



# **Application Guide for Post-Employment under the Policy on People Management and the Directive on Conflict of Interest**

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## 1. Introduction

Post-employment measures in the *Policy on People Management* and the *Directive on Conflict of Interest* (directive) reinforce the integrity of the public service by preventing public servants from improperly benefiting themselves or others after they leave their positions with the government. Improper benefits may arise, for example, from official dealings with external organizations or with individuals who could offer public servants employment opportunities in exchange for preferential treatment.

Improper benefits could also arise from the misuse of confidential or non-public information for personal benefit after leaving their employment with the government.

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

## 2. References

### ***2.1 Values and Ethics Code for the Public Sector***

#### **Integrity value**

Integrity is the cornerstone of good governance and democracy. By upholding the highest ethical standards, public servants conserve and enhance public confidence in the honesty, fairness and impartiality of the federal public sector.

#### **Expected behaviours**

The *Values and Ethics Code for the Public Sector* includes the following behaviours under the integrity value:

Public servants shall serve the public interest by:

3.1 Acting at all times with integrity and in a manner that will bear the closest public scrutiny, an obligation that may not be fully satisfied by simply acting within the law

3.2 Never using their official roles to inappropriately obtain an advantage for themselves or to advantage or disadvantage others

3.3 Taking all possible steps to prevent and resolve any real, apparent or potential conflicts of interest between their official responsibilities and their private affairs in favour of the public interest

3.4 Acting in such a way as to maintain their employer's trust

## ***2.2 Policy on People Management***

### **Deputy head requirements**

Deputy heads are responsible for:

- Designating one or more senior officials to whom responsibility is assigned or authority is delegated with regard to the prevention and resolution of conflict of interest and conflict of duties situations (subsection 4.1.2.2)
- Ensuring that persons employed are informed in writing of the relevant terms and conditions applicable to their employment, including with regard to conflict of interest and post-employment (subsection 4.1.18.2)
- Designating positions that may be at risk for post-employment concerns and determining the appropriate mitigation measures (subsection 4.1.31)

- Approving or denying, in whole or in part, a request to waive the post-employment limitation period (subsection 4.1.32)

## **2.3 Directive on Conflict of Interest**

### **Designated senior officials' requirements**

Designated senior officials are responsible for:

- Identifying those positions that may be a risk for post-employment conflicts of interest (subsection 4.1.5)
- Seeking deputy head approval of the positions to be designated as a risk for post-employment conflicts of interest ("designated positions") (subsection 4.1.6)
- Ensuring that persons offered employment and persons employed are informed about those positions designated for the one-year post-employment period and the applicable limitations (subsection 4.1.10.3)
- Reminding persons employed who have indicated their intention to leave the public service of the ongoing application of this directive and, if they hold a designated position, of their post-employment limitations (subsection 4.1.11)

### **Public servants' responsibilities**

Public servants' responsibilities when they intend to leave the public service are outlined in the directive. As a first step, 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 seek guidance from their designated senior official. If a post-employment risk is determined, public servants must report the risk to their deputy head in accordance with their organization's procedures.

Public servants may be subject to limitations if the employment outside the public service may constitute a conflict of interest with their public service duties. A "cooling off" period of one year may be applied in order to limit contacts between the former public servant and private sector organizations with which that person had business dealings. Public servants in designated positions subject to a post-employment limitation period have specific responsibilities under the directive (subsection 4.2.20).

## **2.4 Organizational code of conduct**

An organization's code of conduct may also contain requirements regarding post-employment pertaining to its own organizational risks and circumstances that public servants should consider.

# **3. Designation of positions subject to post-employment limitations**

## **3.1 Ethical risks to consider in designating positions**

In deciding which positions should be subject to post-employment limitations, designated senior officials (on behalf of their deputy heads) should identify which types or classes of positions may be vulnerable to post-employment conflicts of interest. Examples of potential risks are as follows:

- The former public servant may take advantage of relationships with colleagues still in the department to obtain inside information or preferential treatment, or to make representations

- The public servant who is seeking external employment may give preferential treatment to potential employers with which they or their subordinates have official public service dealings
- The public servant who is seeking external employment may offer confidential or non-public information (which would violate their oath of employment and the Policy on Government Security) to potential employers in exchange for employment opportunities
- The former public servant may use their inside knowledge of strategy to take employment with the opposing side in departmental negotiations

This list is not exhaustive. Potential problems and risks should be identified as part of a comprehensive ethical and operational risk assessment.

