

D'Art report number 4

Conflict of Interest Policies in Arts and Culture Funding Agencies

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Disclaimer: This report has been prepared by Christopher Madden, Research Analyst, IFACCA. Errors, omissions and opinions are the responsibility of the author and cannot be attributed to the respondents listed in Appendix 1, nor to the Board or members of IFACCA.

Introduction

This report summarises the outcome of IFACCA's fourth D'Art question, which was sent by Elizabeth Kerr, Chief Executive of Creative New Zealand. Ms Kerr asks:

Question

We are currently looking at our conflict of interest policies - those policies that make it clear whether or not people appointed to boards and committees (or other such governance or grant/decision-making bodies), OR staff (employees) in the organisations are eligible for funding.

We would find it helpful to find out how our equivalent organisations deal with the conflict of interest issue.

There were seven responses to this request (respondents are listed in Appendix 1). This report is based on these responses and on further investigations undertaken by the IFACCA Secretariat. While the report focuses largely on managing conflicts of interest in grant assessment committees in arts and culture funding agencies, references to other types of conflicts - such as staff conflicts of interest - are also touched upon. The report aims to be a source of references and links to resources on conflict of interest policies. The report surveys conflict of policies around the world, concentrating mainly on policies that are available in English. As usual, we welcome comments, suggestions and additional references and links.

Although many arts and culture funding agencies publish information on their conflict of interest policies and guidelines, this public information often does not contain the full details of the policies. The Secretariat is therefore particularly grateful to member agencies for providing unpublished versions of their conflicts of interest policies and guidelines. The Secretariat is also grateful for comments on a draft version of this report made by staff at Transparency International, the international non-governmental organisation devoted to combating corruption (www.transparency.org).

Conflicts of interest

Conflicts of interest arise when a person making a decision is faced with more than one interest against which to judge their best course of action. The conflict typically of most concern is that between a person's personal interests and their professional interests.

Conflicts of interests are common. Pope (2000; 21) suggests it is *inevitable* that a person's various interests will periodically clash with their work decisions or actions. Yet it is not always easy to determine whether a conflict exists, or whether a conflict will significantly impact on a person's actions. Indeed, as many of the policies cited later in this report recognise, the mere *perception* that a conflict of interest might exist is enough to make such a conflict an issue for concern – whether or not it is 'real', or whether or not it tempts an individual to act inappropriately. For more a detail introduction and background to these and other the practical problems of defining and policing conflicts of interest, see Carney (1998).

Why be concerned when a conflict of interests arises? Having more than one interest means that decision-making in one realm of interest may be compromised by considerations from another realm:

Our personal activities could unduly influence a professional judgment, or bring our primary obligations into question.
Brock (2002; 2)

Of particular concern is when a person's private interests compromise or unduly influence their public decision-making, creating the possibility that their actions may be inappropriate, unethical or even corrupt.

Conflicts of interest raise an ethical dilemma when the private interest is sufficient to influence or appear to influence the exercise of official duties...
Carney (1998; 1)

However, Carney goes on to note that the existence of conflicts of interest does not in itself imply corrupt behaviour:

Corruption is the 'misuse of public power for private profit'...Whether particular conduct constitutes unethical behaviour or worse depends on the circumstances and the reaction to the conflict [of interests]. Corruption lies at one extreme of that spectrum of conflict of interest.
Carney (1998; 1)

The widespread existence of conflicts of interest and their potential for corruption makes conflicts of interest an issue of intense ongoing concern. Not surprisingly, there is an extensive literature on conflicts of interest, particularly in law. The literature cannot be fully reviewed here, but an accessible source of references is the 'CORIS' database at the Transparency International website (www.transparency.org). The website is an invaluable source of news, publications and reports for anyone wishing to investigate this complex topic in more detail.

The extent of the conflicts of interest 'problem' is also often recognised in government policy, with many countries having legislative frameworks addressing the issue (a specific example will be discussed later). These frameworks are broad and can only provide general guidance. Many organisations, particularly grant-giving organisations, find it necessary to supplement legislation with their own more detailed conflict of interest policies and guidelines. The next section looks at such policies and guidelines in arts and culture funding.

Conflicts of interest in arts and culture funding

Conflicts between private and public interests are a crucial issue for arts and culture funding bodies. Conflicts can occur for anyone involved in the operations of an arts funding agency: from people serving on boards of directors and grant-making committees; to senior management, staff and consultants. However, the most common arena in which private-public conflicts are apparent is in arts grant-making committees. This report focuses largely on these committees, although most of the principles can be applied to other operational areas of arts funding agencies. Conflicts of interest in these other areas are discussed briefly at the end of the report.

