



This School is not a Family Business



Peter Johnson reveals some of the issues associated with conflict of interest...

“But she was the best person for the job.”

That was the response from Ron when asked why his daughter was selected to fill a permanent teaching job at his school.

Ron, the principal, had put in place all the correct procedures so that there would be no chance of accusations of nepotism. He handed over the convening of the panel to a head teacher. He played no part in preparing his daughter’s application. He told the head teacher to keep everything confidential, even from him.

So Why Was it a Problem?

The Department of Education’s merit selection procedure document states *“If any panel member believes that another panel member, including the panel convener, has a conflict of interest which could prejudice the outcome, this must be referred immediately to the Director, Recruitment and Employment”*.ⁱ

Ron was not a member of the panel, so it wasn’t relevant to him. Or, so he thought.

Let us look more closely at the issue of conflict of interest.

The public sector, of which schools are part, has always had a much higher bar for issues of integrity, relating to the recruitment, selection and employment of staff, than the private and business sectors.

There are many examples of family being given *“a leg up”* in the private sector and business: Rupert Murdoch handing over to Lachlan Murdoch; Larry Adler to Rodney Adler; Frank Packer to Kerry Packer to James Packer. The list goes on.

That is their decision. It is their money.

In the public sector we, public servants and politicians, manage resources funded by the public purse. We are accountable to the taxpayer.

What may be termed succession planning in the private and business sectors is nepotism in the public sector.

So What is a Conflict of Interest?

The Department’s EPACⁱⁱ fact sheet refers to *“circumstances where a member of staff could be influenced, or could reasonably be perceived to be influenced, by private interest when performing an official function”*.ⁱⁱⁱ These *“can involve the interests of the staff member or his or her immediate family or relatives, friends, business partners or associates”*.^{iv}

The NSW Independent Commission Against Corruption views it as when a public official’s personal interests conflict with their public duties.



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Personal interests may relate to that part of a person's life not directly connected with their work; that may realise benefits to them or disadvantages to the public interest or other people.

So Why is That Relevant to Ron?

The Department's Code of Conduct reminds staff that a "*conflict exists when a reasonably minded and informed person would form that view*".^v

In the case of Ron, the conflict of interest is multi-pronged. He is responsible for the employment of staff at his school. He has delegated the task of convener of the selection panel to a head teacher. A "*reasonably minded person*" may form the view that the head teacher may be influenced by their workplace relationship with Ron.

Why is That?

Ron leads the strategic direction of the school and effectively, in consultation with the executive, determines roles and responsibilities within the school. The head teacher's performance is ultimately judged by Ron, perhaps through an organisational hierarchy involving a deputy principal, but Ron is still the judge. Ron is also the head teacher's first referee when he or she applies for advertised positions.

The Department's Code of Conduct requires staff to report situations where a person unduly influences a decision or is perceived to unduly influence a decision. There will be a definite perception that the head teacher will be tempted to keep Ron, and his daughter, happy; a perception that Ron has influenced the decision.

Perceptions of a conflict of interest can often be of more significance than the actual conflict of interest^{vi}.

The NSW Ombudsman is of the view that it is important to determine the nature and significance of the conflict of interest.^{vii}

In Ron's case, apart from the obvious pride in seeing his daughter achieve a permanent teaching position, and the satisfaction of other family members, Ron may actually derive a financial benefit with a boost to the household income, if his daughter is still living in the family home.

The appointment of his daughter may also disadvantage other teachers who have unsuccessfully applied for the position.

ICAC provides guidance in identifying whether a conflict of interest actually exists by referring to six factors which may or may not be relevant in Ron's case:^{viii}

- favour or disfavour – Ron, through a perceived influence over the head teacher, may have conferred favour on his daughter and disfavour on other applicants;
- “could” adversely influence – Ron’s influence in this situation may not have been real but it certainly “could” occur;
- convergence or commonality of interests – Ron’s personal interests, to have his daughter appointed, may be aligned with the interests of the public authority, to fill the vacancy, leading to a justification that “*everyone benefits*”;
- remote or insignificant – it could not reasonably be construed that Ron’s interest is so remote or insignificant that it could not be regarded as having the potential to influence the head teacher’s decision;
- conflicts of duties – Ron has two or more duties which are not compatible, in this case to maintain the integrity of the recruitment process and to, in his words, select the “*best person for the job*”;
- apprehended bias or conflicts of interest - whether a fair-minded observer might reasonably consider a lack of impartiality on Ron’s part.

