine judgment. First, it may bias a person’s judgment and second, render a person’s judgment unreliable. In science, Resnik argues, judgment is to be objective, “..independent of personal; beliefs, biases, political ideologies, or economic interests..”\(^3\)\(^4\) To these, Resnik adds a third – namely that a conflict of interest can lead to the corruption of the will of a person so that he cannot exercise his objective judgment.\(^5\)

The need to identify interests, declare and control the effects of their conflicts lies in their potential to affect judgement or motivation, as Resnik says. Valuable as this analysis is, its definition of an “interest” as something that may undermine a person’s judgment is likely to vary widely from person to person, rendering a definition dependant on the strength of mind or will of the conflicted person. Further, there are many factors that are likely to undermine or affect judgment that are not usually regarded as conflicts of interest. A company director’s judgment can be undermined, or at least rendered unreliable by his anxiety about the health of a close family member, but that would not be dealt with as a conflict of interests. An employee so affected may have a duty to disclose such a (temporary) situation to protect themselves and their employer from the consequences of poor decisions. The reason lies in their loss of capacity. In a situation of conflict of interest, capacity is undiminished but subject to competing influences. Something beyond the impact of the matter on a person’s judgment is needed to define an interest that can lead to a conflict of interest situation.

\(^2\) Resnik, D Conflicts of interest in science *Perspectives on Science* 6.4 (1998) 381-408 at 387

\(^3\) Resnik, op.cit. n2 at 388

\(^4\) The view that judgement can be so described may be doubted.

\(^5\) Resnik, op.cit. n3 at 388
Individual roles & responsibilities and institutional goals

For institutions, the important consideration is the effect of a conflict of interest on the decision processes and the decisions that result.\(^6\) This suggests that there is a link between a conflict of interest and the role, in the institution, of the person affected by the conflict. That link may lead to recognising a conflict only if the effect on judgment distorts the role a person subject to such a conflict is to perform. Further, the role of an individual and attached responsibilities will be related to the goals of the institution. So, a company director, whose role is to act for the interests of the company, distorts that role and is involved in a conflict interest when he votes for a contract or payment to be made with or to himself. His financial gain is not relevant to the goals of the company. However, where a member of a town council votes against a development proposal because, on balance, she considers the potential environmental damage outweighs the financial or social benefit to the community, she is not distorting her role and is not affected by a conflict of interest. Instead, she is bringing to the performance of her role considerations that are relevant to the enterprise of the council. The environmental concerns expressed in the exercising of judgment contribute to achievement of the council’s goals.

Institutions are also concerned to identify potential and apparent conflicts. Resnik identifies these as, respectively, interests that could interfere with a person’s judgment (potential) and interests that may appear to an observer to involve a conflict, even if they in fact do not (apparent). Both of these, especially the latter, are likely to be related to the person’s role in the achievement of the enterprise’s goals. Institutions, especially those charged with public responsibilities or the stewardship of public money, need public trust – something that is likely to be eroded if not lost by the appearance of conflicts of interest affecting their decisions.

What is an “interest”?\(^\text{6}\)

Determining when a person has, or may have, an interest that can conflict may therefore need a more objective approach. The relationships suggested among an interest, the role of person plays in an enterprise and the goals of the enterprise can be identified in contexts familiar to NHMRC.

A researcher participating in the review of his own proposal, either for funding or ethical approval is a clear example. The researcher stands to

\(^6\) It is the institutional focus that is seen to be important in Australia, see M. Van Der Weyden Confronting conflict of interest in research organisations: time for national action Medical Journal of Australia 175: 396-397 (2001)
receive money or advancement if the decision is made in his favour. His personal interest conflicts with his role as a disinterested expert committee member in which he has an obligation to bring his expertise to bear so that the goal of the review, to identify the most deserving projects, is achieved.

A member of a committee deciding on the allocation of funding among institutions of one of which she is the CEO is another example. Here, the committee member’s institution stands to benefit (and she may also benefit from her employer’s gratitude). Fulfilling her duty to her employer conflicts with her role as a disinterested but experienced committee member in which she is obliged to contribute her expertise so that the best qualified institution is funded.

In both scenarios, individuals are engaged in an enterprise that has goals, have a role in that engagement and have obligations attached to that role. Their personal interest or external duty conflicts with those obligations.

What makes the personal or employment matters “interests” is not intrinsic, ie although direct financial gain is the most common “interest”, it is not the only one that needs identification. A matter is an “interest” because, first, there is a conflict between the prospect of fulfilling it and the responsibilities of the role the person is to play to achieve the goals of the enterprise and second, that conflict distorts that role and so compromises (or at least potentially compromises) the goals of the enterprise. Thus, what is an “interest” is contextual and will vary according to the enterprise, its goals, the obligations attached to the role of the participant and what conflicts with those obligations and compromises those goals.

