



## **Office of the Ethics Commissioner**

### **Information for Designated Senior Officials**

2018

This publication provides information about the various requirements and restrictions that the *Conflicts of Interest Act* places upon designated senior officials.

#### **Who is a designated senior official?**

Section 23.92(1)(d) of the *Conflicts of Interest Act* defines who is a designated senior official:

(d) “designated senior official” means a designated senior official within the meaning of Section 23.921(4) and (5);

Section 23.921(3) reads:

(3) *The following are senior officials for the purposes of this Part:*

- (a) *the chair of a public agency;*
- (b) *the chief executive officer of a public agency;*
- (c) *a person or class of persons holding a public agency position that is identified by the Lieutenant Governor in Council, by order, as a senior official position for the purposes of this Part.*

Section 23.921(4) reads:

(4) *For the purposes of this Part, the Lieutenant Governor in Council may, by order, designate in accordance with this section,*

- (a) *the public agencies whose senior officials may be designated under clause (b), and*
- (b) *the senior official positions of a public agency referred to in clause (a) that have the obligations of a designated senior official for the purposes of this Part.*

Section 23.921(5) reads:

*(5) The Lieutenant Governor in Council may, by order, exempt*

*(a) a public agency, a public agency position or a class of public agency positions from this Part or from an obligation of senior officials set out in this Part, and*

*(b) a designated senior official position or a class of designated senior official positions from this Part or any provision of this Part.*

### **Use of Position**

The *Conflicts of Interest Act* contains a number of restrictions in terms of a designated senior official's use of their position or information which they may have come into possession of in the course of carrying out their duties. These are in addition to any other additional or supplementary codes of conduct which affect members of the agency.

The relevant section of the *Act* is:

#### Section 23.925

*23.925(1) A senior official breaches this Part if he or she takes part in a decision in the course of carrying out his or her office or powers knowing that the decision might further a private interest of the senior official, a person directly associated with the senior official or the senior official's minor or adult child.*

*(2) A senior official breaches this Part if the senior official uses his or her office or powers to influence or to seek to influence a decision to be made by or on behalf of the Crown or a public agency to further a private interest of the senior official, a person directly associated with the senior official or the senior official's minor child or to improperly further any other person's private interest.*

*(3) A senior official breaches this Part if he or she uses or communicates information not available to the general public that was gained by the senior official in the course of carrying out his or her office or powers to further or seek to further a private interest of the senior official or any other person's private interest.*

*(4) A senior official breaches this Part if the senior official fails to appropriately or adequately disclose a real or apparent conflict of interest.*

### **Other Obligations and Restrictions**

There are a number of obligations and restrictions which are placed on a designated senior official. A designated senior official is:

1. Required to submit a list of all direct associates and their addresses. Once provided, a copy of the list will be forwarded to the person designated under s.23.932 of the *Conflicts of Interest Act*.
2. Required to provide a full financial disclosure of all of the assets, liabilities, investments, holdings and other interests of the designated office holder, their spouse or interdependent partner, minor children or any corporation controlled by the designated senior official, his or her spouse or adult interdependent partner, minor children or any

combination thereof.

3. Prohibited from owning publicly-traded securities unless they are held in an approved blind trust or investment arrangement or unless advance approval to hold the shares is received from the Ethics Commissioner.
4. Subject to certain post-employment restrictions which may limit the designated senior official's ability to conduct certain activities or accept employment with certain entities during the "cooling off" period.
5. Must not hold a concurrent position or employment without the approval of the Ethics Commissioner.

