

1. Purpose and Application

The purpose of this policy is to set out conflict of interest provisions for persons described in the definition of “employee” (below) which differ from, or are supplementary to, those in place for other employees of the Government of Prince Edward Island.

2. Definitions

For the purpose of this policy, the following definitions will apply:

- (a) “**Clerk**” means the Clerk of Executive Council.
- (b) “**Commissioner**” means the Ethics and Integrity Commissioner.
- (c) “**Conflict of Interest**” exists in any situation in which an employee, either for the employee or some other person, may attempt to promote a private or personal interest which actually or apparently:
 - (i) interferes with the objective exercise of the employee’s duties, or
 - (ii) is advanced or enhanced because of the employee’s position.
- (d) “**Dependent children**” means minor children, and adult children who live with the employee and are primarily dependent on the employee or the employee’s spouse for financial support.
- (e) “**Employee**” mean a member of the Executive Division as defined by the Civil Service Act. But does not include the Auditor General, the Chairperson and Vice-Chairperson of the Island Regulatory and Appeals Commission or the Chief Executive Officer of the Workers’ Compensation Board.
- (f) “**Executive Division**” is comprised of the positions of
 - (i) deputy heads and assistant deputy ministers;
 - (ii) the Clerk of the Executive Council;
 - (iii) the Secretary to Treasury Board;
 - (iv) special advisors and assistants to members of the Executive Council;
 - (v) the Chief Executive Officer of the Commission; and
 - (vi) such other similar positions as the Lieutenant Governor in Council may designate.
- (g) “**Private interest**” does not include an interest in a decision or matter:
 - (i) that is of general application;
 - (ii) that affects an employee, an employee’s spouse or an employee’s dependent children as one of a broad class of persons;
 - (iii) that concerns the remuneration or benefits of an employee; or
 - (iv) where the interest is so remote or insignificant in nature that it cannot reasonably be regarded as likely to influence the employee.

- (h) **“Spouse”** means a person who:
 - (i) is married to the employee;
 - (ii) is not married to the employee but is cohabiting with the employee in a conjugal relationship and has done so continuously for a period of at least three years; or
 - (iii) is not married to the employee but is cohabiting with the employee in a conjugal relationship and together they are the natural or adoptive parents of a child, but does not include a person from whom the employee is separated.

3. Commissioner

- 3.1 There shall be an Ethics and Integrity Commissioner who shall be appointed by Executive Council for a term of five years and may be reappointed.
- 3.2 If the Commissioner is unable to act due to illness or other cause, Executive Council may appoint an acting Commissioner to serve until the commissioner is again able to act or until the office becomes vacant.
- 3.3 The Commissioner shall be paid such remuneration as is set by Executive Council.
- 3.4 An employee may seek the advice of the Commissioner on any matter respecting the employee’s obligations pursuant to this policy or more generally, on ethical matters relating to senior public servants.
- 3.5 The responsibility for determining whether or not an employee is in conflict of interest rests with the Commissioner.
- 3.6 Where an employee is not satisfied with a decision or recommendation of the Commissioner, the employee may request in writing that the matter be reviewed and reconsidered by the Commissioner.
- 3.7 Information disclosed to the Commissioner pursuant to this policy is confidential and shall not be disclosed to any person except:
 - (a) by the employee, or with the employee’s written consent;
 - (b) in a criminal proceeding, as required by law;
 - (c) in a written statement filed pursuant to subsection 6.3;
 - (d) in a report to the Premier or the Clerk pursuant to subsection 8.10; or
 - (e) otherwise in accordance with law or this policy.

4. Conflict of Interest Guidelines

- 4.1 The following sections of the Conflict of Interest Guidelines for public servants apply to employees subject to this policy and shall be read with any necessary changes to reflect their application to such employees: 1. PURPOSE; 2. DEFINITION 2.01 Definitions of "government property" and "someone connected with Employee"; 6. PRINCIPLES; 7. FINANCIAL GAIN; 9. PREFERENTIAL TREATMENT; 10. COMMUNITY ACTIVITIES; and 12. POLITICAL ACTIVITY.

5. Prohibitions and Restrictions

- 5.1 An employee shall not knowingly be a party to a contract with the Government of Prince Edward Island under which the employee receives a benefit.
- 5.2 An employee shall not have an interest in a partnership or in a private company this is a party to a contract with the Government of Prince Edward Island under which the partnership or company receives a benefit.
- 5.3 Subsections 5.1 and 5.2 do not apply to a contract that existed before the person became an employee but do apply to its renewal or extension.
- 5.4 Notwithstanding subsection 5.3, the Government of Prince Edward Island may require as a condition of employment that a person comply with subsections 5.1 and 5.2 prior to commencement of employment or as soon thereafter as is practicable.
- 5.5 Subsection 5.2 does not apply if the Commissioner is of the opinion that the interest is unlikely to affect the employee's performance of his or her duties.

