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Secrétariat

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Canada

Policy on Conflict of Interest and Post-Employment

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Policy on Conflict of Interest and Post-Employment

1. Effective date

1.1 This policy takes effect on April 2, 2012.

1.2 This policy and the [Values and Ethics Code for the Public Sector](#) replace the 2003 [Values and Ethics Code for the Public Service](#).

2. Application

This policy applies to the core public administration, for which Treasury Board is the employer, as defined in section 11(1) of the [Financial Administration Act](#), unless excluded through specific acts, regulations or Orders in Council.

Sections 6.2, Monitoring and Reporting, and 7.2, Consequences, do not apply with respect to the Office of the Privacy Commissioner, the Office of the Information Commissioner, the Office of the Chief Electoral Officer, the Office of the Commissioner of Official Languages, the Office of the Commissioner of Lobbying, and the Office of the Public Sector Integrity Commissioner. The deputy heads of these organizations are solely responsible for monitoring and ensuring compliance with this policy within their organizations, as well as for responding to cases of non-compliance in accordance with any Treasury Board instruments that address the management of compliance.

3. Context

3.1. Public servants contribute in a fundamental way to good government, democracy and Canadian society through the loyal, impartial, and non-partisan support they provide to the elected government and through the service they provide to Canadians. As dedicated professionals, they serve the public interest and uphold the public trust.

3.2. This policy elaborates on the *Values and Ethics Code for the Public Sector*, and is aligned with its content. It provides direction and measures to assist organizations and public servants in effectively dealing with real, potential and apparent conflict of interest situations which may arise during and after employment in the public service. Preventing, managing or resolving conflict of interest situations is one of the principal means of maintaining public trust and confidence in the impartiality and integrity of the public service.

3.3. This policy is to be read in conjunction with the *Values and Ethics Code for the Public Sector*. The *Values and Ethics Code for the Public Sector* and the requirements for public servants in Appendix B of this policy form part of the conditions of employment for every public servant.

3.4. This policy is issued pursuant to sections 7 and 11.1(1) of the [Financial Administration Act](#).

4. Definitions

See Appendix A.

5. Policy statement

5.1 Objectives

The objectives of this policy are to:

- ensure that, in situations of real, apparent or potential conflict of interest and situations where there is a conflict of duties, decisions are made in a manner which upholds the public interest;
- facilitate ethical decision-making within organizations and by public servants to resolve conflicts between private and public interests; and
- establish measures to help public servants prevent, manage and resolve conflict of interest and post-employment situations that could impair either the integrity of the public service or the public's perception of its integrity.

5.2 Expected results

The expected results of this policy are that:

- organizations have the appropriate mechanisms in place to assist public servants to report and effectively manage real, apparent or potential conflict of interest situations when performing their duties and after employment; and
- public servants take appropriate action to avoid, reduce or manage situations of real, potential or apparent conflict of interest in the performance of their duties and after employment in the public service.

6. Policy requirements

6.1. Deputy heads are responsible for:

6.1.1. Education and oversight:

- a. Ensuring that public servants in their organization, and anyone considering joining their organization, are informed that the requirements listed in Appendix B, are a condition of employment. This obligation is fulfilled by having individuals acknowledge these requirements in their initial acceptance of an offer of employment to the public service and on any subsequent appointment or deployment within the public service;
- b. Ensuring that public servants in their organization are informed on a regular basis of the requirements of this policy, and that public servants who have indicated an intention to leave their employment are reminded of the requirements of this policy;
- c. Ensuring that the operational risks of conflicts of interest related to their organization's specific mandate are identified and managed; and
- d. Ensuring that the delegation of the responsibilities and authorities for the implementation of this policy are clearly communicated to all public servants in their organization.

