

**Conflict of Interest  
and  
Post-employment Code  
for Public Office Holders**

2004

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Conflict of Interest and Post-employment Code for Public Office Holders

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## Message from the Prime Minister

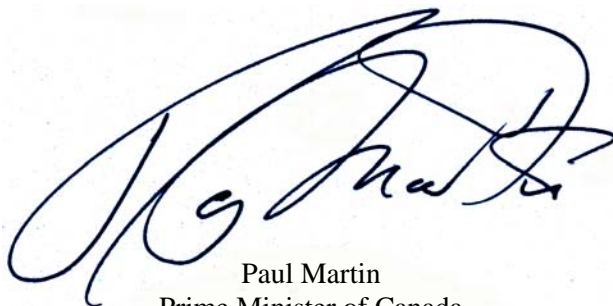
The attached document is a revised *Conflict of Interest and Post-employment Code for Public Office Holders*.

These revisions are the first since *An Act to Amend the Parliament of Canada Act (Ethics Commissioner and Senate Ethics Officer)* came into force on May 17, 2004. The release of this Code fulfils the statutory requirement that the Prime Minister establish “ethical principles, rules and obligations for public office holders”.

Our government must uphold the public trust to the highest possible standard, and this responsibility falls uniquely on all of us as public office holders.

The object of both the original and revised Code is to enhance confidence in our system of government. The Code can be usefully read in conjunction with *Governing Responsibly: A Guide for Ministers and Ministers of State*. Although *Governing Responsibly* does not form part of this Code, it stresses for Ministers, and I would add, for all public office holders, the paramount importance of accuracy and truthfulness.

By acting always in accordance with the principles and specific provisions of this Code, public office holders will provide Canadians with a greater assurance that our government is acting in an honest and transparent manner.

A large, stylized handwritten signature in black ink, which appears to read 'P. Martin'.

Paul Martin  
Prime Minister of Canada

# **CONFLICT OF INTEREST AND POST-EMPLOYMENT CODE FOR PUBLIC OFFICE HOLDERS**

Short Title

1. This Code may be cited as the Conflict of Interest Code.

## **Part I**

### **OBJECT AND PRINCIPLES**

#### **OBJECT**

2. The object of this Code is to enhance public confidence in the integrity of public office holders and the decision-making process in government
  - (a) while encouraging experienced and competent persons to seek and accept public office;
  - (b) while facilitating interchange between the private and public sector;
  - (c) by establishing clear rules of conduct respecting conflict of interest for, and post-employment practices applicable to, all public office holders; and
  - (d) by minimizing the possibility of conflicts arising between the private interests and public duties of public office holders and providing for the resolution of such conflicts in the public interest should they arise.

#### **PRINCIPLES**

3. Every public office holder shall conform to the following principles:

### **Ethical Standards**

- (1) Public office holders shall act with honesty and uphold the highest ethical standards so that public confidence and trust in the integrity, objectivity and impartiality of government are conserved and enhanced.

### **Public Scrutiny**

- (2) Public office holders have an obligation to perform their official duties and arrange their private affairs in a manner that will bear the closest public scrutiny, an obligation that is not fully discharged by simply acting within the law.

### **Decision Making**

- (3) Public office holders, in fulfilling their official duties and responsibilities, shall make decisions in the public interest and with regard to the merits of each case.

### **Private Interests**

- (4) Public office holders shall not have private interests, other than those permitted pursuant to this Code, that would be affected particularly or significantly by government actions in which they participate.

### **Public Interest**

- (5) On appointment to office, and thereafter, public office holders shall arrange their private affairs in a manner that will prevent real, potential or apparent conflicts of interest from arising but if such a conflict does arise between the private interests of a public office holder and the official duties and responsibilities of that public office holder, the conflict shall be resolved in favour of the public interest.

### **Gifts, Hospitality and Benefits**

- (6) Public office holders and their families shall not solicit or accept transfers of economic benefit, other than incidental gifts, customary hospitality, or other benefits of nominal value, unless the transfer is pursuant to an enforceable contract or property right of the public office holder.

### **Preferential Treatment**

- (7) Public office holders shall not use their position of office to assist private entities or persons where this would result in preferential treatment to any person.

### **Insider Information**

- (8) Public office holders shall not knowingly take advantage of, or benefit from, information that is obtained in the course of their official duties and responsibilities and that is not generally available to the public.

### **Government Property**

- (9) Public office holders shall not directly or indirectly use, or allow the use of, government property of any kind, including property leased to the government, for anything other than officially approved activities.

### **Post-employment**

- (10) Public office holders shall not act, after they leave public office, in such a manner as to take improper advantage of their previous office.

### **Fundraising**

- (11) Public office holders are not to personally solicit funds from any person, group, organization or corporation where such fundraising could place public office holders in a position of obligation incompatible with their public duties.

## Part II

### CONFLICT OF INTEREST COMPLIANCE MEASURES

#### INTERPRETATION

4. (1) The following definitions apply for the purposes of this Part and the Schedule:

“Common-law partner” means a person who is cohabiting with a public office holder in a conjugal relationship, having so cohabited for a period of at least one year.

