

Chapter 10

Superannuation Fund Trustees and Conflicts of Interest

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Conflicts of interest arise in a number of ways in the case of superannuation funds, where there are many interested parties, not all of whose allegiances are owed exclusively to the members of the fund. This paper is concerned with a particular kind of conflict, namely, where a trustee of a superannuation fund is also a member or a beneficiary of the fund and it is proposed that the trustee participates in a decision which will affect the rights or financial interests of the trustee as a member or beneficiary of the fund.

1 Conflicts of Interest and Duty Between Trustees and Members of the Fund

The starting point here is to notice the well-known statements of the general rules that are found in cases such as *Aberdeen Railway Co v Blaikie Brothers* where Lord Cranworth said of persons owing fiduciary duties:

And it is a rule of universal application, that no one, having such duties to discharge, shall be allowed to enter into engagements in which he has, or can have, a personal interest conflicting, or which may possibly conflict, with the interests of those he is bound to protect.¹

The rationale for the rule concerning profits is put very neatly in *Snell's Principles of Equity*:

With certain exceptions, neither directly nor indirectly may a trustee make a profit from his trust. This rule is part of the wider principle that in order to protect a trustee against 'the fallibility of human nature' he may not put himself in a position where his duty and his interest may conflict.²

Perhaps the best statement of the rule comes from Lord Herschell in *Bray v Ford*:

1 (1854) 1 Macq 461, 471.

2 (27th edn, p 235).

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