

Dangers and duties: conflicts of interest in professional engineering



by Jim Ridler, P.Eng.

A common underlying theme in the recent scandals that rocked the accounting profession was the variety and degree of the conflicts of interest involved. False financial statements produced by accountants and verified by auditors. Abuse of stock options. Insider trading. False financial advisor investment reports. Overly extensive use of company stock in employee pension plan investments. All of these involved conflict-of-interest issues, which were not revealed voluntarily and resulted in the public interest coming last, despite the professionals often involved. What exactly constitutes a conflict of interest and how can professional engineers do their best to avoid them?

A “conflict of interest” occurs when an individual is in a position to make decisions which affect at least two opposing interests, usually including the interest of the decision maker. The seriousness of the issue is made much more severe if the decision maker does not reveal the conflict to the opposing interests. If there is a real or potential benefit to the decision maker for a particular decision that would or could potentially harm the other interests, the individual is in a conflict of interest.

The personal benefit can be direct through remuneration in some form, or indirect through a positive result for family, friends or colleagues. The result is the same—compromised judgment.

Some might argue that if the decision maker is honest and has the intent to be fair to all interests, the result would be ethical, so there is no issue. The problem with this approach is twofold. First, nobody knows what goes on in another’s mind before a decision is made. We cannot tell whether anyone was truly honest and fair in his or her internal decision-making process. Second, the perception by the others involved of the ethics of the decision will be determined by the results of that decision and especially by their perception of whether it benefited the decision maker. The decision in a conflict of interest situation must be ethical and be seen to be ethical. This implies that there should be no or minimal resultant personal benefit, directly or indirectly, for the decision maker.

There is another principle to apply in conflict of interest situations—full, prompt and complete disclosure of the conflict by the person in the situation to all those who also have a significant interest. This will go a long way toward addressing potential negative perceptions by the other interests.

There is a term for this principle – “informed consent.” By making one’s personal interest clear to the others involved, one allows the others to be fully informed and able to decide whether to consent to continue their relationship with you, stop it, or modify it. You, in turn, can respond to their decision. For example, you can decide to find an option that removes your personal conflict, if it is unacceptable to the others involved.

Some examples

In difficult times, there can be financial pressures on engineers to earn extra income to improve their current and future financial security, for themselves and their families. Some alternatives could be moonlighting for other employers, consulting on their own, starting a small business, working for a friend or relative, or investing in their business.

Unfortunately, all these income opportunities also present the potential for conflicts of interest between the engineer and his or her primary employer. Examples would include the following concerns:

- ◆ the performance of duty to primary employer being diluted by efforts on outside business interests;
- ◆ the possible preferential treatment of

suppliers or customers with which the employee engineer has an outside business relationship;

- ◆ the possible risk of disclosure of confidential employer information to suppliers, customers or even competitors; and
- ◆ the risk of losing business to a competitor using the employee engineer or to the engineer's own business.

Clearly, engineers must try to avoid or eliminate these types of conflicts.

Another case of potential conflicts of interest for engineers is in the purchasing and related marketing functions. In particular, the treatment of giving and receiving of gifts and entertainment between buyer and seller presents obvious possibilities for conflicts. Employers do not want their purchasing agents to be unduly influenced by gifts or entertainment benefits, resulting in unwarranted special treatment for a supplier. The result is potentially higher prices and lower quality and service standards than would otherwise happen if unbiased buying judgments were being made. In other words, a purchasing agent could be putting his or her personal benefit ahead of duty to his or her employer.

There is a less obvious effect of accepting gifts and entertainment, even for relatively minor examples. When other suppliers observe this, there can easily be a perception of a conflict of interest, and of resultant preferential treatment of a competing supplier by a buyer. Something as apparently innocuous as a baseball cap with a competitor's logo sitting on a cabinet in a buyer's office can cause the wrong perception. Think what the reaction could be to repeated observations of a buyer at fancy dinners or Maple Leafs' hockey games with a competitor's salesperson!

To minimize the risk of real or perceived conflicts of interest in this situation, while recognizing the value of developing business relationships, here are some suggestions:

- ◆ keep any gifts accepted to a nominal level;
- ◆ gifts and entertainment received should be infrequent and moderate;
- ◆ entertainment should satisfy an organization's purpose and be appropriate

to the responsibilities and relationships of the parties involved; and

- ◆ gifts and entertainment received should be at a level and frequency that a buyer can reciprocate as a normal activity.

The latter guideline is challenging and is a test of whether gifts and entertainment are being used to develop appropriate relationships, as desired, or risk causing undue influence and establishing a conflict of interest for the buyer. An interesting and logical follow up to these guidelines is to apply them to limiting the marketing function.

It's hoped that employers have already established their own codes of ethics and related policies, which will help you to avoid conflicts of interest. You should be aware of these codes and thus sensitive to any potential conflicts. Also you should consult the manager of professional practice within PEO if the situation is complex, unclear or confusing and you need

advice or wish to inform them of a potential conflict of interest.

Fortunately, PEO's Code of Ethics provides both general and specific guidance for engineers. It advises practitioners to:

- ◆ act fairly and loyally to all stakeholders involved in your professional activity;
- ◆ act with high ideals of personal honour and integrity;
- ◆ maintain confidentiality as to your employer's affairs;
- ◆ avoid or disclose immediately, fully and voluntarily any conflict of interest, direct or indirect, that might influence an engineer's professional judgment involving an employer or client; and
- ◆ be satisfied that contract work for an outside client will not conflict with your duty to your employer. ◆

Jim Ridler, PEng., is a director of the Canadian Centre for Ethics and Corporate Policy.

The most respected reference on environmental control



0-471-41813-7 \$360.50 1584 pp. March 2003

This new edition of the trusted, comprehensive, single-source handbook provides up-to-date, practical guidance on a full range of environmental issues, sanitation management, and engineering expertise. Includes full revisions of material on solid and groundwater contamination, incineration, sewage sludge, pollutant transport, wastewater treatment, administration and planning, noise control, and communicable and noninfectious diseases.

Available at bookstores.

For more information, call 1-800-467-5797

 **WILEY**
Now you know.
wiley.ca