### **3.2 Other factors to consider in designating positions**

Positions may be designated according to such factors as their level, power of approval or recommendation, legislated and delegated authority, the degree to which that authority is or is not fettered, independence of operations, visibility, supervisory functions, and scope of influence.

Positions may also be designated for post-employment limitations by taking into consideration which operations or functions present the most ethical risks. These risks may be associated, for example, with the exercise of financial authority, procurement functions, regulatory functions, grants and contributions, and negotiations on behalf of the employer or the government, and so on. Again, this list is not exhaustive.

Positions in the EX-category and equivalents are normally subject to post-employment limitations because of their seniority, visibility and delegated authority. The incumbents may also supervise staff who carry out official



duties with organizations that are in, or appear to be in, a position to offer the executive employment opportunities outside of the public service in exchange for consideration.

Positions at levels lower than the EX-category may also be at risk for post-employment concerns because of the regulatory or other operational functions the incumbents exercise, the authority to make recommendations or decisions, the degree to which their decisions are or are not subject to supervisory oversight, or the sensitive information to which they regularly have access. These positions may form the pool from which departments select candidates for EX positions as well.

Departments should carefully review their operations to identify positions on the basis of the factors identified above, consult with bargaining agents on the positions so identified, and communicate the final designation to the affected employees.

## **4. Procedures for public servants**

A public servant who decides to leave the public service must inform management as soon as possible in order to provide reasonable notice. The manager will then remind the public servant of their obligations to comply with the post-employment requirements set out in the directive, at subsections 4.2.19 and 4.2.20, and the relevant sections of the organizational code of conduct.

If the public servant judges that future employment could place them in real, apparent or potential conflict of interest, the public servant should inform the deputy head, or designated senior official, by submitting a report in accordance with the organization's procedures. For organizational contacts, please see the Treasury Board of Canada Secretariat's [list of](#)

contacts for designated senior officials for conflict of interest and post-employment measures (accessible only on the Government of Canada network).

After assessing the report (including dialogue with the public servant as necessary), the deputy head or designated senior official will contact the public servant and inform that person in writing of the post-employment measures to be taken. In some cases, a limitation period of up to one year may be imposed in order to limit contacts between the former public servant and private sector organizations with which they or their subordinates had significant official dealings.

## 5. Post-employment limitations

### 5.1 What the limitations are and what they mean

The directive (subsection 4.2.20.2) outlines limitations that public servants in positions designated by the deputy head (see section 3 of this guide) must respect during the one-year period after leaving the public service.

The **first limitation** is that they may not:

a) accept an appointment to a board of directors of, or employment with, outside entities or individuals with which they had significant official dealings, either directly or through their subordinates, in the year immediately prior to leaving their employment in the public service

It is important to note that the official dealings could be on the part of the public servant themselves **or** subordinates whom they supervise. The significance of the official dealings is defined on the basis of common sense and the risk for real or apparent conflict of interest. Awarding contracts and paying invoices, approving transfer payments, signing off on

invoices, making recommendations to the minister on behalf of the organization, exercising delegated authority on behalf of the external organization, or negotiating on the opposing side of the organization are examples of what could be considered official dealings. It is up to organizations to clearly identify and be aware of the risks for conflict of interest in the official dealings that comprise their operations.

The **second limitation** is that these public servants may not:

b) make representations on behalf of entities or individuals outside of the public service to any government organization with which they had significant official dealings, either directly or through their subordinates, in the year immediately prior to leaving their employment in the public service

Making representations may consist of many different activities, such as intervening on behalf of the external person or entity, lobbying as defined by the Office of the Commissioner of Lobbying of Canada, making sales calls, or acting as an official agent or advocate.

It should be noted that assistant deputy ministers and equivalents are also subject to the post-employment restrictions of the Lobbying Act.

The **third limitation** is that public servants in designated positions may not:

c) give advice to their clients or any new employer by using information that is not publicly available concerning the programs or policies of the department or organization with which they were employed or with which they had a direct and substantial relationship

Even after the post-employment limitation period, public servants are restricted from divulging sensitive and classified information by their oath of employment and by the *Policy on Government Security*. However, assisting

a person with finding public information about departments and programs is not a conflict of interest or a breach of security.

For the first two limitations above, the public servant is free to accept employment with any employer once the one-year post-employment period is over, given that they are no longer subject to these limitations. However, the third limitation applies even after the one-year period has lapsed.