Arts grant-making committees are often 'peer' committees – ie they are made up of arts workers themselves (such as artists and arts administrators). The potential for committee members to face conflicting interests is therefore very real. For example, a committee member may be called on to assess a grant application from a theatre company in which they are employed, or from an artist who is a friend or a family member. The potential for such conflicts of interest to arise is heightened by the nature of the arts sector. Artform communities from which peers are drawn are often small and strongly networked. It can be difficult to appoint 'respected peers' who will not be connected to a funding application at some point during their tenure. The problem is compounded in less populated countries and regions, where the arts and cultural communities are particularly small. D'Art respondent Ainiki Väljataga, Public Affairs Manager for the Cultural Endowment of Estonia, notes that

Estonia is a small country with a small artistic community. Almost everybody knows or is related to everyone in the world of art, and alternative funding opportunities are very limited - besides the Cultural Endowment we have only three small foundations giving grants for culture.

The limited size of arts and cultural communities makes it difficult to avoid conflicts of interest. The mission in the arts is, therefore, as much about *managing* conflicts of interest when they arise as it is about avoiding conflicts of interest altogether.

Effective management of conflicts of interest has a number of benefits for arts and cultural funding agencies. It is good business; it promotes fairness of grant programs by ensuring committee decisions are as unbiased or objective as possible, and it reduces the likelihood of costly legal or lobbying action. It is also good public relations; it promotes transparency and instils confidence in the organisation among artists, arts commentators, skeptics and other 'stakeholders'. It is also good leadership; arts and cultural funding agencies that manage conflict of interest effectively and openly set an example for other arts and cultural organisations that face similar challenges in their own operations.

To ensure good management of conflicts of interest, organisations can adopt a variety of rules, guidelines, procedures and codes. These tools can be thought of as elements of an overall 'conflict of interest policy', a catch-all term adopted for this report. The next section looks at such policies in arts and culture funding agencies.

Conflict of interest policies in arts and culture funding

An indication of the incidence of conflict of interest policies in arts and culture support agencies around the world can be obtained from the survey of organisations that participated at the World Summit on the Arts and Culture in Ottawa in 2000. Nearly two-thirds (63 percent) of the 30 agencies that responded to the survey utilised peer assessment in their support for art and culture. Of these, the majority (79 percent, or 15 agencies) had a conflict of interest policy in place. The figures in Appendix 2 summarise the survey results.

In the interests of transparency, many arts and culture funding agencies make their conflicts of interest policies publicly available. A survey of a number of publicly available policies was undertaken for this report (see selected references and links).

Although policies vary widely around the world, the survey revealed three key elements to a comprehensive conflict of interest policy:

- 1) **A definition of interests.** What are conflicts of interests?
- 2) **Procedures and codes.** What procedures should be in place to avoid and manage conflicts of interest?
- 3) **Communications.** How will conflict of interest codes and procedures be communicated to promote awareness among committee members and transparency to stakeholders and the public?

Each of these key elements is discussed below.

1. Definition of 'interests'

A core consideration of any conflict of interest policy is to define what interests might cause a conflict. Definition is often complicated and required across a number of dimensions. Some examples are listed here.

Type of gain

This defines the way that someone might be able to gain through a conflict of interests. An obvious type of gain is financial, but other types of gain are equally relevant, such as the ability to gain prestige, wield power or advance a career. This is recognised in a number of conflict of interest policies. The Australia Council's conflicts of interest code, for example, states: 'Conflicts of interest...may relate to either financial [gain] or personal gain (eg career advancement, public profile).'

Sphere of interests

A conflict need not only occur where a committee member themselves might expect to gain; it may be that someone associated with the member might gain. Policies often go into detail defining such associations. Common examples are:

- a) Associated *individuals*. A committee member's immediate family, spouse, child, sibling, parent, family member, personal/life partner, business partner.
- b) Associated *organisations*. These might include organisations with which a committee member:
 - has a commercial relationship
 - has a financial stake such as shareholding, ownership of land, buildings or equipment, or other claims on assets
 - serves on the board or other governing body
 - is employed
 - has independent contractual relationships
 - has advisory or policy relationships
 - has substantial contributor relationships

Other organisational affiliations found in the conflict of interest policies surveyed include:

- other departments within a committee member's parent organisation (National Endowment for the Arts, 1997).
- organisations that employ an individual associated with a committee member, or which have an associated individual on their governing body.