6. Gifts and Other Benefits

- 6.1 An employee, an employee's spouse or an employee's dependent child shall not accept a fee, gift or personal benefit that is connected directly or indirectly with the employee's position.
- 6.2 Subsection 6.1 does not apply to:
- (a) Compensation provided in accordance with the employee's terms of employment; or
 - (b) A gift or personal benefit
 - (i) that is received as an incident of the protocol, customs or social obligations that normally accompany the responsibilities of the employee's position, or
 - (ii) that is of such a nature that it could not reasonably be regarded as likely to influence the employee in the performance of his or her duties.

- 6.3 Where an employee, an employee's spouse or dependent child receives a gift of personal benefit referred to above with a value that exceeds \$200, the employee shall within thirty days of such receipt file with the Commissioner a written statement indicating the nature of the gift or personal benefit, its source, and the circumstances under which it was given and accepted. This subsection also applies to gifts and personal benefits where the total value received from one source in any twelve month period exceeds \$200.

7. Compliance

- 7.1 An employee is responsible to take all necessary actions to prevent conflict of interest from arising and to resolve those that do arise. Necessary actions may include:
- (a) Avoidance, withdrawal or recusal from activities or situations that place the employee in a conflict of interest. This includes the establishment of an ethical wall;
 - (b) Divestment, where continued ownership would constitute a conflict of interest or otherwise be contrary to this policy. Divestment may be achieved by the sale or transfer of an asset in an arm's length transaction, or by placing the asset in a trust which complies with subsection 7.2 or 7.3.
- 7.2 Where divestment of securities, shares, futures or commodities is to be achieved by entrusting the assets to one or more trustees:
- (a) the provisions of the trust shall be approved by the Commissioner;
 - (b) the trustees shall be persons who are at arm's length from the employee and approved by the Commissioner;
 - (c) the trustees shall not consult with the employee with respect to managing the trust property but may consult with the Commissioner;
 - (d) at the end of each calendar year and at one or more intervals during the years, the trustees shall give the employee a written report stating the value, but not the nature, of the assets in the trust;
 - (e) the year-end report required by (d) shall also state the net income of the trust for the preceding year and the trustees' fees, if any;
 - (f) the trustees shall give the employee sufficient information to permit the employee to submit returns as required by the *Income Tax Act (Canada)* and shall give the same information to the Canada Revenue Agency;
 - (g) the trustees shall give the Commissioner copies of all information and reports given to the employee; and
 - (h) the trust shall provide that the employee may, at any time, instruct the trustees to liquidate all or part of the trust and pay over the proceeds to the employee.
- 7.3 Where the divestment of an interest in a business partnership or sole proprietorship is to be achieved by entrusting the interest to one or more trustees:
- (a) the provisions of the trust shall be approved by the Commissioner;

- (b) the trustees shall be persons who are at arm's length from the employee and approved by the Commissioner;
- (c) the trustees shall not consult with the employee with respect to managing the trust property, but may consult with the Commissioner;
- (d) annually, the trustees shall give the Commissioner a written report stating the nature of the assets in the trust, the net income of the trust for the preceding year and the trustees' fees, if any; and
- (e) the trustees shall give the employee sufficient information to permit the employee to submit returns as required by the *Income Tax Act (Canada)* and shall give the same information to the Canada Revenue Agency.

7.4 Where an employee pays fees or disbursements for the establishment and administration of a trust approved by the Commissioner, the employee is entitled to be reimbursed from the Operating Fund for such amounts as are approved by the Commissioner. The employee is responsible for any income tax liabilities that may result from the reimbursement.

7.5 Where an employee acquires by gift or inheritance an asset or interest which may be a conflict of interest, the Commissioner may allow up to one year for the employee to divest himself or herself of the asset or interest. If such allowance is made, the Commissioner may direct that the employee take such interim steps as may be necessary to guard against conflict of interest in the interim period.

8. Administration and Disclosure

8.1 The Clerk shall provide each employee with a copy of this policy and the Conflict of Interest Guidelines applicable to all public servants upon the employee becoming a member of the Senior Compensation Plan.

8.2 Every employee shall complete and submit to the Commissioner the forms of confidential disclosure statement provided by the Commissioner:

- (a) upon initial membership in the Senior Compensation Plan;
- (b) upon a change in circumstances (including a change in assignment);
- (c) annually; and
- (d) upon request by the Clerk or the Commissioner.