## **6. Post-employment limitation period: Waivers, reductions and enforcement**

### **6.1 Waivers and reductions**

A public servant who holds a designated position may make a written request to the deputy head for a waiver or a reduction of the one-year post-employment period. It is important to note that a public servant's request can apply to one or more of the limitations. So, for example, the deputy head may waive or reduce the one-year post-employment period for the public servant to accept an appointment to a board of directors, but maintain the full one-year period for the other limitations. However, as stated above, the one-year post-employment period can never be reduced or waived with respect to the third limitation. All public servants are restricted, in perpetuity, from divulging sensitive and classified information by their oath of office.

If, through analysis of the public servant's report submitted in accordance with organizational procedures, it is determined that the post-employment opportunity presents no risk for conflict of interest, it is not necessary for the public servant to apply to the deputy head for a waiver or reduction of the one-year post-employment limitation period.

If there is a possibility of a risk of post-employment conflict of interest and after analysis there are reasonable mitigation strategies that can be put in place, the public servant or former public servant can apply in writing to the deputy head for a waiver or reduction in accordance with the organization's procedures. In accordance with the directive, the public servant or former public servant must provide information to assist the deputy head in deciding whether to grant the waiver or reduction. At minimum this information should include:

- the circumstances under which they are leaving or left their public service employment
- their general employment prospects
- the significances to the government of the information they possessed by virtue of their position or former position in the public service
- the desirability of a rapid transfer of their knowledge and skills from the government to private, other governmental or non-governmental sectors
- the degree to which their new employer might gain unfair commercial or private advantage
- the authority and influence they possessed while in the public service

## **6.2 Enforcement**

Once a public servant has left the public service, there are no simple procedures that a department can use to check whether that public servant is respecting the post-employment compliance measures to which they are subject. The onus for compliance is on the individual in question. Once an individual has left office, they are no longer a public servant; hence, managers no longer have any authority over that individual. Public servants who are no longer employed in the public service cannot be subject to disciplinary measures.

This does not mean that the department cannot take any action. Once a public servant has left and it comes to the department's attention that they may be in breach of their obligations, the department should write to the former public servant reminding the individual of their obligations, outlining specific measures that must be taken to resolve the situation and to request that the former public servant let the employer know how they intend to comply.

Departments should take all possible steps to internally manage any situation where a possible breach of the post-employment measures may put at risk the integrity of departmental programs or operations. For example, the employer can ensure that former colleagues do not contravene the directive and their departmental code of conduct by providing the former public servant with inside information or preferential treatment. Departments may take action against a contractor who has violated the *Code of Conduct for Procurement* , which states:

Vendors will not hire directly, or through a third party, former public servants during their one-year cooling-off period where this would constitute a violation of post-employment measures under [the *Directive on Conflict of Interest*] that complements the Values and Ethics Code for the Public Sector.

It will be a condition of all contracts that the vendor has read and agrees to be bound by the terms of this *Code of Conduct for Procurement*.

For further information, please see the "Context and purpose of the Code" section of the *Code of Conduct for Procurement*.

In other examples, the deputy head may instruct departmental program staff to cease negotiations with an entity that has hired a former public servant in breach of post-employment limitations. Departments are to also impose, as a condition of contribution funding to certain non-governmental organizations, that the organization not employ a former public servant who is in breach of their post-employment obligations.

Other authorities available to the employer may include the Oath of Office, signed by the majority of public servants when hired, or, in serious cases, invoking such legislation as the Criminal Code or the Security of Information Act through referral of some matters to the appropriate police or security investigative body, if the post-employment breach has contributed to a criminal act. Employers should seek legal advice or advice from departmental security services when faced with situations that cause concern. Every situation should be examined on a case-by-case basis.

## 7. Returning to the public service

### 7.1 Indeterminate or term employment

The post-employment requirements of the directive do not restrict a former public servant from returning to public service employment as an indeterminate or term employee.

### 7.2 Contracting

Employment during the limitation period with a firm contracting with the government *with which the former public servant had significant official dealings* is a violation of the post-employment requirements. However, a former public servant contracting individually with their former department is not normally in violation of the post-employment

requirements as long as such contracting is in the public interest. It is important that the contracting process be carried out in a manner that will bear the closest public scrutiny.

### 7.3 Casual workers

Casual workers, who are generally hired for specified periods that may not exceed 90 working days in one calendar year, are hired on a non-competitive basis under the authority of section 50 of the Public Service Employment Act. Casual workers are most often hired as short-term replacements for staff and to help manage heavy workloads. At the more senior levels, casuals are used to bring in an expertise in order to support a special project or to transfer knowledge. Many times, the skill set of a former employee of the federal public service is ideal to support a special project, or it may be that the individual has key knowledge that would benefit federal public servants. Although casual workers are not employees as defined by the Federal Public Sector Labour Relations Act, they are considered public servants for the purposes of the *Values and Ethics Code for the Public Sector* and the directive.