The relevant sections of the Conflicts of Interest Act are:

#### Section 23.926

*23.926(1) If any of the following senior officials is involved in any appointment, business, undertaking or employment, including self-employment, other than the appointment, business, undertaking or employment that is subject to this Act, that senior official breaches this Part: (a) a chief executive officer; (b) a chair whose position has been designated for the purposes of section 23.921(4)(b); (c) a person holding a position identified under section 23.921(3)(c), if that position has been designated for the purposes of section 23.921(4)(b).*

*(2) A person referred to in subsection (1) may apply to the Ethics Commissioner for approval in writing to engage in an appointment, business, undertaking or employment, including self-employment, other than the appointment or employment that is subject to this Act.*

*(3) The Ethics Commissioner may provide approval in writing on any conditions that the Ethics Commissioner considers to be appropriate if the Ethics Commissioner is satisfied that the appointment, business, undertaking or employment proposed in an application under subsection (2) will not constitute a real or apparent conflict of interest.*

*(4) Subsection (1) does not apply if the Ethics Commissioner approves the application referred to in subsection (2) in writing and the person referred to in subsection (1) complies with the conditions, if any, that the Ethics Commissioner has included in the approval.*

#### Section 23.93

*23.93(1) A designated senior official breaches this Part if he or she, after the expiration of the relevant period referred to in subsection (7), owns or has a beneficial interest in publicly-traded securities.*

*(2) Subsection (1) does not apply if*

*(a) the publicly-traded securities are held in a blind trust approved under subsection (4) or in an investment arrangement approved under subsection (5),*

*(b) prior to the expiration of the relevant period referred to in subsection (7), the designated senior official applies to the Ethics Commissioner for approval to retain ownership of or a beneficial interest in the publicly-traded securities and either obtains the Ethics Commissioner's approval or, if the approval is refused, takes any steps that the Ethics Commissioner directs with respect to the disposition of the ownership or beneficial interest, or*

*(c) after the expiration of the relevant period referred to in subsection (7), the designated senior official acquires ownership of or a beneficial interest in publicly-traded securities with the prior*

*approval of the Ethics Commissioner.*

*(3) The Ethics Commissioner may give an approval*

*(a) under subsection (2)(b) or (c) if the Ethics Commissioner is of the opinion that the publicly-traded securities are securities of a corporation the interests of which are not likely to be affected by decisions of the public agency or by decisions of the Government within the scope of advice, advocacy, activity or influence of the public agency, or*

*(b) under subsection (2)(b) if the Ethics Commissioner is of the opinion that the designated senior official will sustain a financial loss if the publicly-traded securities are disposed of and the public interest does not require disposition of the publicly-traded securities.*

*(4) The Ethics Commissioner may approve the retention of publicly-traded securities to be held in a blind trust if the blind trust will meet the criteria set out in section 20(4).*

*(5) The Ethics Commissioner may approve the retention of publicly-traded securities to be held in an investment arrangement if the investment arrangement will meet the criteria set out in section 20(5).*

*(6) An approval or direction given by the Ethics Commissioner under this section may be given subject to any conditions determined by the Ethics Commissioner.*

*(7) For the purposes of subsections (1) and (2),*

*(a) the relevant period is*

*(i) in the case of a person who becomes a designated senior official after the coming into force of this section, 60 days after becoming a designated senior official or any longer period that the Ethics Commissioner directs, or*

*(ii) in the case of a person who is a designated senior official when this section comes into force, 60 days after the coming into force of this section or any longer period that the Ethics Commissioner directs,*

*or*

*(b) with respect to a designated senior official who acquires ownership of or a beneficial interest in publicly-traded securities by gift or inheritance, the relevant period is 60 days after receiving the gift or inheritance or any longer period that the Ethics Commissioner directs.*

*(8) For greater certainty, the Ethics Commissioner may, during the Ethics Commissioner's first review of disclosure statements, returns and holdings under this Part, direct that a relevant period set out in subsection (7) be extended for administrative reasons.*

### Section 23.937

*23.937(1) No former designated senior official shall, for a period of 12 months from the last day the former designated senior official held a position referred to in section 23.92(1)(d), lobby as defined in the Lobbyists Act any public office holder as defined in the Lobbyists Act.*

*(2) No former designated senior official shall, for a period of 12 months from the last day the former designated senior official held a position referred to in section 23.92(1)(d), act on a commercial basis or make representations on his or her own behalf or on behalf of any other person in connection with any ongoing matter in connection with which the former designated senior official, while a designated senior official, directly acted for or advised a department or public agency involved in the matter.*

(3) No former designated senior official shall, for a period of 12 months from the last day the former designated senior official had a direct and significant official dealing with a department or public agency, make representations with respect to a contract with or benefit from that department or public agency.