“Dependent child” means a child of a public office holder, or a child of the public office holder’s spouse or common-law partner, who has not reached the age of 18 years or who has reached that age but is primarily dependent on the public office holder or the public office holder’s spouse or common-law partner for financial support.

“Ethics Commissioner” means the Ethics Commissioner appointed under section 72.01 of the *Parliament of Canada Act*.

“Family” means spouse or common-law partner and dependent children.

“Private interest” does not include an interest in a matter

- (a) that is of general application;
- (b) that affects a person as one of a broad class of the public; or
- (c) that concerns the remuneration or benefits of a public office holder.

“Public office holder” means

- (a) a minister of the Crown, a minister of state or a parliamentary secretary;
- (b) a person, other than a public servant, who works on behalf of a minister of the Crown or a minister of state;
- (c) a Governor in Council appointee, other than the following persons, namely:
  - (i) a Lieutenant-Governor,
  - (ii) officers and staff of the Senate, House of Commons and Library of Parliament,
  - (iii) a person appointed or employed under the



- Public Service Employment Act* who is a head of mission within the meaning of subsection 13(1) of the *Department of Foreign Affairs and International Trade Act*,
- (iv) a judge who receives a salary under the *Judges Act*,
  - (v) a military judge within the meaning of subsection 2(1) of the *National Defence Act*, and
  - (vi) an officer of the Royal Canadian Mounted Police, not including the Commissioner; and
- (d) a full-time ministerial appointee designated by the appropriate minister of the Crown as a public office holder.

“Public Registry” means the registry where public documents are maintained by the Ethics Commissioner for examination by the public.

“Relatives” include persons related to a public office holder by blood, marriage, adoption or affinity, except where the Ethics Commissioner otherwise determines necessary in the context.

“Spouse” does not include a person from whom the public office holder is separated where all support obligations and family property have been dealt with by a separation agreement or by a court order.

- (2) Ministers of the Crown, ministers of state and parliamentary secretaries are subject to the provisions of this Code when carrying out the duties and functions of their office as ministers of the Crown, ministers of state or parliamentary secretaries.

- (3) (a) Staff of federal boards, commissions and tribunals as defined in the *Federal Court Act*, separate employers as defined under the *Public Service Staff Relations Act*, the Canadian Armed Forces and the Royal Canadian Mounted Police, are subject to the Principles set out in Part I and such other compliance measures as may be determined by the head of the organization in question, for whose application that individual is responsible.
  - (b) Part-time ministerial appointees who are persons other than public servants who work on average fewer than fifteen hours a week on behalf of a minister of the Crown or a minister of state, including persons working on a contractual or voluntary basis, and part-time Governor in Council appointees, who are not appointed on a full-time basis and are not in receipt of an annual salary or benefits from the appointment, are subject only to the Principles set out in Part I and such other compliance measures as may be determined by the head of the organization in question, for whose application that individual is responsible.
- (4) Crown corporations as set out in the *Financial Administration Act* shall be subject to compliance measures established by, and in accordance with, the established practices of their own organization.
  - (5) Such provisions of this Part as may be relevant shall be brought to the attention of Lieutenant-Governors at the time of their appointment.

#### DUTIES OF THE ETHICS COMMISSIONER

- 5. (1) Pursuant to subsection 72.07 of the *Parliament of Canada Act*, the Ethics Commissioner is charged with the administration of this Code and the application of the conflict of interest compliance measures set out in this Part as they apply to public office holders.
- (2) Information concerning the private interests of a public office holder provided to the Ethics Commissioner is confidential until a Public Declaration, if any, is made with respect to that information.
- (3) It is the responsibility of the Ethics Commissioner to ensure:
  - (a) that information provided under subsection (2) shall

- be kept in strict confidence and in secure safekeeping; and
- (b) that any information provided by public office holders for a public purpose is placed in personal unclassified files in the Public Registry.

#### CERTIFICATION

- 6. Before or on assuming their official duties and responsibilities, public office holders shall sign a document certifying that, as a condition of their holding office, they will observe this Code.

#### COMPLIANCE ARRANGEMENTS

- 7. (1) Once the arrangements made by a public office holder to comply with the conflict of interest compliance measures set out in this Code are completed, a Summary Statement described in subsection (2) and any Public Declaration made pursuant to sections 11, 14, 18 and 21, and section 1 of the Schedule, shall be signed by the public office holder and a certified copy of the Summary Statement and any Public Declaration shall be placed in the Public Registry.
- (2) The Summary Statement shall include:
  - (a) a statement by the public office holder of the methods of compliance used to comply with the conflict of interest compliance measures;
  - (b) a list of the matters which the Ethics Commissioner has determined could, as a result of the public office holder's private interests or other reasons the Ethics Commissioner considers relevant, create a conflict of interest, and on which the public office holder shall recuse in accordance with this Code, or for other reasons which the Ethics Commissioner may consider necessary;
  - (c) information regarding the process which must be put in place by the public office holder and others to administer the recusal; and
  - (d) a certification by the public office holder that he or she is fully cognizant of the post-employment compliance measures set out in Part III, where applicable.