Candidates for casual employment may be former public servants who are potentially subject to the post-employment limitations and period as outlined in the directive (subsection 4.2.20.2). The post-employment limitations are designed to minimize the possibility of conflict of interest arising from employment **outside** the public service and the public servant's official responsibilities while employed full-time; therefore, the post-employment limitations do **not** restrict a former public servant from coming back into the public service as a casual worker. That said, casual workers should be hired in a fair and transparent manner, and there should be evidence that in the opinion of the manager, the person is competent to do the work.



When their period as a casual worker ends, they may be subject to a post-employment limitation period as determined by their department if they have a firm offer of employment from an entity outside the public service and if it presents a real, apparent or potential conflict of interest with respect to the official responsibilities they had during their casual employment.

The directive stipulates that the limitation period is normally one year; however, it also provides that the limitation period may be waived or reduced by the deputy head upon consideration of the factors outlined in the directive (Appendix A, subsection A.2.2.4.3). One of these factors is the circumstances under which the termination of the service occurred. Because casual employment is limited to 90 days in any one department in a calendar year with no extensions, the deputy head may take this factor into consideration when considering a request to reduce or waive the limitation period pertaining to the public servant's most recent employment.

## **8. Case studies and examples**

### **Scenario 1: Everyone has a responsibility**

Jeffrey is a PG-02 purchasing officer and is responsible for administering large contracts with outside suppliers. His position was not designated as subject to the limitation period by his department. It is not public yet, but he knows that his department is planning a large move to a new building and will need to purchase a lot of new furniture. He contacts one of his regular suppliers and trades this knowledge for a new, higher-paying job, managing the contract with his former department. He brags about this to his colleagues in the department.

## Factors to consider

- Did Jeffrey violate his ethical responsibilities under the *Values and Ethics Code for the Public Sector*, the directive and the departmental code of conduct?
- Is there anything the department can or should do about this?

## References

The *Values and Ethics Code for the Public Sector* (subsection 3.2) requires that public servants never use their official roles to inappropriately obtain an advantage for themselves or to advantage or disadvantage others.

The directive (subsection 4.2.2) states that all public servants must identify, prevent and resolve conflict of interest situations when they leave the public service.

## Suggested solution

Even though his position is not subject to a limitation period, Jeffrey nevertheless has responsibilities with respect to avoiding post-employment conflicts of interest. Jeffrey violated the *Values and Ethics Code for the Public Sector* and the directive (and possibly the organizational code of conduct). He has taken advantage of information that is not available to the public. Jeffrey could be disciplined for this breach of the Code, up to and including termination of his public service employment. His actions may also have jeopardized the outside firm's chances of winning the contract and its future relationship with the department. Also consult section 6.2, "Enforcement," of this guide for more information.

## Scenario 2: A change of career

In six months, Dr. Smith, Associate Assistant Deputy Minister (ADM), Research Branch, will be leaving her department to join the University of Waterloo as Chair of the School of Applied Research in the science faculty. ADM positions have been designated by her deputy head as subject to post-employment limitations.

As part of her new duties, Dr. Smith will direct the school's activities, including establishing links to government and non-government groups, and developing proposals to funding organizations that offer grants to support work in the fields of applied research.

The position involves establishing contacts with private and public sector organizations to carry out research and setting up an advisory committee for the school. The position also involves directing multi-disciplinary research teams and publishing the results of studies. The school could conduct research and scientific studies in applied sciences for Dr. Smith's current department.

Dr. Smith's future role seems to have advantages for her current department, in particular in generating research results and evidence-based decision making for policy development.

### **Factors to consider**

- Does the directive apply in Dr. Smith's case?
- What steps must Dr. Smith follow to avoid any real, apparent or potential conflict of interest?
- How can Dr. Smith's current department ensure that there will be no perception of preferential treatment or undue influence on her part as she prepares to assume her new role?
- Could a third party have reasonable doubts about Dr. Smith's neutrality or objectivity as a public servant?

## Reference

The *Policy on People Management* (subsection 4.1.31) states that deputy heads are responsible for designating positions that may be at risk for post-employment conflict of interest and for determining the appropriate mitigation measures.