6.1.2. Managing conflict of interest and post-employment situations:

- a. Ensuring that public servants have access to advice and assistance when they are unsure of whether they are in a conflict of interest, and when they are considering undertaking any political activity;
- b. Ensuring that procedures are in place in their organization for public servants to file a report of all situations, assets, liabilities or interests that might give rise to a real, apparent or potential conflict of interest with respect to their official duties. These reports are to be administered in accordance with the [Privacy Act](#);
- c. Ensuring that any conflict arising between the private interests and the official duties of a public servant is resolved in favour of the public interest, by considering the nature and risk of the conflict of interest in relation to the feasibility and practicality of the measures required to resolve the conflict, and communicating the decision and the reasons for the decision to the public servant. While a declaration of a possible conflict of interest to the deputy head may often be sufficient, additional requirements may be necessary, as outlined in Appendix B
- d. Ensuring that benefits provided or offered to the organization by outside entities or individuals with whom the organization has past, present or potential official dealings are managed appropriately and that any resulting organizational conflict of interest is resolved in the public interest;
- e. Ensuring that concurrent outside appointments that are part of a public servant's official duties, such as to a board of directors, are managed appropriately and that any resulting conflicts of duties are resolved in the public interest;
- f. Without unduly restricting public servants' ability to seek other employment, reviewing their operations and organizational structure for post-employment situations:
 - i. Determining which positions in their organizations may be at risk for post-employment concerns and designating them as subject to the requirements in Appendix B, section 3.2 (normally including all positions in the executive (EX) category); and
 - ii. When appropriate, reducing or waiving the one-year limitation period, in consideration of the criteria set out in section 3.3 of Appendix B.
- g. Ensuring that decisions taken to resolve conflicts of interest and post-employment situations are, where practicable, made in mutual agreement with the public servant in question, using fair and effective means to resolve disagreements regarding the decisions.

6.2 Monitoring and reporting requirements

6.2.1. Deputy heads are responsible for monitoring the performance of their organization with respect to the application and administration of this policy as follows:

- a. assessing the organization's service delivery structure, resource allocation, human resources competencies, performance indicators, as well as the systems, processes and procedures to prevent and effectively manage real, apparent or potential conflicts of interest in favour of the public interest;
- b. informing the Treasury Board Secretariat (Office of the Chief Human Resources Officer) of any major concerns or problems regarding the administration of this policy in a timely manner; and
- c. providing the Treasury Board Secretariat (Office of the Chief Human Resources Officer) with information that is considered necessary for assessing compliance with this policy, its related directive and other policy instruments, as required.

6.2.2. The Treasury Board Secretariat (Office of the Chief Human Resources Officer) is responsible for assessing departmental performance with respect to the implementation of this policy, as well as compliance with its related directive, through such instruments as employee surveys, the Values and Ethics Component of the Management Accountability Framework (MAF) or audits as required.

6.2.3. The Treasury Board Secretariat (Office of the Chief Human Resources Officer) will review this policy five years after the date of implementation.

7. Consequences

7.1 A public servant who has not complied with the requirements in Appendix B may be subject to disciplinary measures, up to and including termination of employment.

7.2 Organizational consequences of non-compliance with this policy may include any measures allowed by the [Financial Administration Act](#) that the Treasury Board may determine appropriate.

8. Roles and responsibilities of government organizations

8.1 Treasury Board Secretariat

Treasury Board Secretariat (Office of the Chief Human Resources Officer) will promote this policy and provide guidance to support its implementation.

8.2 Public Service Commission

The Public Service Commission is responsible for ensuring that appointments in the Public Service are made on the basis of merit and are free from political influence. The Public Service Commission is also responsible for administering the provisions of [Part 7. Political Activities, of the Public Service Employment Act \(PSEA\)](#), including:

- Granting permission to an employee seeking nomination for or being a candidate in a federal, provincial, municipal or territorial election;
- Authorizing leave without pay to an employee who is a candidate in a federal, provincial, or territorial election; and
- Receiving and investigating allegations of inappropriate political activity as defined in the PSEA, and taking corrective action when the allegations are founded.

9. References

Legislation:

- [Criminal Code](#)
- [Financial Administration Act](#)
- [Lobbying Act](#)
- [Public Servants Disclosure Protection Act](#)
- [Public Service Employment Act](#)
- [Privacy Act](#)

Related policies/publications:

- [Values and Ethics Code for the Public Sector](#)
- [Foundation Framework for Treasury Board Policies](#)
- [Policy Framework for People Management](#)
- [Management Accountability Framework](#)
- [Policy on Interchange Canada](#)
- [Policy on Privacy Protection](#)
- [Framework for the Management of Compliance](#)
- [Directive on Reporting and Managing Financial Conflicts of Interest](#) (yet to be published)

10. Enquiries

Please direct enquiries about this policy to your responsible departmental official. For interpretation of this policy, departmental officials should contact [TBS Public Enquiries](#).

Appendix A: Definitions

deputy head:

a) in relation to a department named in Schedule I of the Financial Administration Act, its deputy minister; and b) in relation to any portion of the federal public administration named in Schedule IV of the Financial Administration Act, its chief executive officer or, if there is no chief executive officer, its statutory deputy head or, if there is neither, the person who occupies the position designated by the Governor in Council in respect of that portion.