Other definitional considerations

Affiliations need not be positive (ie mutually beneficial). A conflict of interest may arise if a committee member is faced with making a decision about an adversary. The Cambridge Arts Council accounts for this by adding a proviso that 'panelists are required to disclose any past or current adversarial relationships with actual or potential applicants' (Cambridge Arts Council).

Some policies also reinforce that *perceived* conflicts are as important as *actual* conflicts, since perception that a conflict may exist is enough to damage reputation and public trust. The Australia Council defines perceived benefit as: 'where a member of the public might reasonably assume that there was a conflict of interest (even if there was not) – eg an application from a sibling or other relation of a member, or an institution related in some way to a member. In a perceived conflict of interest there is no direct benefit involved' (Australia Council).

Rather than attempt to anticipate all conflicts with comprehensive and prescriptive definitions, some agencies choose a simpler approach. The City of Chico's *Application for Selection Panel*, for example, suggests:

'A good test for the possible existence of conflict of interest is this: if an outside observer would have reasonable cause to believe that a panelist's impartiality would be compromised with respect to a specific applicant, a conflict of interest probably exists'
(City of Chico; 4)

Similarly, Chapter 21 of Pope (2000) contains a useful list of prompt questions to help individuals determine whether or not they are facing a potential conflict of interests.

2. Procedures and codes

Procedures and codes are the superstructure of any conflict of interests policy. The policies surveyed here have three main types of procedures and codes: screening; declaration; and action.

a) Screening procedures and codes

These are designed to prevent conflicts of interest situations arising. Screening clauses tend to fall into two main categories:

- i) *Committee membership codes*, which attempt to exclude people with potential conflicts of interest from being a member of a committee. For example, Creative New Zealand's conflict of interest codes state: 'Committee members may not hold office on the governing body or staff of any organisation that receives regular or major funding'.
- ii) *Grant application codes*, which prohibit applications for financial assistance from individuals and organisations for who a potential conflict exists. Most common is the prohibiting of committee members themselves from applying for funding (eg Creative New Zealand, Australia Council, Scottish Arts Council). Other restrictions include prohibiting applications for financial assistance from:

- organisations that are represented by committee members (eg Scottish Arts Council)
- staff members, and former staff members up to a certain period after employment ceased (eg Canada Council for the Arts)
- committee members who are a major beneficiary through a third party (eg Australia Council).

As noted earlier, the closeness of many arts networks can make these screening clauses impractical. The clauses may also be considered unfair, or act as a disincentive to serve on a grant-making committee for any length of time, since service brings with it ineligibility. Many policies therefore contain clauses that reduce the severity of the exclusion rules. The policies noted above, for example, contain exception clauses that allow the waiving of a rule, usually on a case-by-case basis. Further caveats can be added to soften strict screening clauses. The Australia Council, for example, allows a committee member to apply to their own committee if they are only a *minor* beneficiary through a third party. Defining the difference between minor and major benefit is of course complicated. The full definition reads:

‘For those cases where a board, Committee or Advisory Body member is a minor beneficiary through an application by a third party...action will be taken on a case-by-case basis depending on the context and nature of the conflict. As a general rule, a minor beneficiary is one who will receive not more than 20 percent of the funds requested for grants under \$50,000.’
(Australia Council, 2002)

Other policies do not attempt to screen, but rely on declaration and action procedures to manage conflicts when they arise (eg Arts NT).

b) Declaration procedures and codes

These specify how committee members declare potential conflicts of interest. Three types of declaration procedures are discussed here, categorised by how far in advance of a meeting declaration is required.

1. Registration of interests

Registers of interests are a common conflict of interest management tool. Committee members are required to periodically declare their interests on a register that is held by the funding agency. Examples of arts and culture funding agencies that have such a register are the Arts Council of Northern Ireland, the USA’s National Endowment for the Arts, London Arts, Southern Arts and the Maryland Arts Council. The following extract explains how the London Arts register works:

‘Members of the Board, its staff and advisers and assessors must register annually with London Arts a full list of any organisations which have received funding in the previous twelve months from London Arts of which they or their close family members are, or have been in the previous twelve-month period, a board member, shareholder, director, employee or supplier of goods or services.’
(London Arts, 2001; 8)

The register is updated annually, but any interests that arise between updates are required to be reported. A standard form is provided to ensure that information is clear and consistent. The register applies not just to board and committee members, but also to staff and advisers.

An example of a disclosure form can be found at the following page from Maryland Arts Council's website: <http://www.msac.org/forpanel.htm>. A detailed discussion about registers of interest can be found in Carney (1998; Section 3b).