- (3) Where there is doubt as to which method is appropriate in order that a public office holder may comply with the Code, the Ethics Commissioner shall determine the appropriate method and, in doing so, shall try to achieve mutual agreement with the public office holder.
- (4) All arrangements made by a public office holder to comply with the conflict of interest compliance measures set out in this Part shall be approved:
  - (a) in the case of ministers of the Crown, ministers of state and parliamentary secretaries, by the Prime Minister, in consultation with the Ethics Commissioner; and
  - (b) in the case of all other public office holders including the Prime Minister, by the Ethics Commissioner.
- (5) The information contained in Confidential Reports and the arrangements made by public office holders and their obligations under the Code will be reviewed annually by the Ethics Commissioner and the public office holder.
- (6) Public office holders who have established:
  - (a) a trust, will require the respective trustee to provide the Ethics Commissioner with a written annual report verifying as to accuracy the trust's nature and market value, a reconciliation of the trust property, the net income of the trust for the preceding year, and the fees of the trustee, if any; or
  - (b) a management agreement in instances where
    - (i) a public office holder owns an interest in a corporation whose assets are invested, in whole or in part, in publicly traded securities, will require the manager to provide the Ethics Commissioner with a written annual report verifying as to accuracy the nature and market value of the agreement property, a reconciliation of the agreement property, the net income of the agreement property for the preceding year, and the fees of the manager, if any;
    - (ii) a corporation and its holdings in which a public office holder has an interest, contracts with the federal government or its agencies, will require the manager to provide the Ethics Commissioner with an annual report

verifying as to accuracy the nature and name(s) of the corporation(s) that contract(s) with the federal government or its agencies, a reconciliation of the agreement property and the net worth value of the public office holder's interest.

- (7) On the recommendation of the Ethics Commissioner, a public office holder may be reimbursed for administrative costs incurred as a result of arrangements made under this Code, as set out in the Schedule.
- (8) A public office holder shall not take any action that has as its purpose the circumvention of the public office holder's obligations under this Code.

#### TIME LIMITS

- 8. Unless otherwise authorized by the Ethics Commissioner, every public office holder shall:
  - (1) within 60 days after appointment, make a Confidential Report as required under section 9;
  - (2) within 120 days after appointment
    - (a) where required, make a Public Declaration pursuant to sections 11, 14, 18 and 21, and section 1 of the Schedule;
    - (b) divest controlled assets as required under subsection 12(2); and
    - (c) sign a Summary Statement for placing in the Public Registry pursuant to section 7;
  - (3) within 30 days after receipt of a gift, hospitality or other benefit, notify the Ethics Commissioner as required under section 21, and within 60 days make a Public Declaration as required under that section;
  - (4) within 30 days, inform the Ethics Commissioner of any material changes in his or her assets, liabilities and outside activities; and
  - (5) in the case of ministers of the Crown, ministers of state and parliamentary secretaries, within 30 days, inform the Ethics Commissioner of any material changes in their assets, liabilities and outside activities and those of their families except for exempt assets.

## CONFIDENTIAL REPORT

9. (1) Public office holders shall make a Confidential Report to the Ethics Commissioner of all their assets, direct and contingent liabilities and income received during the twelve-month period before assuming public office as well as the income they are entitled to receive during the following twelve months. The Confidential Report shall include the value of these assets, liabilities and income. The Confidential Report shall also include a description of those outside activities in which public office holders were engaged during the two-year period before they assumed public office. Outside activities shall include all involvements in activities of a philanthropic, charitable or non-commercial nature and designations as trustee, executor or holder of a power of attorney.
- (2) (a) In the case of ministers of the Crown, ministers of state and parliamentary secretaries, information, including value, regarding the assets, liabilities, income and outside activities of members of their families shall also be included in the Confidential Report. Ministers of the Crown, ministers of state and parliamentary secretaries shall make reasonable efforts to include this information in the Confidential Report. This information is to be used by the Ethics Commissioner for the sole purpose of advising the ministers, ministers of state and parliamentary secretaries on their own compliance measures.
- (b) In the case of ministers of the Crown, ministers of state and parliamentary secretaries, the Confidential Report shall also include all benefits that the ministers of the Crown, ministers of state and parliamentary secretaries and their families, and any private corporation in which they or their families have an interest, are entitled to receive during the following twelve months as a result of a contract with the Government of Canada, and a description of the subject matter and nature of each such contract.
- (3) In addition to the information required under this section, a public office holder shall include in his or her Confidential Report any other information that the Ethics Commissioner may require to ensure compliance with this Code.

