



CONFLICT OF INTEREST UNDER THE *SCHOOL ACT*

The *School Act* (SA or the *Act*) sets forth requirements for trustees relating to conflicts of interest. (I have referred to these requirements as the conflict law.)

The following is basically a paraphrase of the *School Act*, though it includes some interpretation. When you have a specific problem, you should refer to the precise wording of the *Act* ([section 55-64](#)). If you are in doubt as to your correct course of action, seek legal advice.

1. DO CONFLICT OF INTEREST LAWS JUST APPLY TO SCHOOL TRUSTEES?

No. Elected officials of municipalities and regional districts must comply with similar provisions found in the *Community Charter* and *Local Government Act*. Members of the Legislative Assembly are governed by the *Members' Conflict of Interest Act*.

2. WHEN DOES THE CONFLICT LAW APPLY?

The *School Act* provisions apply whenever the Board deals with matters in which a trustee has a pecuniary interest. It applies to all Board and committee meetings where these matters are considered. Where a conflict exists, the *Act* also prohibits any attempts to influence the voting on the matter in question, regardless of when or where these attempts occur.

3. WHAT KINDS OF CONFLICT ARE COVERED?

Only financial ones. If a matter being considered by the Board could monetarily affect you (or certain other persons associated with you), you are said to have a pecuniary interest in the matter. If you have a pecuniary interest, the law considers you to have a conflict, unless you fall within a few narrow exceptions discussed below (see questions 14, 22, 23 and 24).

4. WHAT IF I FEEL THAT I HAVE A CONFLICT OF INTEREST THAT IS NOT FINANCIAL IN NATURE?

Situations sometimes arise where you do not have a financial interest but your impartiality may reasonably be questioned. For example, the Board may be called on to deal with an issue involving close personal friends or relatives.

At common law, you are not qualified to vote on a matter in which you have a “personal interest” that could lead a reasonably well-informed outsider to think that your judgment could be influenced by that interest, in other words that your personal interest would lead to a “reasonable apprehension of bias.”

These situations do not come within the SA provisions (unless they are also situations where there is a deemed or indirect pecuniary interest) but should still be avoided to protect the integrity of the Board's decisions and keep the Board out of litigation. A good way to avoid them is to follow the same procedure as you would use for a conflict that fell within the SA conflict law.

5. WHAT IF A DECISION DOES NOT IMMEDIATELY AFFECT ME BUT MIGHT IN THE FUTURE IF CERTAIN OTHER THINGS HAPPEN?

It depends how likely that outcome is, based on reasonable expectations.. The key question is whether the likelihood is so low that it could not reasonably be regarded as likely to influence the trustee. If the possibility is remote it would probably not be considered a conflict. If it is reasonably likely, then it would.

6. DOES THE CONFLICT LAW APPLY TO ME IF I WILL NOT BE PERSONALLY AFFECTED BY THE BOARD'S DECISION?

It may still apply. The conflict law says that the pecuniary interests of certain people associated with you through family or business relationships will be treated as though they were your personal pecuniary interests.

7. WHICH FAMILY MEMBERS ARE INCLUDED?

The financial interests of the following family members are considered to be your interests for the purposes of determining conflicts:

- spouse
- parent
- child.

8. WHO IS INCLUDED IN "SPOUSE"?

A "spouse" includes your husband or wife. A "spouse" also includes a person who is not married to you but who lives with you in a marriage-like relationship and has been so living with you for at least the past two (2) years. A husband or a wife who is separated from you and living apart from you is still considered to be your spouse unless there is a written separation agreement or a court order recognizing the separation.

9. WHO IS INCLUDED IN "PARENT"?

Just your own parents, not parents-in-law.

10. WHO IS INCLUDED IN "CHILD"?

Not only your own children and adopted children, but also others whom you treat as members of your family. It is not clear how far "member of your family" extends. Adult children are included, whether or not they reside with you.

11. WHAT IF I DON'T KNOW ABOUT A FINANCIAL INTEREST THAT MY SPOUSE, PARENT OR CHILD HAS?

Then it doesn't count. You should, however, disclose the interest as soon as it is discovered.

