

ETHICAL PROBLEMS

Conflicts of interest are extremely common. This article discusses the significance of ethical problems in the art world and offers analysis of some hypothetical examples.

Inherent in any institution is a potential conflict between the personal interests of the personnel that run an organisation and the interests of the organisation itself.

When did you last hear someone say that **they** had been unethical, that **they** had put their personal interests before those of the museum or that they had improperly benefited from their position? Conflicts of interest are always things that **other** people are involved in. When it involves you, they are usually self-justifiable as a perk of the job, merely a leisure activity or personal relationship that is of no business of the museum, merely a fortunate incidence of one's position...

All of these self justifications ignore the fact that your professional and private lives are intricately intertwined, not only in your own daily life, but in the way that both the individual and the institution is perceived by third parties.

The human facility for self-justification means that it is difficult to leave matters of ethics entirely to the individual. The fact that the museum employee is satisfied that his or her own behaviour is impeccable does not necessarily protect the museum from criticism. To adapt an old adage, the conduct of museum professionals must not only be ethical, it must be seen to be ethical.

What is at risk is the very reputation of the institution and in some respects the **potential** for abuse is just as dangerous to the reputation of the museum as is **actual** bad faith. The cultural, professional, academic and financial consequences of a museum losing its reputation are dire. A reputation built up over many years can be drastically, albeit temporarily, affected.

Museums are perceived to be the epitome of respectability and the consequences of the public's disillusionment would be severe. For this reason alone, it is dangerous for institutions to rely on ethical self-regulation by their staff. Some sorts of controversy may be good for the museum business but scandal never is.

This is not to suggest that in the museum world there is a moral chasm between the institution and those who work in them. Indeed the Council of Australian Museum Associations published a very useful Code Of Ethics. It was an important document; the first of its kind in Australia. Of course codes of ethics are hardly new: there are many overseas associations of museum professionals that have already tackled the task and in Australia, outside the museum and art worlds, there are hundreds of examples of professional associations which have recognised the need to regulate the behaviour of their members.

The authors of the Code have had to strive to satisfy many honestly held but disparate views as to what is ethical practice and what is not. Thus, because its very introduction depended upon its acceptance by the broad professional community, it is soft or silent on some issues that are in need of address. This is not the fault of the authors, rather, it reflects the sensitive youthfulness of museum ethics as an issue in Australia.

There is a need for more critical discourse on professional and institutional ethics. Care needs to be taken to explain why some apparently innocent actions are ethically unacceptable in practice. This is not to say that Locke, Bentham and Aquinas need to be resurrected. Rather, Australian museum professionals need greater discussion of the ethical pros and cons of various professional decisions and behaviours.

The CAMA Code is weakened by the fact that no enforcement measures have been provided. As it stands, the code is only an expression of good thoughts and thus is non-threatening. However, if there was a system for institutional accreditation and also for membership of various museological professions, a wide range of sanctions would be available.

Ethical issues are management issues. It is the duty of each responsible museum board and administration to examine ethical concerns inherent within their own institution and develop guidelines which will prevent their occurrence. There is no one answer. Although there will be many problems that are common between institutions, the needs and solutions will be different in each. It is not a simple task but failure to do so may easily bring the museum into public controversy if not disrepute.

As a starting point, each institution could adopt the CAMA Code (or a further edition of it) and make adherence to the code a condition of appointment. More than that, each institution should have a comprehensive administrative practice guide or some such text in which the general principles enunciated in the code can be amplified and where procedures are established for resolving the potential conflicts of interests that inevitably arise in any museum.

One museum that has gone a long way towards this, is the Australian National Gallery. Its Administrative Practice Guide is an excellent piece of work and should be used as a model for the many other museums that have never bothered to produce such a manual. Most other museums have the odd practice paper that has been produced in an ad hoc manner. It is extraordinary that institutions with the sorts of budgets and the cultural importance of our museums do not **all** have a readily accessible manual which sets out the various policies and procedures of the museum. Such a work is essential to any worthwhile management plan.

Although it would of course contain more, for the purposes of this chapter, it would certainly include a full treatment of all of the most likely ethical trouble spots such as that museum's-

funding policies on donations, sponsorships and merchandising,

collection policies on accessioning and deaccessioning and

staff policies on personal collecting; self dealing; outside employment and consultancies; gifts, discounts, loans; valuations and advice to third parties; publishing; the use of museum premises or facilities for private purposes; the relationship between corporate sponsors and personnel; confidentiality and so on.

There should be clearly enunciated and readily available policies within each institution and mechanisms by which those policies may be promoted and enforced.

In brief, the potential for and resolution of ethical problems is not just an ethical issue. It is a **management** issue. As such it should be an integral part of the institution's management plan. It is too important to leave to the diverse attitudes and beliefs of individual employees.

Management should be taking the lead and initiating critical discussion on professional and institutional ethics. It is through such discourse that we may better understand why some apparently innocent activities may be ethically unacceptable in practice.