The ICAC Act requires that the “*principal officer*” of a public authority, in this case the Department’s Secretary, notify it of possible corrupt conduct^x. The definition of corrupt conduct includes a public official adversely affecting, directly or indirectly, the exercising of official functions^x. One of the matters included in the definition is “*fraudulently obtaining or retaining employment or appointment as a public official*”^{xi}.

Is There a Perception that Ron has Acted Corruptly?

Probably not directly, but there may be a perception that he has indirectly influenced an employment decision; an act which may fall under the definition articulated in the ICAC Act.

So how could Ron have handled this situation, the selection of a teacher to fill the vacancy at his school?

There are a number of possibilities:

1. Ron could have convened the panel. If his daughter applied for the position, there is a definite conflict of interest, real and perceived.
2. Ron could have delegated the convening of the panel to a member of his staff, in this case the head teacher. There may be a perceived conflict of interest due to the influence Ron has over the member of staff.
3. Ron could have delegated the convening of the panel to a principal colleague. There may still be a perception of Ron influencing the decision. “*You scratch my back and I’ll scratch yours*”, particularly if the colleagues relate closely professionally or socially.



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4. Ron could have requested that his director convene the panel. It is unlikely that a director would find time in their busy schedule to convene a panel for a teacher position.
5. Ron could have requested that the director, or a colleague, identify someone remote to Ron and his school to convene the panel. This is possibly the safest suggestion, but there may still be some perception that Ron has played a part in the selection of the convenor.
6. Ron could suggest to his daughter that she not apply. Is this a fair outcome for his daughter?

A conflict of interest, or the perception of a conflict of interest, is an unfortunately common occurrence in the selection of staff in schools, particularly in rural and remote schools where the pool of likely applicants may be significantly restricted.

It is no less significant where the engagement of temporary staff, or the employment of casual staff, is concerned. The length or status of the tenure does not mitigate the seriousness of the action.

It is also no less significant if it involves “*friends, business partners or associates*”.^{xii}

Recruitment is only one facet of school life where school leaders may face a real or perceived conflict of interest. It is however, the most prevalent and the most visible.

School leaders faced with such a dilemma need to seek guidance and err on the side of caution.

References:

ⁱ NSW Department of Education (2016), *Merit Selection Procedure*, Sydney, 10

ⁱⁱ Employee Performance and Conduct Directorate

ⁱⁱⁱ NSW Department of Education and Communities (2013), *Conflict of Interests*, Sydney

^{iv} *ibid*

^v NSW Department of Education (2016), *Code of Conduct*, Sydney, 14

^{vi} Longstaff S (1995), *Most people have an intuitive grasp of what it means to have a conflict of interest.*, The Ethics Centre, Sydney

^{vii} NSW Ombudsman (2017), *Recognising and Managing Conflict of Interests*, Sydney

^{viii} NSW Independent Commission Against Corruption (2019), *Managing Conflicts of Interest in the NSW Public Sector*, Sydney, 6-7

^{ix} S11(1)(d) Independent Commission Against Corruption Act 1988

^x S8(2) Independent Commission Against Corruption Act 1988

^{xi} S8(2A)(e) Independent Commission Against Corruption Act 1988

^{xii} NSW Department of Education and Communities (2013), *Conflict of Interests*, Sydney



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Peter had an extensive and diverse career with the NSW Department of Education. Peter has been a teacher, primary school principal, demographic planner and human resource practitioner.

Peter's last position with the NSW Department of Education was that of Executive Director, People and Services, with responsibility for the Department's human resources and business services functions, Peter has over 37 years' experience in the public sector. His human resource management experience spans the last 25 years across a range of senior roles.

He also represented the Department on the NSW BOSTES^[i] Initial Teacher Education Committee and the AITSL^[ii] Teacher Quality Advisory Committee, and represented the AEEYSOC^[iii] on the AITSL National Initial Teacher Education Advisory Committee.

During his teaching career, Peter was the Federation Representative in the schools in which he worked, was a member of his local teachers' association executive and represented teachers on the NSW Teachers Federation Council and at Annual Conference.

[i] Board of Studies, Teaching and Educational Standards (now known as NSW Education Standards Authority [NESA])

[ii] Australian Institute of Teaching and School Leadership

[iii] Australian Education, Early Childhood and Youth Affairs Senior Officials Committee