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CONFLICTS OF INTEREST Eugene A. G. Cipparone and Ted Tjaden Release No. 2, June 2026

A practical guide that analyzes conflict of interest dilemmas. Find solutions regarding issues of loyalty and confidentiality with *Conflicts of Interest: Principles for the Legal Profession*. This service is designed as a handbook and covers all major legal areas regarding conflicts of interest. The text includes: guidance on and practical resources for identifying and resolving conflict of issues; thorough analysis of the rules governing legal ethics; and resources for managing conflicts arising in legal practice.

What's New in this Update:

This release introduces a substantially revised and reorganized Chapter 18 – Other Perspectives on Conflicts of Interest. The chapter has been updated throughout to incorporate significant new research references, giving readers more direct access to comparative, interdisciplinary, behavioural, economic, philosophical and risk-based scholarship on conflicts of interest.

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The revised chapter expands the discussion beyond traditional Canadian doctrine to examine how conflicts of interest are understood and regulated in other jurisdictions and professions, and how emerging theoretical perspectives can assist lawyers, law firms, courts and regulators in managing conflicts in modern legal practice.

Highlights:

§ 18:6 Risk Analysis and Regulatory Techniques—Canadian regulators have traditionally relied on detailed rules to guide lawyer conduct. Rules provide visibility, signal professional expectations and support enforcement. But as behavioural research shows, rules also assume that lawyers will identify conflicts objectively, disclose them candidly and obtain meaningful consent—assumptions that empirical evidence calls into question. More problematic perhaps is that codes of professional conduct may not have the impact as one might think. Margaret Ann Wilkinson and her colleagues offer a rare empirical perspective on this. Rather than theorizing about how lawyers should reason, they asked how lawyers actually make ethical decisions in practice. Their study—based on 154 in-depth interviews with Ontario lawyers—revealed a striking gap between the intended role of professional codes of conduct and their real-world influence.

§ 18:7 Conclusion: Challenges and Future Directions—The theoretical perspectives surveyed in this chapter—comparative, interdisciplinary, behavioural, economic, philosophical and risk-based—reveal that conflicts of interest are not merely technical problems of professional regulation. They are structural features of legal practice that arise whenever lawyers exercise judgment on behalf of others while navigating competing loyalties, incentives and institutional pressures. Understanding conflicts of interest therefore requires more than doctrinal analysis. It requires a realistic account of how lawyers think, how they behave and how the profession's values shape their decisions.

Several themes emerge across this chapter.

First, behavioural and economic research challenge the longstanding assumption that lawyers can reliably identify, disclose and manage their own conflicts. Cognitive biases—anchoring, overconfidence, availability, rationalization and automatic self-interest—operate beneath awareness and shape how lawyers perceive adversity and risk. Economic analysis reinforces this picture by showing that when incentives to avoid conflicts are weak or ambiguous, lawyers may treat conflicts as manageable business risks rather than ethical constraints. These insights call for regulatory approaches that reduce reliance on self-assessment and strengthen structural safeguards.

Second, philosophical and values-based theories illuminate the deeper moral foundations of conflict of interest regulation. Helleringer's judgment-centred account shows why conflicts matter even when no misconduct occurs: they impair the reliability of professional judgment. Eberle's value-pluralist framework reveals that conflicts

often arise when duties to client, community and conscience pull in different directions. Saguil's virtue-based approach reframes conflicts as moments that test character, not merely compliance. These perspectives underscore that effective conflict of interest regulation must attend not only to rules but to the cultivation of judgment, integrity and professional identity.

Third, risk analysis provides a practical method for integrating these insights into regulatory design. Distinguishing between harm rules and risk rules clarifies the purpose of conflict of interest doctrine and helps regulators identify when risks are significant and unjustifiable. Structural techniques—clearer categorical prohibitions, firm-level systems, ethical walls, reduced reliance on consent and education about cognitive bias—offer realistic tools for managing conflicts of interest in a profession increasingly shaped by complexity, specialization and organizational practice.

Legislation, Code of Professional Conduct and Related Highlights:

None.

Practice Notes:

None.

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