The following are some situations that might be considered. It is a limited selection and does not purport to cover the field. Of course, the examples are all quite hypothetical:

(i) Personal Collecting

There is nothing inherently wrong with museum personnel maintaining private collections. Private collecting may enhance the knowledge and aesthetic judgement of the individual (and thus indirectly benefit the institution) but it also carries the potential for serious conflict of interest.

Example 1:

You are a recent graduate who has a personal collection of decorative objects. You accept a position as curator of decorative arts in a small museum.

- (1) Should you now be prevented from adding to your personal collection?
- (2) What rule might be introduced to overcome this difficulty?

Example 2:

You buy an object for your personal collection that is of interest to the museum. Should the museum be able to insist on purchasing it for the collection? Under what conditions? Would the situation be different if you had been given the object or left it in a will?

(ii) Self dealing and insider advantage

Self-dealing and insider advantage occurs when the individual puts his or her own interests (or those of any third party), before those of the museum. As one prominent case declared, where there is even a glimmer of self interest there must also be a presumption of bad faith. Remember that it is not just actual bad faith that that is destructive; the potential for it is just as harmful to reputation.

There need be no damage incurred by the museum. Good faith and honest intentions are not enough. Put simply the interests of the institution must be put before the interests of the individual.

Example 1:

You make money 'on the side' by regularly purchasing works in a private capacity and reselling them. You describe this as a hobby.

- (1) Is this ethical conduct?
- (2) If such sales were only infrequent and were for the purpose of upgrading your private collection, would your answer be different?
- (3) Does it make any difference if the area of private dealing is quite distinct from your museum role (e.g. curator of contemporary art dealing in ancient Chinese ceramics)?

Example 2:

You are a cataloguer at an auction and are interested in a small print. You are unsure of its authorship but want to acquire if it goes cheaply enough. When the bidding starts you notice one of the curators from your museum bidding for the print.

- (1) What should you do?
- (2) Why?
- (3) What rule might the director introduce to deal with such a dilemma?

Example 3:

You are a trustee who learns of the planned exhibition of work by a young artist. Before the announcement of the exhibition you decide to buy a number of the artist's works while they are still cheap. Is this desirable? Is this permissible? Would the answer be different if you were a curator rather than a trustee?

Example 4:

The curator finds a desirable piece. The museum can not afford it. Can the director advise a generous benefactor of the museum to buy it for the patron's personal collection?

Example 5:

You are a curator who buys a work by a little known artist for the gallery and at the same time buys a number for yourself. You include the gallery's work in various shows, write erudite pieces about the artist and eventually sells your own works for a considerable profit. Is this ethical?

Example 6:

You are a museum employee. You include the work of spouse in a group show that you are curating for the museum. Is the situation any different if the artist was not your spouse but that of another senior museum employee?

Example 7:

You are a trustee. You wish to sell an object from your personal collection to the museum.

- (1) Can you? Should you? What are the dangers of doing so?
- (2) What rule should the board introduce to deal with such difficulties?
- (3) Would it be different if you wished to donate the object under the tax incentive scheme?

(iii) Gifts

The acceptance of gifts is both a pleasure and a danger. Whilst the gift may be merely an innocent symbol of friendship or gratitude it may also be used as a means of improper influence.

Needless to say, both the innocent and the guilty will loudly protest their innocence. To the outsider, it is difficult to discern which gifts have been improperly made or sought and those which are not.

Example:

You are a curator of contemporary Australian painting. A friend of yours, an artist, gives you one of his paintings as a present.

- (1) What should you do?
- (2) Would your answer be different if he gave you a painting by somebody else?
- (3) Would your answer be different if he gave you a glass plate that he'd made himself?
- (4) What rule would you introduce to overcome such difficulties?

(iv) Outside employment

Again, there is nothing inherently wrong with doing more than one job. It depends on the demands of each and the potential for either deleteriously affecting your ability to fulfil your obligations to the museum, or for bringing the museum into disrepute.

Example 1:

You are offered a part-time teaching position in a postgraduate diploma course on gallery management:

- (1) Do you need your employer's permission? What are your reasons?
- (2) Would it make any difference if you had taken a job taxi driving rather than teaching?
- (3) If you were a director, what rule would you introduce to deal with the potential problem?

Example 2:

You are a director/curator of a museum who regularly advises a private dealer gallery as to which artists should be accepted into its stable.

- (1) Assume that you give this advice on a retainer. Is this ethical?

Give reasons.

- (2) Would your answer be different if you were not being paid but gave the advice out of friendship with the dealer?
- (3) If you were the director what rule would you introduce to clarify the situation?

(v) Publishing

The Publishing of articles, catalogues raisonne's, and books is an important part of the intellectual life and function of the museum. Nevertheless there is a potential for conflict in interests.