8.3 The confidential disclosure statements shall:

- (a) Identify the assets and liabilities of the employee, the employee's spouse and dependent children, and state the value of the assets and liabilities;
- (b) State any income the employee, the employee's spouse and dependent children have received during the preceding twelve months or are entitled to receive during the next twelve months, as well as the source of that income;

- (c) State any benefits the employee, the employee's spouse and dependent children and any private company or partnership in which any of them has an interest, have received during the preceding twelve months as a result of a contract with the Government of Prince Edward Island, and describe the subject matter and nature of the contract;
 - (d) If a disclosure statement mentions private company or partnership:
 - (i) include any information about the activities of the private company or partnership and sources of income that the employee is able to obtain by making reasonable inquiries, and
 - (ii) state the names of any other companies or partnerships that are affiliates;
 - (e) List all corporations and other organizations in which the employee, the employee's spouse or dependent children is an officer or director; and
 - (f) Include any other information that the Commissioner requires.
- 8.4 The Commissioner shall meet with an employee each time a confidential disclosure statement is filed, i.e., not less than annually. The purpose of the meeting shall be to review the disclosure, make inquiries as to its comprehensiveness and discuss any issues which may arise from it.
- 8.5 An employee's spouse may attend the employee's meeting with the Commissioner to ensure that adequate disclosure has been made and to receive information regarding the employee's obligations with respect to conflict of interest.
- 8.6 The Commissioner shall prepare a disclosure statement for the Clerk of the basis of the information provided by the employee. Such disclosure statement shall:
- (a) State the source and nature, but not the value, of the income, assets and liabilities disclosed to the Commissioner, except those described in 8.7 below;
 - (b) Identify any contracts with the Government of Prince Edward Island disclosed to the Commissioner and describe their subject matter and nature;
 - (c) List the names of any affiliated companies or partnerships disclosed to the Commissioner; and
 - (d) List any gifts or benefits disclosed to the Commissioner.
- 8.7 The following assets, liabilities and sources of income shall not be included in the disclosure statement for the Clerk:
- (a) an asset or liability worth less than \$5,000;
 - (b) a source of income that yielded less than \$5,000 during the twelve months preceding the filing of the confidential disclosure statement;
 - (c) real property that the employee, the employee's spouse or dependent children uses primarily for as a residence or for recreation purposes;
 - (d) personal property that the employee, the employee's spouse or dependent children uses primarily for transportation, household, educational, recreational, social or aesthetic purposes;
 - (e) cash on hand or on deposit with a financial institution;
 - (f) fixed value securities issued or guaranteed by a government or government agency;

- (g) a registered retirement savings plan, registered educational savings plan or tax free savings account;
- (h) interest in a pension plan, employee benefit plan, annuity or life insurance policy;
- (i) an investment in an open-ended mutual fund that has broadly based investments not limited to one industry or one sector of the economy;
- (j) a guaranteed investment certificate or similar financial instrument;
- (k) support payments; and
- (l) any other asset, liability or source of income that the Commissioner approves as an excluded private interest.

8.8 The Commissioner may withhold information from the disclosure statement to the Clerk if, in the Commissioner's opinion, the information is not relevant to the purposes of this policy.

8.9 The Commissioner shall ensure that a retention and destruction schedule is developed for the records of the Commissioner's office.

8.10 Where an allegation, question or other matter relating to an employee is referred to the Commissioner by the Premier or the Clerk for investigation and advice, the report of the Commissioner to the Premier or the Clerk may include such information from the confidential disclosure statements relating to the employee as is reasonably required to address the matter.

9. Post Employment

9.1 A former employee shall not:

- (a) make representation to the Government of Prince Edward Island in relation to a transaction or negotiation to which the government is a party and in which the former employee was previously involved while an employee, where the representation could result in the conferring of a benefit not general application; and
- (b) during the six months after the rescission of his or her appointment, make representations to the Government of Prince Edward Island on another person's behalf with respect to any contract or benefit.

9.2 A former employee shall not during the six months after the rescission of his or her appointment:

- (a) make representations to the Government of Prince Edward Island on his or her own behalf with respect to any contract or benefit; or
- (b) seek or accept a contract or benefit that is awarded, approved or granted by the Executive Council or an employee of a department pursuant to the *Public Departments Act*, R.S.P.E.I. 1988, Cap. P-29

9.3 Subsections 9.2 does not apply:

- (a) to contracts or benefits in respect of further duties in the service of the Crown; or
- (b) if the conditions on which the contract or benefit is awarded, approved or granted are the same for all persons similarly entitled or have received the prior approval of the Commissioner.

- 9.4 For six months after the rescission of an appointment of an employee, a current employee shall not knowingly:
- (a) award or approve a contract with, or grant a benefit to, a former employee who has made representations to the Government or Prince Edward Island regarding the contract or benefit;
 - (b) award or approve a contract with, or grant a benefit to, a person on whose behalf a former employee has made representations to the Government of Prince Edward island in respect of the contract or benefit.
- 9.5 An employee shall not knowingly directly or indirectly award a contract or benefit to a former employee contrary to subsection 9.2, with the exceptions noted in subsection 9.3.