The directive (subsection 4.2.20) states that before leaving the public service, public servants who hold designated positions must report to their deputy head all firm offers of employment that might give rise to a real, apparent or potential conflict of interest in relation to their most recent duties and responsibilities. They are also to seek their deputy head's approval before accepting employment with outside entities with which they had significant official dealings, either directly or through their subordinates, in the year immediately prior to leaving the public service.

## Suggested solutions

- As a senior manager in the department, Dr. Smith must comply with the directive and with her organizational code of conduct, and she must report the offer of employment with the university before accepting the offer.
- If it is determined that Dr. Smith has significant official dealings with the University of Waterloo in her role as Associate ADM, Research Branch, she should be assigned new responsibilities as quickly as possible. She could also submit a request for a reduction of the limitation period. The period following her reassignment to new duties could be taken into consideration in the request for the reduction.
- Since the work to be carried out by Dr. Smith with the university will benefit the public service, she could request a reduction or waiver of the limitation period as provided for in the directive, Appendix A, subsection A.2.2.4.3.

### **Scenario 3: The world-renowned expert**

Dr. O'Brien is a MD-MOF-2. His position was designated as subject to post-employment limitations by his department. He was brought into the public service for a two-year term to manage a contribution to the World Health Organization (WHO) headquarters outside of Canada for a project involving the classification of rare veterinary diseases in the developing world. He is one of three people in the world with this specialty. The contribution program has a sunset clause, and his term and the program end at the same time. After his term ends, the WHO offers him a position to continue the work. Can he accept this position?

#### **Factors to consider**

- Would restricting Dr. O'Brien from accepting the offer have an impact on his future employability?
- Would it be in the public interest of Canada for him to accept the offer?
- What risks could arise from Dr. O'Brien accepting this offer? How could it be perceived by the public?

#### **Reference**

The directive, Appendix A, subsection A.2.2.4.3, applies to this example.

A public servant or former public servant may apply to the deputy head for a written waiver or reduction of the one-year post-employment limitation period by providing, at minimum, the following information:

- The circumstances under which they are leaving or left their public service employment;
- Their general employment prospects;
- The significance to the government of the information they possessed by virtue of their position or former position in the public service;

- The desirability of a rapid transfer of their knowledge and skills from the government to private, other governmental or non-governmental sectors;
- The degree to which their new employer might gain unfair commercial or private advantage; and
- The authority and influence they possessed while in the public service.

### **Suggested solution**

Dr. O'Brien could possibly accept this position, provided he obtained a waiver of the limitation period from the deputy head. He would have to present a request, based on the expiration of his term (which is not in his control) and based on the limitations on his employment prospects in his field because of his specialization and the public interest of Canada to have him continue this work.

### **Scenario 4: A volunteer opportunity**

Jean-Jacques Marcil was the director of the Transfer Payment Program in his department before he retired four months ago. His position in the EX-category was designated by the deputy head as one of those subject to the post-employment limitations.

Jean-Jacques was enjoying his retirement, but was seeking volunteer opportunities. During a round of golf, he met Ron Brown, the director of the non-governmental organization that his staff dealt with regularly regarding its transfer payment. During their informal conversation, Jean-Jacques asked Ron if his organization could use volunteer help. Ron mentioned that their community relations officer had left on maternity leave and that they were in a bind. He suggested to Jean-Jacques that it would really be helpful if he could come in part-time and help them out for

a few months. Among other duties, the community relations position requires regular liaison with and representations to Jean-Jacques' former department.

### **Factors to consider**

- Would Jean-Jacques be able to take this volunteer opportunity?
- As Jean-Jacques is no longer a public servant, is he still subject to the directive and his former department's code of conduct?
- Would a third party raise concerns that Jean-Jacques obtained his new volunteer position because he was in charge of the program that provided the organization's funding or be concerned that he was taking advantage of his previous connections to lobby the department?

### **Reference**

The directive, subsection 4.2.20.2, states that during the limitation period, a former public servant must seek deputy head's written approval before making representations to any government organization on behalf of persons or entities outside of the public service with which they had significant official dealings, either directly or through their subordinates, in the year immediately prior to leaving their employment in the public service.

### **Suggested solutions**

- During the year following his retirement, if Jean-Jacques is considering accepting such an offer, he is required to report it to his former department and seek its advice.
- Unless the deputy head is of the opinion that there is sufficient cause to waive or reduce the limitation period, Jean-Jacques may not accept

the position or others like it until one year after his retirement date without violating the directive.

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