12. WHAT KINDS OF BUSINESS INTERESTS ARE COVERED?

You are considered to have a pecuniary interest in a matter if the Board's decision could reasonably be expected to monetarily affect

- your employer
- your business partner
- a member of a firm of which you are also a member
- a private corporation in which you (or someone acting on your behalf) hold shares, or of which you (or someone acting on your behalf) are a director or senior officer
- a public corporation in which you (or someone acting on your behalf) hold a controlling interest, or of which you (or someone acting on your behalf) are a director or senior officer.

It is likely that such interests would be deemed to also be your interests, although they may, in the specific circumstances, be considered too remote to constitute a conflict under the *School Act*.

13. WHAT IS A CONTROLLING INTEREST IN A PUBLIC COMPANY?

Any interest in shares, except an interest which is only by way of security, where the shares carry more than 10 per cent of the votes for the election of the company's directors.

14. I BELONG TO A CO-OP THAT HAS DEALINGS WITH THE BOARD. DOES THE CONFLICT LAW APPLY? WHAT ABOUT MY MEMBERSHIP IN A CREDIT UNION?

No, the conflict law does not apply in either case. The *SA* has a specific exemption for pecuniary interests that arise only from membership in a cooperative association or a credit union.

15. WHAT ABOUT NONPROFIT ORGANIZATIONS WITH WHICH I AM ASSOCIATED AS A MEMBER, DIRECTOR OR OFFICER?

If you personally stand to gain or lose monetarily because of the Board's decision, even if the decision relates to an association or group with which you are involved, you have a pecuniary interest.

If you do not stand to gain or lose monetarily, but the non-profit organization does, you would be considered to have a form of indirect pecuniary interest. Even though the organization is non-profit, it still has monetary interests, and indeed, these interests may affect the viability of the organization.

16. IF I HAVE A PECUNIARY INTEREST IN A MATTER BEING CONSIDERED AT A BOARD OR COMMITTEE MEETING, WHAT DO I DO?

As soon as you are aware that the Board or a committee is considering a matter in which you have a pecuniary interest, you must:

- state that you have a pecuniary interest in the matter
- state the general nature of the pecuniary interest
- if the meeting is closed to the public, leave the meeting until the matter has been dealt with
- not take part in any discussion of the matter
- not attempt in any way to influence the voting on any question in respect of the matter, before, during or after the meeting
- abstain from voting on any question in respect of the matter.

This does not apply to pecuniary interests that are too remote or insignificant to reasonably be considered as likely to influence you (as discussed below, see question 21.)

17. CAN I DISCUSS THE MATTER WITH OTHER TRUSTEES AFTER THE MEETING IS OVER?

The conflict law does not prohibit you from doing so, but it is advisable to avoid discussions. You are prohibited from attempting to influence voting. Since procedural bylaws allow for reconsideration under some circumstances, discussions after the meeting can easily be construed as an attempt to influence the voting, especially if some reconsideration follows your discussion.

18. WHAT HAS TO GO IN THE MINUTES?

If a meeting is open to the public, the minutes must show that you disclosed a pecuniary interest and the general nature of the interest as you stated it at the meeting. It is good practice for the minutes to show that you took no further part in the proceedings dealing with that matter.

If the meeting is not open to the public, then the minutes of the next open meeting must include a statement that you disclosed a pecuniary interest during the closed meeting. It is not necessary to include in the minutes any statement of the general nature of that interest. (This applies to both Board and committee meetings, including meetings where the Board sits as a committee of the whole.)

Where Board meetings are closed to the public, the *Act* requires that a record containing a general statement as to the nature of the matters discussed and the general nature of the decisions reached be prepared and be open for inspection. (This applies only to meetings of the Board, not meetings of committees or meetings of the Board in committee of the whole.) Although the conflict law does not deal with that record, it would be advisable to include the statement of disclosure (but not the nature of the interest) in that record also.

19. WHAT IF I AM NOT AT THE MEETING WHERE THE MATTER IS DISCUSSED?

It is important to review the minutes of any meeting that you missed. If something in which you have a pecuniary interest was considered at that meeting, then you must make a disclosure statement and fulfill any of the other requirements that apply at the very next meeting you attend.