### ASSETS AND LIABILITIES

## Exempt Assets

10. (1) Assets and interests for the private use of public office holders and their families and assets that are not of a commercial character are not subject to public declaration or divestment. Such assets, hereinafter referred to as “exempt assets,” include:
  - (a) residences, recreational property and farms used or intended for use by public office holders or their families;
  - (b) household goods and personal effects;
  - (c) works of art, antiques and collectibles;
  - (d) automobiles and other personal means of transportation;
  - (e) cash and deposits;
  - (f) Canada Savings Bonds and other similar investments issued or guaranteed by any level of government in Canada or agencies of those governments;
  - (g) Registered Retirement Savings Plans and Registered Education Savings Plans that are not self-administered or self-directed;
  - (h) investments in open-ended mutual funds;
  - (i) guaranteed investment certificates and similar financial instruments;
  - (j) public sector debt financing not guaranteed by a level of government, such as university and hospital debt financing;
  - (k) annuities and life insurance policies;
  - (l) pension rights;
  - (m) money owed by a previous employer, client or partnership;
  - (n) personal loans receivable from the public office holder’s relatives, and personal loans of less than \$10,000 receivable from other persons where the public office holder has loaned the moneys receivable; and
  - (o) money owed under a mortgage of less than \$10,000.
- (2) Assets that are not exempt assets are either “declarable assets” or “controlled assets.”

## Declarable Assets

11. (1) A public office holder shall make a Public Declaration of assets that are not controlled assets, as defined under section 12, in order to allow the public office holder to deal with those assets, subject to exercising vigilance to ensure that such dealings cannot give rise to a conflict of interest.
- (2) Declarable assets include:
  - (a) interests in businesses that do not contract with the government, and do not own or control publicly traded securities, other than incidentally, and whose stocks and shares are not traded publicly;
  - (b) farms under commercial operations;
  - (c) real property that is not an exempt asset as described in section 10;
  - (d) assets that are beneficially owned, that are not exempt assets as described in section 10, and that are administered at arm's length;
  - (e) rental property;
  - (f) investments in limited partnerships;
  - (g) personal loans, greater than or equal to \$10,000 receivable from persons other than the public office holder's relatives; and
  - (h) money owed under a mortgage greater than or equal to \$10,000.
- (3) Declarable assets that are not publicly declared pursuant to subsection (1) shall, for the purposes of section 13, be considered to be controlled assets and must be divested.

## Controlled Assets

12. (1) For the purposes of this section and section 13, "controlled assets" means assets that could be directly or indirectly affected as to value by Government decisions or policy.
- (2) Controlled assets, other than assets that may be retained under subsection 13(5), shall be divested, pursuant to subsection 13(1).
- (3) Controlled assets include:
  - (a) publicly traded securities of corporations and foreign governments, whether held individually or in an investment portfolio account such as, but not limited to, stocks, bonds, stock market indices, trust units, closed end mutual funds, commercial papers and



- medium-term notes;
- (b) self-administered Registered Retirement Savings Plans, self-administered Registered Education Savings Plans and Registered Retirement Income Funds, except when exclusively composed of exempt assets as described in section 10;
- (c) commodities, futures and foreign currencies held or traded for speculative purposes; and
- (d) stock options, warrants, rights and similar instruments.

#### Divestment of Controlled Assets

13. (1) Subject to subsection (5), controlled assets are usually divested by one or more of the following:
  - (a) selling them in an arm's length transaction;
  - (b) making them subject to a trust or management agreement, the most common of which are set out in the Schedule; or
  - (c) through means of an appropriate recusal mechanism, approved by the Ethics Commissioner.
- (2) The Ethics Commissioner has the sole responsibility for determining that a trust, management agreement or recusal, or a combination of any of the foregoing, meets the requirement of this Code. Before an arrangement is executed or when a change is contemplated, a determination that the arrangement meets the requirements of this Code shall be obtained from the Ethics Commissioner.
- (3) Confirmation of sale or a copy of any executed instrument shall be filed with the Ethics Commissioner. With the exception of a statement that a sale has taken place or that a trust or management agreement exists, all information relating to the sale and the arrangement is confidential.
- (4) For the purposes of this Code, trust or management arrangements shall be such that they do not leave in the hands of the public office holder any power of management or decision over the assets.
- (5) (a) Subject to the approval of the Ethics Commissioner, a public office holder is not required to divest controlled assets:

- (i) that are pledged to a lending institution as collateral; or
  - (ii) where in the opinion of the Ethics Commissioner the assets are of such minimal value that they do not constitute any risk of conflict of interest in relation to the public office holder's official duties and responsibilities.
- (b) Notwithstanding subparagraph 5(a)(ii), in the case of ministers of the Crown, ministers of state and parliamentary secretaries, controlled assets, save those described in subparagraph 5(a)(i) above, must be divested even where they are of such minimal value that they do not constitute any risk of conflict of interest in relation to the public office holder's official duties and responsibilities.

#### Liabilities

14. The Ethics Commissioner may require, with respect to liabilities, that particular arrangements be made to prevent any conflict of interest situation from arising. Ministers of the Crown, ministers of state and parliamentary secretaries are required to publicly declare liabilities greater than or equal to \$10,000 identifying their source and nature, but not their value.