(4) No former designated senior official shall, for a period of 12 months from the last day the former designated senior official had a direct and significant official dealing with a department or public agency, solicit or accept on his or her own behalf a contract or benefit from that department or public agency.

(5) No former designated senior official shall, for a period of 12 months from the last day the former designated senior official had a direct and significant official dealing with an individual, organization, board of directors or equivalent body of an organization, accept employment with that individual or organization or an appointment to the board of directors or equivalent body.

(6) Nothing in this section restricts a designated senior official or former designated senior official from being appointed to the board of directors or a governing body of another public agency.

(7) Nothing in this section restricts a designated senior official or former designated senior official from accepting employment with a department of the public service or a public agency in accordance with Part 1 of the Public Service Act.

### **Who are persons directly associated?**

The *Conflicts of Interest Act* defines persons directly associated:

1(5) For the purposes of this Act, a person is directly associated with a Member if that person is

(a) the Member's spouse or adult interdependent partner,

(b) a corporation having share capital and carrying on business or activities for profit or gain and the Member is a director or senior officer of the corporation,

(c) a private corporation carrying on business or activities for profit or gain and the Member owns or is the beneficial owner of shares of the corporation,

(d) a partnership

(i) of which the Member is a partner, or

(ii) of which one of the partners is a corporation directly associated with the Member by reason of clause (b) or (c),

or

(e) a person or group of persons acting with the express or implied consent of the Member.

A designated senior official is required to submit a list of all directly associated persons, and their addresses, to the Office of the Ethics Commissioner within 60 days of s.23.932 becoming applicable to a designated senior official. Thereafter, only changes need to be reported to the Ethics Commissioner.

A list of direct associates is also provided to certain persons, as required under the *Conflicts of Interest Act*. Section 23.932(3) reads:

(3) *On receipt of a return under this section, the Ethics Commissioner shall provide a copy of the return*

(a) *in the case of a return concerning any designated senior official other than the chief executive officer or chair, to the chief executive officer or, if no chief executive officer exists, to the chair,*

(b) *in the case of a return concerning the chief executive officer, to the chair or, if no chair exists, to the responsible Minister, and*

(c) *in the case of a return concerning the chair, to the responsible Minister.*

### **What is the financial disclosure process? What are the requirements?**

Each year, the Office of the Ethics Commissioner sends a letter to each designated senior official advising it is time for the annual financial disclosure and meeting. A form is provided which requires a complete list of all of the designated senior official's and the spouse or adult interdependent partner and minor children of the designated senior official's assets, liabilities, investments, holdings and business interests as of a given date. This is a requirement under the *Conflicts of Interest Act* and all designated senior officials must comply to be in compliance with the *Act*.

Once the required financial information has been filed, the Office of the Ethics Commissioner reviews it and then arranges a meeting between the designated senior official and the Ethics Commissioner to review the information and address any conflict of interest issues that the designated senior official or Ethics Commissioner may have.

### **Publicly-traded securities**

Within 60 days of s.23.93 becoming applicable to a designated senior official, there is a requirement to sell any publicly-traded securities. Publicly-traded securities may be retained if placed in a blind trust, whose trustee and blind trust agreement are pre-approved by the Ethics Commissioner, by establishing an approved investment arrangement, or by applying for and obtaining approval for an exemption from the Ethics Commissioner.