20. WHAT IF THERE ARE SO MANY ABSTENTIONS BECAUSE OF CONFLICTS THAT THERE IS NO QUORUM TO DEAL WITH THE MATTER BEFORE THE BOARD?

The Board will have to get a court order authorizing it to consider, discuss and vote on the matter. (If unopposed, this should not take long to obtain.) The court can order that the conflict provisions don't apply and then all trustees can participate in the decision-making, subject to any conditions that the court imposes.

21. DO I HAVE TO GO THROUGH ALL THIS WHEN MY PECUNIARY INTEREST IS SO SMALL THAT IT COULDN'T REASONABLY BE CONSIDERED AS CREATING A CONFLICT OF INTEREST?

No, you don't. There is a specific exemption in the *Act* for pecuniary interests that are so remote or insignificant that they cannot reasonably be regarded as likely to influence you. However, be very careful about concluding that your interest is so small it doesn't count. Courts have interpreted this exception very narrowly.

22. HOW CAN WE VOTE ON OUR REMUNERATION AND EXPENSE ALLOWANCES? OR ON ATTENDANCES AT CONFERENCES? OR REIMBURSEMENT FOR LEGAL FEES?

The *Act* makes a specific exception for any matter where a trustee's interest arises from being entitled to receive any indemnity, expenses, or remuneration payable to one or more trustees.

23. MY HUSBAND WORKS FOR THE BOARD OF EDUCATION. HIS TERMS OF EMPLOYMENT ARE COVERED IN THE COLLECTIVE AGREEMENT BETWEEN THE BOARD AND ONE OF THE UNIONS REPRESENTING EMPLOYEES. WHAT SORTS OF ISSUES DO I HAVE TO STAY OUT OF?

Firstly, you will have to stay out of matters that affect your husband as an individual employee in a significant way, (e.g. his application for leave, a complaint against his conduct, or a student discipline matter in which he is a witness.) Some of these matters may not be actual pecuniary interests, but may lead the public to a "reasonable apprehension of bias," in other words, the situation makes it look as though the Board of Education could be making decisions based on personal relationships. You will probably find these situations easy to spot and easy to understand why you should withdraw.

Secondly, you will have to stay out of collective bargaining with the union representing your husband. This includes negotiation and ratification votes, and even decisions on the process

(e.g. who will be on the bargaining committee). Because your husband has a pecuniary interest in the collective agreement, you do too. The agreement is looked at as a whole; you cannot break it down into parts that have a financial impact on your husband and parts that don't and participate in negotiations only on the latter.

You will be able to participate in some contract administration (grievance) matters and not in others. Many other matters that the Board of Education decides will have various impacts on school district staff. These each must be considered case-by-case.

The BC Public School Employers' Association's (BCPSEA) [Constitution and Bylaws](#) address circumstances when a person may be ineligible to be a board's representative to BCPSEA due to pecuniary interest.

24. WHO CAN CHALLENGE ME IF THEY THINK I HAVE NOT OBEYED THE CONFLICT LAW? HOW?

Any elector can apply to the BC Supreme Court for a court order stating that you have failed to comply with the requirements of the *Act*.

25. WHAT TIME LIMITS DOES A CHALLENGER HAVE TO MEET?

There is a time limit of six (6) weeks from the time the person challenging you first knew about the alleged breach. After four (4) years from the alleged breach, no court challenge can be taken.

26. WHAT HAPPENS TO ME IF A COURT FINDS THAT I BROKE THE CONFLICT LAW?

You are disqualified as a trustee unless the court finds that you broke the law through inadvertence or a good faith error in judgment. The disqualification is not a lasting one. You can run again in the by-election or a future election and hold office if you win.

If you gained financially from your breach of the conflict laws, the court may order you to pay back your gains.

27. IF A TRUSTEE BREAKS THE CONFLICT LAWS, IS THE BOARD DECISION STILL VALID?

Yes, unless the Board takes steps to void its decision. The Board has this option for two (2) years from the date of the passing of the resolution or bylaw unless voiding the resolution would prejudice the rights of someone who didn't know about the breach, who acquired rights under the resolution or bylaw and who acted in good faith on those rights.