For the purposes of this policy the term “deputy head” means deputy heads or their delegated alternates.

public servant:

a person employed in organizations defined in section 2 of this policy. This includes indeterminate and term employees, employees on leave without pay, students participating in Student Employment Programs, casual, seasonal and part-time workers.

Although they are not public servants, individuals on incoming Interchange Canada assignments are expected to comply with, and volunteers are expected to respect, the requirements in Appendix B of this policy. Order-in-council appointees, such as deputy heads, are subject to the [Conflict of Interest Act](#), and are not subject to this policy.

conflict of interest (COI):

a situation in which the public servant has private interests that could improperly influence the performance of his or her official

duties and responsibilities or in which the public servant uses his or her office for personal gain. A *real* conflict of interest exists at the present time, an *apparent* conflict of interest could be perceived by a reasonable observer to exist, whether or not it is the case, and a *potential* conflict of interest could reasonably be foreseen to exist in the future.

conflict of duties

a conflict that arises, not because of a public servant's private interests, but as a result of one or more concurrent or competing official responsibilities. For example, these roles could include his or her primary public service employment and his or her responsibilities in an outside role that forms part of his or her official duties, such as an appointment to a board of directors, or other outside function.

Appendix B: Requirements for public servants to prevent and deal with conflict of interest and post-employment situations

Following are the conflict of interest and post-employment requirements that are a condition of employment for public servants in all organizations subject to this policy. These requirements are grounded in and serve to uphold the values contained in the *Values and Ethics Code for the Public Sector*. By upholding these ethical standards, public servants conserve and enhance public confidence in the honesty, fairness and integrity of the public service. These requirements also form part of Canada's commitments as a signatory to [international agreements on values and ethics](#).

Prevention of conflict of interest

A public servant maintains public confidence in the objectivity of the public service by preventing and avoiding situations that could give the appearance of a conflict of interest, result in a potential for a conflict of interest or result in an actual conflict of interest. Conflict of interest does not relate exclusively to matters concerning financial transactions and the transfer of economic benefit. While financial activity is important, conflicts of interest in any area of activity can have a negative impact on the perceived objectivity of the public service. With the permanent and pervasive nature of information technology, public servants should be particularly sensitive to real, apparent or potential conflicts of interest that may arise from messages and information transmitted via the Internet and other media.

It is impossible to foresee every situation that could give rise to a real, apparent or potential conflict of interest. When in doubt, public servants should refer to the requirements found in this appendix, the *Values and Ethics Code for the Public Sector* and their organization's code of conduct to guide appropriate action. Public servants can also seek guidance from their manager, from their deputy head or his/her delegate.

In addition to the requirements outlined in this appendix, public servants are also required to observe any specific conduct requirements contained in the statutes governing their particular department or organization and their profession, where applicable.

1. A public servant's general responsibilities and duties include:

- a. Taking all possible steps to recognize, prevent, report, and resolve any real, apparent or potential conflicts of interest between their official responsibilities and any of their private affairs;
- b. Unless otherwise permitted in this appendix, refraining from having private interests, which would be unduly affected by government actions in which they participate, or of which they have knowledge or information;
- c. Not knowingly taking advantage of, or benefiting from, information that is obtained in the course of their duties that is not available to the public;
- d. Refraining from the direct or indirect use of, or allowing the direct or indirect use of government property of any kind, including property leased to the government, for anything other than officially approved activities;
- e. Not assisting private entities or persons in their dealings with the government where this would result in preferential treatment of the entities or persons;
- f. Not interfering in the dealings of private entities or persons with the government in order to inappropriately influence the outcome;
- g. Maintaining the impartiality of the public service and not engaging in any outside or political activities that impair or could be seen to impair their ability to perform their duties in an objective or impartial manner; and
- h. Ensuring that any real, apparent or potential conflict that arises between their private activities and their official responsibilities as a public servant is resolved in the public interest.

2. Requirements for preventing and dealing with situations of conflict of interest during employment:

Public servants are required to report in writing to the deputy head, in accordance with their organization's procedures, all outside activities, assets, liabilities and interests that might give rise to a real, apparent or potential conflict of interest in relation to their official duties. Such a report is to be made within 60 days of their initial appointment or any subsequent appointment, transfer or deployment.