### OUTSIDE ACTIVITIES

#### General

15. Public office holders' participation in activities outside their official duties and responsibilities is often in the public interest. Subject to sections 16 to 18, such participation is acceptable where it is not inconsistent with their official duties and responsibilities and does not call into question their capacity to perform their official duties and responsibilities objectively.

#### Prohibited Activities

16. Subject to section 17, public office holders shall not, outside their official duties and responsibilities:
- (a) engage in employment or the practice of a profession;
  - (b) actively manage or operate a business or commercial activity;
  - (c) retain or accept directorships or offices in a corporation;
  - (d) hold office in a union or professional association;
  - (e) serve as a paid consultant;
  - (f) be an active partner in a partnership; and

- (g) personally solicit funds except for participation in fundraising campaigns sponsored by the federal government and participation in discussions of a strategic nature for other charitable campaigns.

#### Permissible Activities

- 17. (1) When the activities described in section 16 relate to the official duties and responsibilities of a public office holder, the public office holder may, in exceptional circumstances and with the approval required by subsection 7(4) and subject to the conditions specified by the Ethics Commissioner, become or remain involved in them, but may not accept remuneration for any activity, except as provided in subsections (3) and (4).
- (2) A public office holder may, with the approval of and subject to the conditions specified by the Ethics Commissioner, retain or accept directorships in organizations of a philanthropic, charitable or non-commercial character, but the office holder shall take great care to prevent conflicts of interest from arising.
- (3) Where the Ethics Commissioner is of the opinion that it is in the public interest, full-time Governor in Council appointees to Crown Corporations, as defined in the *Financial Administration Act*, may retain or accept directorships or offices in a financial or commercial corporation, and accept remuneration therefore, in accordance with compensation policies for Governor in Council appointees as determined from time to time.
- (4) Public office holders may, in exceptional circumstances and with the approval required by subsection 7(4), become or remain involved in activities that do not place on them demands inconsistent with their official duties and responsibilities or call into question their capacity to perform their official duties and responsibilities objectively.

#### Public Declaration of Outside Activities

- 18. (1) A public office holder shall make a Public Declaration of the activities referred to in section 17 and of past and current directorships and other positions listed in a Confidential Report under section 9.
- (2) In cooperation with a public office holder, the

Ethics Commissioner shall prepare the Public Declaration of outside activities to be made by that office holder.

## GIFTS, HOSPITALITY AND OTHER BENEFITS

### General

19. (1) Gifts, hospitality or other benefits, including those described in section 20, that could influence public office holders in their judgment and in the performance of official duties and responsibilities, shall be declined.
- (2) Where there is doubt as to the appropriateness of accepting an offer of a gift, hospitality or other benefit, irrespective of its value, public office holders must consult the Ethics Commissioner and obtain his or her approval to accept the offer.

### Where Acceptable

20. (1) (a) Acceptance by public office holders or members of their families of offers of gifts, hospitality or other benefits arising out of activities associated with the performance of the public office holder's official duties and responsibilities is not prohibited if such gifts, hospitality or other benefits:
  - (i) are within the normal bounds of propriety, a normal expression of courtesy or protocol or within the normal standards of hospitality;
  - (ii) are not such as to bring suspicion on the public office holder's objectivity and impartiality; and
  - (iii) would not compromise the integrity of the Government.
- (b) Invitations to attend special events (such as, but not limited to, sporting events and performing arts) are not prohibited provided that the criteria in paragraph (1)(a) are met and provided that:
  - (i) attendance serves a legitimate business purpose;
  - (ii) the person or a representative of the organization extending the invitation is in attendance; and

- (iii) the value is reasonable and the invitations are not frequent.
- (2) In the case of ministers of the Crown, ministers of state and parliamentary secretaries and their family members, travel on non-commercial chartered or private aircraft for any purpose shall be prohibited except in exceptional circumstances and may only be accepted with the prior approval of the Ethics Commissioner.
- (3) In keeping with existing practice, gifts, hospitality and other benefits are permitted if:
  - (a) received from relatives and close personal friends; or
  - (b) of reasonable value and received from a government or in connection with an official or public event.
- (4) Where the Ethics Commissioner determines appropriate, where a gift accepted under subsection 20(1), other than gifts from relatives or close personal friends, has a value of \$1,000 or more, the public office holder shall make arrangements for the gift to be placed into the government inventory.

#### Disclosure and Public Declaration

- 21. (1) Where the total value of all gifts, hospitality or other benefits received, directly or indirectly, by a public office holder or his/her family, exceeds \$200, from any one source other than relatives and close personal friends in a twelve-month period, such gifts, hospitality and benefits shall be disclosed to the Ethics Commissioner.
- (2) Where a public office holder or a member of his or her family directly or indirectly accepts any gift, hospitality or other benefit in accordance with section 20 that has a value of \$200 or more, other than a gift, hospitality or other benefit from a relative or close personal friend, the public office holder shall notify the Ethics Commissioner and make a Public Declaration that provides sufficient detail to identify the gift, hospitality or other benefit received, the donor and the circumstances.
- (3) Where travel has been accepted in accordance with subsection 20(2), from any source, the public office holder shall make a Public Declaration that provides sufficient detail to identify the source and the circumstances.