The *Conflicts of Interest Act* defines publicly-traded securities. Section 1 reads:

(i) *"publicly-traded securities" means*

(i) *securities of a corporation that are listed or posted for trading on a recognized stock exchange, or*

(ii) *securities of a corporation that has more than 15 shareholders and any of whose issued securities were part of a distribution to the public;*

(j) "securities" means

(i) shares of any class or series of shares of a corporation, or

(ii) bonds, debentures, notes or other evidence of indebtedness or guarantees of a corporation, whether secured or unsecured,

but does not include shares or units in a mutual fund;

(2) For the purposes of this Act, securities of a corporation

(a) issued on a conversion of other securities, or

(b) issued in exchange for other securities

are deemed to be securities that are part of a distribution to the public if those other securities were part of a distribution to the public.

(3) Subject to subsection (4), for the purposes of this Act, securities of a corporation

(a) are part of a distribution to the public if, in respect of the securities, there has been a filing of a prospectus, statement of material facts, registration statement, securities exchange take-over bid circular or similar document under the laws of Canada, a province or territory or of a jurisdiction outside Canada, or

(b) are deemed to be part of a distribution to the public if the securities have been issued and a filing referred to in clause (a) would be required if the securities were being issued currently.

(4) On the application of a Member who owns or is a beneficial owner of securities of a corporation, the Ethics Commissioner may determine, for the purposes of this Act, whether the securities of the corporation are or were part of a distribution to the public.

This definition covers the entire range of stocks, bonds, warrants, rights, debentures, shares, and credit notes.

### **What is a blind trust?**

A blind trust is an arrangement whereby:

1. The trustee is given sole power over investment decisions.
2. The designated office holder is precluded from having any knowledge of what investments are held in the trust, and is precluded from influencing or guiding investment decisions made by the trustee.
3. The designated senior official may only deposit in the trust certain types of investments, including publicly-traded securities.
4. The trustee is required to only invest in certain types of investments, including publicly-traded securities.

## **What is an investment arrangement?**

An alternative to a blind trust is an investment arrangement, which is similar. The *Conflicts of Interest Act* reads:

*1(b.1) "investment arrangement" means an investment arrangement approved under section 20(5) or section 23.5(5), as appropriate;*

*20(5) The Ethics Commissioner may approve the retention of publicly-traded securities to be held in an investment arrangement if the investment arrangement will meet the following criteria:*

*(d) it gives a person other than the Minister sole power over investment decisions,*

*(e) it precludes the Minister from having any knowledge of the specific investments at any time after a deposit to the investment arrangement, and*

*(f) it ensures there will be no relationship between the Minister and the person referred to in clause (a) that would affect or would appear to affect that person's investment decisions.*

*(6) An approval or direction given by the Ethics Commissioner under this section may be given subject to any conditions determined by the Ethics Commissioner.*

*23.5(5) The Ethics Commissioner may approve the retention of publicly-traded securities to be held in an investment arrangement if the investment arrangement will meet the criteria set out in section 20(5).*

An approval or direction given by the Ethics Commissioner of a blind trust or investment arrangement may be given subject to any conditions determined by the Ethics Commissioner.

## **Exemption**

The only other option is to seek approval of the Ethics Commissioner for an exemption which is considered on a case by case basis. An approval may be provided under s.23.93(2)(b),(c),(3) and (6) of the *Act*, which read:

*23.93(1) A designated senior official breaches this Part if he or she, after the expiration of the relevant period referred to in subsection (7), owns or has a beneficial interest in publicly-traded securities.*

*(2) Subsection (1) does not apply if*

*(b) prior to the expiration of the relevant period referred to in subsection (7), the designated senior official applies to the Ethics Commissioner for approval to retain ownership of or a beneficial interest in the publicly-traded securities and either obtains the Ethics Commissioner's approval or, if the approval is refused, takes any steps that the Ethics Commissioner directs with respect to the disposition of the ownership or beneficial interest, or*

*(c) after the expiration of the relevant period referred to in subsection (7), the designated senior official acquires ownership of or a beneficial interest in publicly-traded securities with the prior approval of the Ethics Commissioner.*