On a regular basis thereafter, and every time a major change occurs in their personal affairs or official duties, every public servant is required to review his or her obligations under this policy, the *Values and Ethics Code for the Public Sector* and their organizational code of conduct. If a real, apparent or potential conflict of interest exists, he or she is to file a report in a timely manner.

When negotiating financial arrangements with outside parties, public servants are to comply with the requirements listed in this appendix as well as other related directives or policies issued by the Treasury Board. When in doubt, public servants are to

immediately report the situation to their managers in order to seek advice or direction on how to proceed.

2.1 Assets and Liabilities

Public servants are required to evaluate their assets and liabilities, taking into consideration the nature of their official duties and the characteristics of their assets. If there is any real, apparent or potential conflict of interest between the carrying out of their official duties and their assets or liabilities, they are to report this matter to their deputy head in a timely manner.

Where their deputy head determines that any of these assets or liabilities results in a real, apparent or potential conflict of interest in relation to their official duties, public servants may be required to divest those assets, or to take other measures to resolve the conflict. Public servants may not sell or transfer assets to family members or anyone else for the purpose of circumventing the compliance requirements.

The types of assets and liabilities that should be reported and the procedures for reporting and managing such assets and liabilities are set out in the *Directive on Reporting and Managing Financial Conflicts of Interest*.

2.2 Outside employment or activities

Public servants may engage in employment outside the public service and take part in outside activities unless the employment or activities are likely to give rise to a real, apparent or potential conflict of interest or would undermine the impartiality of the public service or the objectivity of the public servant.

Public servants are required to provide a report to their deputy head when their outside employment or activities might subject them to demands incompatible with their official duties, or cast doubt on their ability to perform their duties or responsibilities in a completely objective manner. The deputy head may require that the outside activities be modified or terminated if it is determined that a real, apparent or potential conflict of interest exists.

Public servants who receive a benefit or income either directly or indirectly from a contract with the Government of Canada are required to report to their deputy head on such contractual or other arrangements. The deputy head will determine whether the arrangement presents a real, apparent or potential conflict of interest, and may require that the contract be modified or terminated.

Political Activities

Any public servant considering involvement in political activity should seek the advice of their manager, a designated departmental official, the Public Service Commission (PSC) or a human resources advisor before acting.

Public servants are required to seek and obtain permission from the PSC to seek nomination for or be a candidate in a federal, provincial, territorial, or municipal election, in accordance with Part 7 of the [Public Service Employment Act](#) (PSEA).

“Political activities” are defined in [Part 7 of the PSEA](#) as “any activity in support of, within or in opposition to a political party; carrying on any activity in support of or in opposition to a candidate before or during an election period; or, seeking nomination as or being a candidate in an election before or during the election period.”

Any public servant who wishes to engage in a political activity not covered by Part 7 of the PSEA that could constitute a conflict of interest is required to report the proposed activity to their deputy head.

Similarly, any public servant who is subject to this policy but who is not subject to Part 7 of the PSEA, including casual and part-time workers, who wishes to engage in any political activity that could constitute a conflict of interest, is to report the proposed activity to the deputy head.

2.3 Gifts, hospitality and other benefits

Public servants are expected to use their best judgment to avoid situations of real, apparent or potential conflict of interest by considering the following criteria on gifts, hospitality and other benefits and in keeping with the *Values and Ethics Code for the Public Sector*, their organization's code of conduct and this policy.

Public servants are not to accept any gifts, hospitality or other benefits that may have a real, apparent or potential influence on their objectivity in carrying out their official duties and responsibilities or that may place them under obligation to the donor. This includes activities such as free or discounted admission to sporting and cultural events, travel or conferences.

The acceptance of gifts, hospitality and other benefits is permissible if they are infrequent and of minimal value, within the normal standards of courtesy or protocol, arise out of activities or events related to the official duties of the public servant concerned, and do not compromise or appear to compromise the integrity of the public servant concerned or of his or her organization.

Public servants are to seek written direction from their deputy head where it is impossible to decline gifts, hospitality or other benefits that do not meet the principles set out above, or where it is believed that there is sufficient benefit to the organization to warrant acceptance of certain types of hospitality.

2.4 Solicitation

With the exception of fundraising for such officially supported activities as the Government of Canada Workplace Charitable Campaign (GCWCC), public servants may not solicit gifts, hospitality, other benefits or transfers of economic value from a person, group or organization in the private sector who has dealings with the government. When fundraising for such official activities, public servants should ensure that they have prior written authorization from their deputy head in order to solicit donations, prizes or contributions in kind from external organizations or individuals.