- (4) Where there is doubt as to the need for a Public Declaration the public office holder must consult the Ethics Commissioner.

#### AVOIDANCE OF PREFERENTIAL TREATMENT

- 22. (1) A public office holder shall take care to avoid being placed or the appearance of being placed under an obligation to any person or organization that might profit from special consideration on the part of the office holder.
- (2) In the formulation of government policy or the making of decisions, a public office holder shall ensure that no persons or groups are given preferential treatment based on the individuals hired to represent them.
- (3) Public office holders shall not accord preferential treatment in relation to any official matter to relatives or friends or to organizations in which they, relatives or friends have an interest.
- (4) A public office holder shall not use his or her position as a public office holder to influence or attempt to influence a decision of another person so as to further the public office holder's private interests or those of his or her relatives or friends or to improperly further another person's private interests.
- (5) A public office holder shall not use information obtained in his or her position as a public office holder that is not generally available to the public to further his or her private interests or those of his or her relatives or friends, or to improperly further another person's private interests.
- (6) Ministers of the Crown and ministers of state should not hire or contract with their families, non-dependent children, siblings or parents. As well, they should not permit departments or agencies for which they are responsible, or to which they are assigned, to hire or contract with their families, non-dependent children, siblings or parents.
- (7) Ministers of the Crown, ministers of state and the departments or agencies for which they are responsible should not hire or contract with the families, non-dependent children, siblings or parents of another minister of the Crown, minister of state or party colleague in Parliament

except by means of an impartial administrative process in which the minister or minister of state plays no part. Appointments to ministerial exempt staff are not subject to this restriction.

- (8) A public office holder shall not attempt to engage in any of the activities prohibited under subsections (1) to (7).

#### FAILURE TO COMPLY

- 23. Where the Ethics Commissioner advises that a public office holder is not in compliance with the Code, the public office holder is subject to such appropriate measures as may be determined by the Prime Minister, including, where applicable, discharge or termination of appointment.

## Part III

### **POST-EMPLOYMENT COMPLIANCE MEASURES**

#### INTERPRETATION

24. For purposes of this Part, “public office holder” refers to the same positions subject to Part II, as set out in section 4, with the exception that ministerial staff and other public office holders as defined at paragraph (b) of the definition of “public office holder” under subsection 4(1) must be designated by their minister for this Part to apply.

#### OBJECT

25. Public office holders shall not act, after they leave public office, in such a manner as to take improper advantage of their previous public office. Observance of this Part will minimize the possibilities of:
- (a) allowing prospects of outside employment to create a real, potential or apparent conflict of interest for public office holders while in public office;
  - (b) obtaining preferential treatment or privileged access to government after leaving public office;
  - (c) taking personal advantage of information obtained in the course of official duties and responsibilities until it has become generally available to the public; and
  - (d) using public office to unfair advantage in obtaining opportunities for outside employment.

#### COMPLIANCE MEASURES

##### Before Leaving Office

26. (1) Public office holders should not allow themselves to be influenced in the pursuit of their official duties and responsibilities by plans for or offers of outside employment.
- (2) A public office holder shall disclose in writing to the Ethics Commissioner all firm offers of outside employment that could place the public office holder in a position of conflict of interest.
- (3) A public office holder who accepts an offer of outside employment shall immediately disclose in writing to the



Ethics Commissioner as well as to his or her superior, the acceptance of the offer. In such an event, where it is determined by the Ethics Commissioner that the public office holder is engaged in significant official dealings with the future employer, the public office holder shall be assigned to other duties and responsibilities as soon as possible. The period of time spent in public office following such an assignment shall be counted towards the limitation under section 28.

- (4) The public office holder shall also disclose the acceptance of the offer:
  - (a) in the case of ministers of the Crown and ministers of state, to the Prime Minister;
  - (b) in the case of deputy heads, to the Clerk of the Privy Council;
  - (c) in the case of ministerial staff and other public office holders as defined at paragraph (b) of the definition of “public office holder” under subsection 4(1), full-time ministerial appointees and full-time Governor in Council appointees other than those referred to in paragraph (b), to the appropriate minister of the Crown or minister of state; and
  - (d) in the case of parliamentary secretaries, to the minister whom the parliamentary secretary assists.

#### After Leaving Office - Prohibited Activities

- 27. (1) At no time shall a former public office holder switch sides by acting for or on behalf of any person, commercial entity, association or union in connection with any specific ongoing proceeding, transaction, negotiation or case to which the Government is a party and where the former public office holder acted for or advised the Government.
- (2) Nor shall former public office holders give advice to their clients using information that is not available to the public concerning the programs or policies of the departments with which they were employed, or with which they had a direct and substantial relationship.