Defining an “interest” needs to be related to the enterprise, its goals and the role and responsibilities of the participant. In enterprises where goals are non-pecuniary, such as knowledge or expert professional judgment, the prospect of monetary gain to a participant who is assumed to be pursuing those goals, will almost always be a conflicting interest. However, any other matter, whether a selfish interest or a competing obligation, could also constitute an “interest” because of the effect it could have on that person’s fulfilment of her role obligations and in turn on the achievement of the enterprise’s goals. It may be clearer to refer to

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8 Resnik refers to these as “competing commitments”, op.cit n 2 at 393-4
some situations, like that of the institutional CEO, as conflicts of duties than of interests, but it is probably more convenient to use the conventional phrase for both situations.

**Conflicts of Interest in Research**

Conflicts of interest can, and do, arise in the research context. Conflicts frequently occur between the roles of clinician and scientist in a biomedical context. The obligations of a researcher to answer a question, to clarify mechanisms or to understand a process may be at odds with the researcher’s engagement with the primary interest of a sponsor in achieving financial gain, or the interest of the researcher in achieving personal success or recognition. The need to address these is said to be a national and urgent priority, following the wide attention give to these issues in the United States.\(^9\) Academic supervisors of student research projects may also face conflicts of interests between the needs of students to complete their project to a required timetable and the interests of potential research participants, and the general community, in ensuring that all research involving humans is ethically conducted.

It may be, for example, that increasing economic pressures from government have intensified conflict situations within research practice. The intensification of an entrepreneurial spirit within the biomedical research environment may well increase the gap between professional and personal interests of practitioners. Similarly, reductions in funding for research and universities may distort the choices researchers make and, contrary to the wider public interest, researchers may favour projects that deliver immediate economic returns rather than new basic insights that will foster future innovative work.

In all of these examples, the interest can, it is suggested, be identified by reference to the person’s role obligations and the institution’s goals.

**Conflicts of Interest in Ethics**

Where a committee’s role is to provide advice or make decisions on ethical matters, similar distinctions need to be made. A member who stands to gain financially from a certain decision distorts his role if that potential is not disclosed and he is not excluded from the decision. The financial interest is not relevant to the ethical decision to be made. However, where a member considers that a decision should not be made because it may offend a cultural group or a humanistic or religious

\(^9\) Van der Weyden, op.cit, n.5
\(^10\) C D DeAngelis Conflict of Interest and the Public Trust The Journal of the American Medical Association v 284 p 2237. The volume contains a collection of relevant accounts.
value, she is bringing to the issue relevant matters and exercising judgement.

An exploration of the meaning, and sources of that meaning, of the expression “ethics” measures the scope of what is relevant to an ethical determination. That exploration will include not only the ethical judgements that individuals make, but the principles on which they are based and the values that underlie those principles. All of those matters would be relevant to a determination of an ethical issue and reliance on any of them by a contributor to that determination should not be considered a distortion of their role because none of these matters constitute a conflict of interest in the sense explained above. Personal ethical positions and values are not irrelevant considerations to the task at hand. Rather, they are the reasons for what may be strenuously defended differences of ethical opinion as to how the determination is to be made.

Categories of membership of a body such as AHEC mark out domains of knowledge and value that are communally agreed to make a proper contribution to the shaping of ethical judgment and opinion, e.g. religious institutions, the disability community, philosophical orientation, etc. Those categories reflect a shared understanding that membership of such a domain does not constitute a conflict of interest.

Thus, the goals of the enterprise that is AHEC extend to a broad and inclusive conception of ethics. They imply that the role of members is to bring all of their expertise and experience to bear in discussion and decision: it is all relevant to the achievement of AHEC’s goals.

This limiting of the scope of the concept of ‘conflict of interest’ does not contradict the importance of a shared appreciation, by all those party to thinking and deciding about ethical matters, of ‘where others are coming from’. Complete openness about that is important not only when there is a risk of distorted judgment or dubious motives otherwise remaining hidden. It is always valuable, because it helps all participants in discussion better to understand and appreciate the content and weight of others’ views. Accordingly, open discussion will be promoted by early disclosure of ‘where all are coming from’.

**Conflicts of Interest and HRECs**

HRECs play a key role in assessing and clarifying conflicts of interest in the research setting and in limiting any possible adverse consequences. An ethics committee may need to ask a few fundamental questions about the nature, funding and institutional structures involved in the research project in order to develop procedures for dealing with the most common conflicts. For example, it is important to ask whether a particular
research proposal has a primary commercial purpose, or seeks to answer genuine research questions. It is also important to ask whether the combined roles of clinician and scientist are likely to influence either the appropriate treatment of patients or the ethical conduct of the project, and whether sponsorship from industry will limit scientific communication in order to protect proprietary information. When the committee is discussing a project, members with personal interests in, or personally affected by, eg involvement in competing research, the study should absent themselves. On occasion, it may be necessary to seek specific advice from disinterested parties.

**Procedures for Declaration of Conflicts of Interest and Minimisation of Their Effect**

No member of a committee should adjudicate on an issue in which he or she has any conflict of interest, including any personal involvement or participation, financial interest in the outcome, involvement in competing activity to that under consideration.

When a committee member has a conflict of interest in relation to a matter under review, or could be seen to have a conflict of interest, that member should withdraw from the meeting. The absence of the member concerned should be recorded in the minutes. In addition, a committee member in this situation should refrain from discussing the project with other committee members, or attempting to influence the committee in any way.