Similarly, if an outside individual or entity, with whom the organization has past, present or potential official dealings, offers a benefit to the organization such as funding for an event or a donation of equipment, public servants are to consider whether any real, apparent or potential conflict of interest exists, and obtain the consent in writing of the deputy head prior to accepting any such benefit.

The deputy head may require that the activities be modified or terminated where it is determined that there is a real, potential or apparent conflict of interest or an obligation to the donor. These provisions are designed to ensure that this policy is consistent with [paragraph 121\(1\) \(c\) of the Criminal Code](#).

2.5 Avoidance of preferential treatment

Public servants are responsible for demonstrating objectivity and impartiality in the exercise of their duties and in their decision-making, whether related to staffing, financial awards or penalties to external parties, transfer payments, program operations or any other exercise of responsibility.

This means that they are prohibited from granting preferential treatment or advantages to family, friends or any other person or entity. They are not to offer extraordinary assistance to any entity or persons already dealing with the government without the knowledge and support of their supervisor. They also are not to disadvantage any entity or persons dealing with the government because of personal antagonism or bias.

Providing information that is publicly accessible is not considered preferential treatment.

3. Requirements for preventing post-employment conflict of interest situations before and after leaving office:

All public servants have a responsibility to minimize the possibility of real, apparent or potential conflict of interest between their most recent responsibilities within the federal public service and their subsequent employment outside the public service.

3.1 Before leaving employment

Before leaving their employment with the public service, all public servants are to disclose their intentions regarding any future outside employment or activities that may pose a risk of real, apparent or potential conflict of interest with their current responsibilities and discuss potential conflicts with their manager or their deputy head or his/her delegate.

3.2 Post-employment limitation period for public servants in designated positions

Deputy heads are responsible for designating positions of risk for post-employment conflict of interest situations as per section 6.1.2.(f)(i). of this policy.

Public servants in these designated positions are subject to a one-year limitation period after leaving office. Before leaving office and during this one-year limitation period, these public servants are to report to their deputy head all firm offers of employment or proposed activity outside the public service that could place them in a real, apparent or potential conflict of interest with their public service employment. They are also to disclose immediately the acceptance of any such offer. In addition, these public servants may not, during this one-year period, without their deputy head's authorization:

- a. accept appointment to a board of directors of, or employment with, private entities with which they had significant official dealings during the period of one year immediately prior to the termination of their service. The official dealings in question may either be directly on the part of the public servant or through their subordinates;
- b. make representations on behalf of persons or entities outside of the public service to any government organization with which they had significant official dealings, during the period of one year immediately prior to the termination of their service.^[1] The official dealings in question may either be directly on the part of the public servant or through their subordinates; or
- c. give advice to their clients or employer using information that is not publicly available concerning the programs or policies of the departments or organizations with which they were employed or with which they had a direct and substantial relationship.

3.3 Waiver or reduction of limitation period

A public servant or former public servant may apply to the deputy head for a written waiver or reduction of the limitation period. The public servant is to provide sufficient information to assist the deputy head in making a determination as to whether to grant the waiver taking into consideration the following criteria:

- a. the circumstances under which the termination of their service occurred;
- b. the general employment prospects of the public servant or former public servant;
- c. the significance to the government of information possessed by the public servant or former public servant by virtue of that individual's position in the public service;

- d. the desirability of a rapid transfer of the public servant's or former public servant's knowledge and skills from the government to private, other governmental or non-governmental sectors;
- e. the degree to which the new employer might gain unfair commercial or private advantage by hiring the public servant or former public servant;
- f. the authority and influence possessed by that individual while in the public service; and/or
- g. any other consideration at the discretion of the deputy head.

4. Resolution

With respect to the arrangements necessary to prevent real, apparent or potential conflict of interest, or to comply with the requirements set out above, it is expected that situations will be resolved through discussion and agreement between the public servant and the deputy head or delegate. When a public servant and the deputy head or delegate disagree on the appropriate arrangements to resolve a real, apparent or potential conflict of interest, the disagreement will be resolved through the resolution procedures established by the deputy head.

5. Consequences

A public servant who does not comply with the requirements set out in this appendix may be subject to disciplinary measures, up to and including termination of employment.

Footnotes

Footnote fn1

Assistant deputy ministers and their equivalents are subject to the [Lobbying Act](#). In the case of any conflict between this policy and the Act, the Act takes precedence.

[Return to footnote 1 referrer](#)