Third parties aggrieved by the Board's decision may in some cases have legal remedies. There is also a possibility that a court can set aside a Board decision where a trustee voted who was disqualified at common law from voting (see question 4 above).

28. WHAT CAN I DO TO PROTECT MYSELF IF I AM NOT SURE WHETHER I HAVE A LEGAL CONFLICT? I DON'T WANT TO ABSTAIN FROM EVERYTHING, THAT'S NOT WHAT I WAS ELECTED FOR!

Your first source of advice will be the knowledge and experience of your Superintendent and/or Secretary-Treasurer. If, after discussing the matter with them, you are still in doubt or others are challenging your participation, the best way to protect yourself is to get a legal opinion. If you act in good faith on legal advice that states that you are not in conflict, then even if the court disagrees with that advice and finds you broke the conflict law, the court may find that you acted out of a good faith error in judgment.

29. WHAT SHOULD I DO WHEN I THINK ANOTHER TRUSTEE HAS A CONFLICT OF INTEREST THAT HE IS NOT RECOGNIZING? HOW ARE "GREY AREAS" DEALT WITH?

The primary responsibility for compliance with the *School Act* conflict of interest provisions belongs to the individual trustee. Trustees are not required to "play it safe" by withdrawing whenever there is a suggestion that they have a conflict of interest, although many trustees follow a practice of making sure that they withdraw whenever they believe the public could consider them to be in a conflict situation. Trustees have the right to participate fully unless it would contravene the *School Act* or the common law.

It is not improper for one trustee to question whether another trustee has a conflict of interest with respect to a specific issue before the Board. Such questions can alert a trustee to an aspect of the issue that he may not have considered.

Before you raise such a question in a formal Board meeting, you should do some homework. Ask the Superintendent or Secretary-Treasurer (or Board Chair or an experienced trustee) about the situation: they may have dealt with similar issues in the past and may have more information about the trustee's circumstances that bear on whether there is a conflict. You may raise the question informally with the trustee, particularly if you are considering raising questions at a meeting of the Board.

HOW SHOULD I RESPOND IF ANOTHER TRUSTEE QUESTIONS ME ABOUT A POSSIBLE CONFLICT IN A MATTER BEFORE THE BOARD?

You should answer as a question of ethics. If the answer involves sensitive personal information it may be handled outside the public meeting to protect personal privacy. The integrity of the Board's decision-making processes is a legitimate concern of all trustees. Your answer may be sufficient to put the question of conflict at rest (e.g., my son no longer works for that company) or may acknowledge the facts giving rise to the concern and indicate why you believe you do not have a conflict requiring you to disclose, abstain, etc.

30. IF I FORMALLY RAISE THE QUESTION OF ANOTHER TRUSTEE'S CONFLICT OF INTEREST IN WRITING OR IN A BOARD MEETING, DOES THAT HAVE ANY LEGAL EFFECT?

Questions about conflict of interest may be meant only as friendly reminders or may be intended to formally put the other trustee on notice. Whatever the intention, such warnings would be relevant if the other trustee's participation in an issue were later challenged in court and the trustee claimed that participation was inadvertent, i.e. he just didn't notice that he had a pecuniary interest in the matter before the Board. (For example, his son's company was included in a list of subcontractors in a contract being approved by the Board.) If other trustees or a board officer had pointed out the pecuniary interest to him, this would not be a convincing excuse.

If it is suggested to a trustee that he or she should leave the meeting for a certain agenda item, the trustee should ensure that he understands the grounds for the concern expressed and then can either make a statement of disclosure and withdraw from discussion as required by the *School Act*, or state that he has considered the issue and concluded that he has no pecuniary interest in the matter that could reasonably be considered to be likely to influence his vote. Normally the discussion would end there.

31. CAN I GET LEGAL ADVICE FROM BCSTA ON WHETHER OR NOT I HAVE A CONFLICT?

Yes and no. For legal purposes, BCSTA's client is the Board of Education, not the individual trustees, so using BCSTA legal services is different from getting your own legal advice. You can call BCSTA for an informal discussion of your own situation and whether you have a conflict. Such discussions are not confidential from the rest of the Board or Board officers.

Disclaimer: This document provides general information and should not be relied upon as legal advice.