(3) *The Ethics Commissioner may give an approval*

*(a) under subsection (2)(b) or (c) if the Ethics Commissioner is of the opinion that the publicly-traded securities are securities of a corporation the interests of which are not likely to be affected by decisions of the public agency or by decisions of the Government within the scope of advice, advocacy, activity or influence of the public agency, or*

*(b) under subsection (2)(b) if the Ethics Commissioner is of the opinion that the designated senior official will sustain a financial loss if the publicly-traded securities are disposed of and the public interest does not require disposition of the publicly-traded securities.*

*(6) An approval or direction given by the Ethics Commissioner under this section may be given subject to any conditions determined by the Ethics Commissioner.*

### **Reimbursement for costs related to blind trusts and investment arrangements**

A designated senior official is entitled to be reimbursed by their public agency for costs relating to setting up a blind trust or investment arrangement, in an amount approved by the Ethics Commissioner.

s.23.936(1)(b), (2), (3) of the *Conflicts of Interest Act* read:

*23.936(1) Designated senior officials are entitled to be reimbursed for*

*(b) costs associated with the establishment and administration of a blind trust or an investment arrangement.*

*(2) The amount of the reimbursement is subject to the approval of the Ethics Commissioner.*

*(3) The reimbursement is payable by the public agency.*

### **Gifts**

Designated senior officials are subject to gift provisions in their agency's code of conduct.

### **What are the specific post-employment restrictions?**

As previously indicated, section 23.937 of the *Conflicts of Interest Act* reads:

*23.937(1) No former designated senior official shall, for a period of 12 months from the last day the former designated senior official held a position referred to in section 23.92(1)(d), lobby as defined in the Lobbyists Act any public office holder as defined in the Lobbyists Act.*

*(2) No former designated senior official shall, for a period of 12 months from the last day the former designated senior official held a position referred to in section 23.92(1)(d), act on a commercial basis or make representations on his or her own behalf or on behalf of any other person in connection with any ongoing matter in connection with which the former designated senior official, while a designated senior official, directly acted for or advised a department or public agency involved in the matter.*

*(3) No former designated senior official shall, for a period of 12 months from the last day the former designated senior official had a direct and significant official dealing with a department or public agency, make representations with respect to a contract with or benefit from that department or public agency.*

*(4) No former designated senior official shall, for a period of 12 months from the last day the former designated senior official had a direct and significant official dealing with a department or public agency, solicit or accept on his or her own behalf a contract or benefit from that department or public agency.*

*(5) No former designated senior official shall, for a period of 12 months from the last day the former designated senior official had a direct and significant official dealing with an individual, organization, board of directors or equivalent body of an organization, accept employment with that individual or organization or an appointment to the board of directors or equivalent body.*

*(6) Nothing in this section restricts a designated senior official or former designated senior official from being appointed to the board of directors or a governing body of another public agency.*

*(7) Nothing in this section restricts a designated senior official or former designated senior official from accepting employment with a department of the public service or a public agency in accordance with Part 1 of the Public Service Act.*

A former designated senior official is not restricted from being appointed to the board of directors or a governing body of another public agency.

The definition of “direct and significant official dealing” is in the sole discretion of the Ethics Commissioner. What constitutes a direct and significant official dealing is not necessarily limited to cases where there has been considerable interaction and discussion involving a designated senior official. In some cases, it may simply be a matter of knowing inside information, or being privy to a single meeting or discussion of a substantive nature.

A designated senior official or former designated senior official may apply to the Ethics Commissioner for a waiver or reduction of the above time periods. These are considered on a case by case basis, and certain criteria must be met. The discretion to waive the restriction rests solely with the Ethics Commissioner, and any approval given may be subject to conditions.

Contravention of these post-employment restrictions may result in a prosecution and carries a potential fine of up to \$50,000. Designated senior officials are strongly encouraged to contact the Office of the Ethics Commissioner **before** accepting any employment or volunteer positions where there may be a conflict or contravention of the above restrictions, or where the designated senior official is unsure whether interactions constitute a direct and significant official dealing.