2. Pre-meeting declaration

Often it is not clear that a conflict of interests will occur until committee members receive agenda papers outlining the applications to be considered and issues to be discussed at a meeting. To deal with this, many agencies provide a 'conflict of interest disclosure form' for completion prior to a particular meeting. The following example comes from the Canada Council for the Arts:

'Prior to the committee meeting...the committee members receive the "Conflict of Interest Disclosure Form" (as well as examples of the kinds of conflict of interest that may occur). All members must complete this form and submit it on the first day of the committee meeting. Committee members declaring a conflict of interest must indicate the file(s) in question in the sign-off sheet.'
(Canada Council for the Arts, a)

3. Declaration during a meeting

Most conflict of interest policies allow verbal declaration up to the point where an application or issue is about to be discussed at a meeting. This allows for unanticipated conflicts to be resolved at any time before consideration.

The common procedures described above rely on self-declaration. Funding agencies may also have procedures that do not rely fully on self-declaration. In the Australia Council, for example, staff examine applications for potential conflicts of interest prior to an assessment meeting. Staff then prepare recommendations on how any potential conflicts should be handled.

c) Action procedures (for when a conflict of interest exists)

These set out procedures that should be followed once a conflict of interest has been declared or identified. Procedures are aimed at ensuring that any committee member with a conflict of interest is not involved in the decisions or deliberations on the matter for which the conflict exists. A variety of ways are adopted to ensure insulation. Common procedures are:

- Withholding of materials: a committee member does not receive papers for which a conflict has been identified.
- Absenting: a committee member who has a conflict of interest leaves the meeting when the matter involving the conflict arises.
- Consignment: the case or issue for which a conflict exists is passed to an alternative committee.

Most policies also contain clauses ensuring that actions undertaken to avoid conflicts of interest are well documented. Often policies specify the recording in minutes when a committee member vacated and re-entered the room during the meeting. Some agencies also require that all identified conflict of interest situations are recorded in the organisation's annual report (eg. Wallace Alexander Gerbode Foundation).

3. Communications

An important consideration of any conflict of interest policy is how the policy is to be communicated, how much will be communicated, to whom it will be communicated and in what form. It may appear trite to point out the importance of communication in conflicts of interest, but the limited survey undertaken for this report reveals an inconsistency in the level of disclosure of policies and procedures.

Good conflict of interest management requires that rules and procedures be clearly communicated both internally (to staff and committee members) and externally (to 'stakeholders'):

- Good *internal* communications will promote compliance with the rules and codes prescribed in the policy. In particular, the policy should be forcefully promoted to committee members themselves to ensure that it is clearly understood and its efficacy is maximised. Many agencies explain conflict of interest policies and guidelines in induction packs for new committee members, such as the Australia Council's 'members manual' (Australia Council, 2002).
- Good *external* communications - ie to grant applicants, government ministers, the arts community and the public – will promote and preserve public confidence in the agency's integrity and impartiality. To promote transparency and maintain trust, agencies not only make their conflict of interest policies publicly available, but also publish instances where potential conflicts were identified and the measures taken to avoid the conflict's potentially damaging impacts. Some agencies go further by publishing information on instances where a conflict of interests that may have possibly arisen but was determined to be non-existent or trivial; in its annual report, for example, the Australia Council records instances where grants were provided to organisations on which a Council member holds a position, even if no direct conflict was determined to be present (Australia Council 2001; 84).

The policies investigated for this report adopt a variety of communications mechanisms. Publishing media vary from books/pamphlets to web pages. Often the communication strategy depends on the nature of the policy. For example, where an agency has a register of interests, this register is can be made available to the public (the London Arts register is publicly available for inspection, while The Arts Council Northern Ireland register is available on-line).

Other considerations

Two final considerations are worth noting here.

i) Integrating conflict of interest policies with broader organisational frameworks

As mentioned earlier, many countries have statutory or legislative conflicts of interest requirements that provide a broad conflict of interest framework. In Australia, for example, the Commonwealth Authorities and Companies Act (1997) specifies declaration and conduct procedures for board members who are faced with a conflict of interest; the Act is accordingly cited in the Australia Council's members' manual.

Similarly, in Estonia board members are supplied with copies of the Act of the Cultural Endowment and the Act on Corruption. Transparency International's 'good practice documentation' lists public service codes of conduct from around the world, many of which contain conflict of interest guidelines (<http://www.transparency.org/bp/>).