Example 1:

You decide to write a book on your personal passion, 19th century agricultural farm equipment. You are a curator of Decorative Arts.

- (1) Should this be permitted? If so, under what conditions? If not, why?
- (2) You are asked by a regional gallery to write a critical essay for the catalogue of an exhibition of decorative arts. Can you accept? Should you?
- (3) If you were a director what rules would you introduce so as to minimize such dilemmas?

Example 2:

You are a curator who wishes to write a novel.

- (1) Does you need to get approval of the director?

- (2) Would your answer be different if the book were to be a text on Monet?
- (3) To whom should the copyright belong?

Example 3:

Should you be allowed to write reviews or catalogue essays on the work of your spouse?

(vi) Private use of museum premises or facilities

Every administration expects that its employees are going to steal the odd ball point pen and paper clip. These become seen not as improprieties or even crimes, but rather as perks of the job. They are often all three.

If museum personnel use the administrative resources of the institution for personal purposes the museum will be deleteriously affected. The degree of damage depends upon how many people chisel and in what quantities. It is a question of the quantum not the quality of such acts.

The appropriation of the more specialised resources and facilities for one's private purposes also generally is unethical. The misapplication of resources is no different in principle to the misapplication of money, yet so often the former seems easier to rationalise.

In addition museum professionals should be aware that just as solicitors and accountants can be held liable for their negligent advice or action, so too can any other experts. This in turn can expose the museum to legal liability (for the actions of its employees). This is potentially much more expensive than the simple use or misuse of museum facilities and resources.

Example 1:

A collector has a 17th century Japanese ceramic that he suspects to be valuable. He takes it to the museum and shows it to the curator.

- (1) Is it proper for the curator to give an opinion on it?
- (2) Could the curator write a certificate of authenticity?
- (3) If so, is it proper for the curator to charge a fee for the opinion or the certificate?
- (4) Would the answer be different if the curator had been approached out of working hours?
- (5) If the museum sees this as a useful museum activity what guidelines should be introduced?

Example 2

A conservator uses the museum's facilities to repair an object which is privately owned.

- (1) Should this be permissible?
- (2) If so, in what circumstances?
- (3) Does it make any difference whether the conservator receives a fee or not?

Then there is a misapplication of the collection itself. Again these situations we are usually self-justified as being perks of the position.

Example 1:

The museum has a policy of lending works (of second quality) to its trustees and senior staff for domestic display.

- (1) Is this ethical?
- (2) Would you make a distinction between the trustees and the employees?

Example 2:

A corporate sponsor of the museum offers to sponsor a major international exhibition but requests that it be permitted to use the main exhibition space for a dinner party for its board and major clients. Is this an ethical use of museum property?

(vii) Corporate opportunity/sponsorships

A new and important danger has emerged during the last few years, one that was addressed by the Art Museums Association of Australia in its 1983 conference, but one that few museums have yet sufficiently addressed. This is the effect of corporate sponsorship, the linking of museum activity with private commercial advantage.

A major corporation does not allocate money to sponsorships in order to absolve itself of some ill-defined corporate guilt. It does not particularly care about the cultural benefits of museums. Their directors owe a duty to maximise the company's potential for profit to its shareholders. Shareholders profits, not aesthetics, govern the company's decision to sponsor.

Major sponsors of Australian cultural activity include tobacco, alcohol, drug, mining, and construction companies. They sponsor culture for the development of their corporate profile and image. Their involvement is designed to promote their goods and services in their marketplace. It is not, mere beneficence. This is no ground for condemnation. However it is essential that the governing body of each museum address these issues for itself and establish guidelines for the acceptability of sponsorships.

Examples:

A tobacco company offers \$50,000 towards the mounting of an international exhibition. Its principal conditions are that:

- (1) a forty foot banner featuring a cigarette brand is to be draped above the entrance;
- (2) usual acknowledgment be given in the catalogue and all publicity;
- (3) the main exhibition hall be made available to the company for a celebrity dinner;
- (4) Mention may be made of the exhibition and the museum in the company's usual product advertising.
- 5) Would it make any difference if the company was a manufacturer of baby foods?
- (6) Should a museum exhibit a company's corporate collection of paintings? Is the situation any different if the company is, (or is considering becoming), a sponsor?

Conclusion

Of course not all of the above examples constitute unethical behaviour. Indeed, such judgements may vary from incident to incident, actor to actor, observer to observer and time to time. It is for this very reason it is administratively easier but managerially negligent to leave the issue to the discretion and good breeding of the individual. Actions performed in innocence can still damage the reputation of the individual, the institution and indeed the profession.

A potential for conflict of interests is inherent in any profession. At some stage every profession must collectively face the issue. It can be only through reasonable but fearless discussion that the institutions and the bodies representing museum employees will be able to develop bodies of rules which will assist them to avoid or resolve conflicts of interest. The law of defamation, together with the profession's patina of gentility, has for too long inhibited the discussion.