## Limitation

28. Subject to section 29, and to the object of this Code, former public office holders, except for ministers of the Crown and ministers of state for whom the prescribed period is two years, shall not, within a period of one year after leaving office:
- (1) accept services contracts, appointment to a board of directors of, or employment with, an entity with which they had direct and significant official dealings during the period of one year immediately prior to the termination of their service in public office; or
  - (2)
    - (a) make representations whether for remuneration or not, for or on behalf of any other person or entity to any department, organization, board, commission or tribunal with which they had direct and significant official dealings during the period of one year immediately prior to the termination of their service in public office; and
    - (b) in the case of former ministers of the Crown or former ministers of state make representations to a minister in the Cabinet who had been a Cabinet colleague of the former minister of the Crown or former minister of state;

provided that nothing in this section will act so as to prevent a former minister of the Crown, minister of state or parliamentary secretary from engaging in activities which, as a member of Parliament, he or she is normally asked to carry out on behalf of constituents.

## Reduction and Waiver of Limitation

29. (1) On application from a public office holder or former public office holder the Ethics Commissioner, may waive or reduce the limitation imposed under section 28.
- (2) In deciding whether to waive or reduce the limitation imposed under section 28, the Ethics Commissioner will consider whether the public interest in granting the waiver or reduction outweighs the public interest in maintaining the prohibition. Factors to consider include:
- (a) the circumstances under which the termination of the public office holder's service in public office occurred;
  - (b) the general employment prospects of the public office holder or former public office holder making

- (c) the application;
  - (c) the significance to the Government of information possessed by the public office holder or former public office holder by virtue of that office holder's public office;
  - (d) the desirability of a rapid transfer from the Government to private or other governmental sectors of the public office holder's or former public office holder's knowledge and skills;
  - (e) the degree to which the new employer might gain unfair commercial advantage by hiring the public office holder or former public office holder;
  - (f) the authority and influence possessed by the public office holder or former public office holder while in public office; and
  - (g) the disposition of other cases.
- (3) The decision made by the Ethics Commissioner shall be communicated in writing to the applicant referred to in subsection (1).

#### EXIT ARRANGEMENTS

30. Prior to a public office holder's official separation from public office, the Ethics Commissioner shall, in order to facilitate the observance of the compliance measures set out in this Part, communicate with the public office holder to advise about post-employment requirements.

#### DEALINGS WITH FORMER PUBLIC OFFICE HOLDERS

##### Obligation to Report

31. (1) Public office holders who have official dealings, other than dealings that consist of routine provision of a service to an individual, with former public office holders who are or may be governed by the measures set out in this Part, shall report those dealings to the Ethics Commissioner.
- (2) On receipt of a report under subsection (1), the Ethics Commissioner shall immediately determine whether the former public office holder is complying with the compliance measures set out in this Part.
- (3) Public office holders shall not, in respect of a transaction, have official dealings with former public office holders, who

are determined pursuant to subsection (2) to be acting, in respect of that transaction, contrary to the compliance measures set out in this Part.

## SCHEDULE

### AGREEMENTS AND RECUSAL

1. The following are examples of the most common agreements that may be established by public office holders for the purpose of complying with the Code:

- (a) **Blind Trust**

A blind trust is one in which the trustee makes all investment decisions concerning the management of the controlled assets, with no direction from or control by the public office holder who has placed the assets in trust. Assets are placed in a blind trust for the purpose of allowing investment in publicly traded securities of corporations or foreign governments.

A blind trust is not acceptable for a single or minimal block of shares with a relatively small value, unless there is a written undertaking by the public office holder to provide the trustee with additional funds to be invested at the trustee's discretion. In such a case, the Ethics Commissioner shall require confirmation from the trustee to that effect.

The trustee shall provide the Ethics Commissioner with an annual report setting out the nature and value of the trust property, the trust's net income for the preceding year and the trustee's fees, if any.

- (b) **Blind Management Agreement**

A blind management agreement places the assets of the public office holder in the hands of a manager who is at arm's length from the public office holder. The manager is empowered to exercise all of the rights and privileges associated with those assets. The agreement prevents the manager from seeking or obtaining the advice of the public office holder. However, financial information as approved by the Ethics Commissioner can be provided to the public office holder. The public office holder cannot offer or provide advice, nor can the public office holder participate in any discussion or decision-making processes, wherever they may arise, that may particularly or significantly affect the assets that are subject to the agreement. It is only in exceptional circumstances where an extraordinary corporate event is likely to materially affect the assets, that the public office holder may personally intervene, but only after the

Ethics Commissioner has been consulted and determines that the intervention would not give rise to a conflict of interest, and only in the presence of the Ethics Commissioner. A Public Declaration which has been verified as to accuracy by the manager, to be signed by the public office holder, must also be made, identifying the interest of a public office holder in a corporation and its holdings that contract with the federal government or its agencies. The public office holder is entitled throughout the duration of the agreement to be kept informed of the basic value of the assets.

- (c) **Recusal**  
Recusal is based on a determination by the Ethics Commissioner of matters which could create a conflict of interest for a public office holder. This could include a public office holder's assets, which must be divested under subsection 13(1) of the Code, or other information which the Ethics Commissioner considers relevant. As provided at paragraph 7(2)(c) of the Code, matters determined to be subject for recusal must be set out in the Public Registry, as well as information regarding the process for administering recusals. On the basis of a determination, the public office holder must refrain from exercising any official power or performing any official duty or function with respect to the matter, and from attempting to influence the matter in any way.