Legislative and statutory guidelines are, however, unlikely to be sufficiently detailed to act as conflict of interest rules for the specific business of an arts and culture funding agency. Many arts and culture agencies integrate their conflict of interest policies with these broader guidelines, but supplement the guidelines with details and specifics more relevant to their own requirements and operating environment. In some cases, a policy might also need to consolidate various statutory requirements into one set of codes or guidelines.

It is also worth considering other broad frameworks that may have implications for conflict of interest management. Some of the policies reviewed for this report deal with conflicts of interest as part of a cluster of ethical and 'good practice' considerations, such as privacy of information, acceptance of gifts, and endorsement of commendable behaviour such as fairness, objectivity and impartiality, (eg: Canada Council for the Arts, c; Manitoba Arts Council, 1995). Centralising the imprecise notion of good conduct may have a number of benefits, especially in that it may bring consistency to an agency's ethical profile and simplify communications about that profile. Examples of a variety of ethical and good conduct codes adopted in the USA can be found at Independent Sector's website (see references). Given the close relationship between conflict of interests policies and transparency, conflict of interest procedures might also be integrated into a funding agency's other policies that promote transparency in the funding process (such as communicating clearly the criteria by which applications will be judged).

ii) Agency-wide conflicts of interest

The discussion in this report has concentrated on conflicts of interest for members of peer assessment committees. However, conflicts of interest can arise in other areas of an arts and culture funding agency's activities. Conflicts of interest may, for example, be as intense for a staff member who *vet*s applications - or who has access to applicant files - as for a member of a committee making the ultimate funding decision. Thus, Creative New Zealand's conflict of interest policy contains separate guidelines for:

- council members
- external assessors and decision-makers
- external advisors
- internal advisers/staff

Though the principles surrounding conflicts of interest principles are similar for these different groups, the procedures for managing conflicts often differ. It is not possible to explore these other rules and procedures. Examples of agencies that have conflict of interest guidelines and codes that apply to staff and advisors are: Creative New Zealand, Manitoba Arts Council (1995a), Southern Arts, Australia Council and Canada Council for the Arts(d).

Summary

Conflicts of interest are common and often unavoidable. In close-knit arts communities, management of conflicts that inevitably arise is just as important as avoiding conflicts altogether. Good management is based on unambiguous definition, clear procedures and guidelines, and effective communication. This report has described some of the key elements of conflict of interest policies used in arts and culture funding agencies around the world. The report is intended to be a source of ideas, links and references for anyone wishing to further investigate the issue of conflicts of interest in arts and culture funding agencies.

Selected references and links

Citation policy: Unless otherwise stated, websites are not dated. Unless otherwise noted, the date of access should be taken as September 2002.

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Appendix 1

Respondents

Responses to this D'Art question were received from:

- Graham Berry, Director, Scottish Arts Council.
- Ann Bridgwood, Director of Research, Arts Council of England.
- Pennie Ojeda, International Coordinator, National Endowment for the Arts, USA.
- Roisin McDonough, Chief Executive, Arts Council of Northern Ireland.
- Lisa Roberts, Senior Policy Officer, Canada Council for the Arts.
- Ainiki Väljataga, Public Affairs Manager, Cultural Endowment of Estonia.
- Carolyn Watts, Senior Policy Officer, Australia Council for the Arts.
- Miklos Marschall, Executive Director, Transparency International.
- Jeremy Pope, Transparency International.

Thanks to everyone who contributed!

Appendix 2

Conflict of interest policies in arts and culture funding organisations

The figures below summarise the results of a survey of organisations that participated at the First World Summit on the Arts and Culture in 2000. Delegates were asked if their agency uses peer assessment to evaluate applications for financial assistance. If 'yes', respondents were asked 'Are there conflict of interest rules for the assessors?'

Survey results are held by the IFACCA Secretariat and were used to construct the country profiles at <http://www.ifacca.org/ifacca2/en/profile/default.asp>.

Figure 2.1: Incidence of peer assessment, arts and culture funding agencies, 2000.

	Responses (no.)	Percent
Agencies:		
with peer assessment	19	63
without peer assessment	11	37
Total all agencies*	30	100

* Four responses were invalid.

Source: Survey of participating organisations, World Summit on the Arts and Culture, December 2000.

Figure 2.2: Incidence of conflict of interest policies - arts and culture funding agencies with peer assessment, 2000.

	Responses (no.)	Percent
Agencies with peer assessment		
Conflict of interest policy	15	79
No conflict of interest policy	4	21
Total	19	100

Source: Survey of participating organisations, World Summit on the Arts and Culture, December 2000.