The public office holder, with the advice of the Ethics Commissioner, will put in place appropriate procedures to prevent a conflict of interest on such matters, and to ensure the appropriate exercise of powers and performance of duties or functions. This could include:

- (i) in the case of the Prime Minister, replacement on the matter by the Deputy Prime Minister or acting Prime Minister;
- (ii) in the case of a minister of the Crown, replacement on the matter by an acting Minister;
- (iii) in the case of a minister of state, the appropriate minister of the Crown acting on the matter in the stead of the minister of state; and

- (iv) in the case of a parliamentary secretary, the minister whom he or she assists seeing to the appropriate exercise of power or the performance of duty or function.

The Ethics Commissioner will maintain a confidential record of all recusals which the Ethics Commissioner may use in determining whether or not the minister has breached the requirements of the Code. The Ethics Commissioner will also report annually on recusal practices implemented under the Code.

#### PROVISIONS COMMON TO BLIND TRUSTS

2. Provisions common to blind trusts are:

- (a) **Custody of the Assets:** The assets to be placed in trust must be registered to the trustee unless these are in a RRSP account.
- (b) **Power of Management or Control:** The public office holder (settler) may not have any power of management or control over trust assets. The trustee, likewise, may not seek or accept any instruction or advice from the public office holder concerning the management or the administration of the assets.
- (c) **Schedule of Assets:** The assets placed in trust shall be listed on a schedule attached to the trust agreement.
- (d) **Duration of Trust:** The term of any trust is to be for as long as the public office holder who establishes the trust continues to hold an office that makes that method of divestment appropriate. A trust may be dismantled once the trust assets have been depleted.
- (e) **Return of Trust Assets:** Whenever a trust agreement is dismantled, the trustee shall deliver the trust assets to the public office holder.
- (f) **Information:** No information is provided to the public office holder (settler) except information that is required by law to be filed and periodic reports on the overall value of the trust, but never its composition.
- (g) **Income:** A public office holder who establishes a blind trust

may receive any income earned by the trust, add or withdraw capital funds, and be informed of the aggregate value of the entrusted assets.

- (h) Trustee: Any trustee who is appointed shall clearly be at arm's length from the public office holder and the Ethics Commissioner is to be satisfied that an arm's length relationship exists in each case. As other criteria, any trustee must be:
  - (i) a public trustee;
  - (ii) a company, such as a trust company or investment company, that is public and known to be qualified in performing the duties of a trustee; or
  - (iii) an individual who may perform trustee duties in the normal course of his or her work.
- (i) Annual Reporting: Trustees are required to provide the Ethics Commissioner, on every anniversary of the trust, with a written annual report verifying as to accuracy the nature, market value and reconciliation of the trust property, the net income of the trust for the preceding year, and the fees of the trustee, if any.

#### AGREEMENT FORMS

- 3. (1) Acceptable blind trust and blind management agreements are available from the Ethics Commissioner. Any amendments to these agreements shall be submitted to the Ethics Commissioner for approval, before they are executed.
- (2) Written investment instructions can be provided by the public office holder to the trustee, and be included in a blind trust agreement provided they are general in nature and pre-approved by the Ethics Commissioner. The instructions may provide for proportions to be invested in various categories or risk, but may not be industry-specific, except where there are legislative restrictions on the type of assets that a public office holder may own. No oral directives are permitted.

#### FILING OF AGREEMENTS

- 4. Public office holders are required to file with the Ethics Commissioner a copy of any blind trust or blind management agreement. Such agreements will be kept in the public office holder's confidential file and the Ethics Commissioner will not make them available to anyone for any purpose.



## REIMBURSEMENT FOR COSTS INCURRED

5. On the recommendation of the Ethics Commissioner, the following reimbursements for costs to comply with the Conflict of Interest Compliance Measures set out in this Code may be permitted:
  - (a) Divestment of Assets:
    - (i) reasonable legal, accounting and transfer costs to establish and dismantle a trust or management arrangement determined to be necessary by the Ethics Commissioner;
    - (ii) annual, actual and reasonable costs to maintain and administer the trust or management arrangement, following rates set from time to time by the Ethics Commissioner;
    - (iii) commissions for transferring, converting or selling assets where determined necessary by the Ethics Commissioner; and
    - (iv) costs of other financial, legal or accounting services required because of the complexity of arrangements for such assets.
  - (b) Withdrawal from Activities:

Costs of removing a public office holder's name from federal or provincial registries of corporations.
6. Reimbursement is not permitted for:
  - (a) charges for day-to-day operations of a business or commercial entity;
  - (b) charges associated with winding down a business; and
  - (c) costs for acquiring permitted assets using proceeds from required sale of other assets.
7. The public officer holder is responsible for any income tax adjustment that may result from the reimbursement of trust costs.